

## **The complaint**

Mr T has complained that Ikano Bank AB (publ) ("Ikano") rejected his claim against it under Section 75 of the Consumer Credit Act 1974. A representative (the CMC) is assisting Mr T with his complaint.

## **What happened**

Mr T bought a solar panel system ("the system") for his home in 2017. The purchase was funded with a loan from Ikano, and that business is therefore liable for the misrepresentations and/or breach of contract of the supplier under the relevant legislation. In this case, Mr T alleges that the supplier misled Mr T into believing that the panels would be self-funding.

Mr T's complaint was considered by one of our adjudicators. Initially our adjudicator thought the complaint should be upheld. However, after Ikano sent in additional submissions, he thought that the complaint shouldn't be upheld as there wasn't sufficient evidence that the system was mis-represented to Mr T.

Mr T disagreed. Through his representative he said:

- Our adjudicator had made an error in assessing the case based on Mr T not retaining the sales documents, but his submission was that he wasn't given any.
- The fact that Mr T hadn't raised concerns sooner shouldn't be used against him as he has 6 years to raise a claim. He contacted the CMC within 3.5 years of the sale, after seeing an advert that he could make a claim.

As the complaint couldn't be resolved by our adjudicator, I have been asked to make a decision.

## **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

When considering what's fair and reasonable, I'm required to take into account; relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

In this case the relevant law includes section 56, section 75 and section 140 of the Act. Section 75 provides protection for consumers for goods or services bought using credit.

As Mr T paid for the system with a fixed sum loan agreement, Ikano agrees that section 75 applies to this transaction. This means that Mr T could claim against Ikano, the creditor, for any misrepresentation or breach of contract by the supplier in the same way he could have claimed against the supplier. So, I've taken section 75 into account when deciding what is fair in the circumstances of this case.

Section 56 is also relevant. This is because it says that any negotiations between Mr T and the supplier, are deemed to have been conducted by the supplier as an agent of Ikano. And Section 140A is about unequal relationships between the parties to a credit agreement. For the purpose of this decision, I've used the definition of a misrepresentation as an untrue statement of fact or law made by one party (or his agent) to a second party which induces that second party to enter the contract, thereby causing them loss.

Having carefully considered everything provided, I do not uphold this complaint.

Firstly, I'd like to explain that neither Ikano nor Mr T have been able to provide much paperwork from the time of sale. Where there is such limited evidence, I have to make a decision based on the available evidence – that includes Mr T's testimony and any other documentation either party have been able to submit as well as the wider circumstances.

Mr T (through his CMC) said, in his letter of claim, that he was led to believe that the system would pay for itself within five to six years. This would be due to the income he would receive from the power generated by the system and savings made on his energy bills. He said he believed he would get £300 a month in FIT payments and £900 a year in savings on electricity bills.

More recently Mr T said the following. He reiterated that he believed his finance payments would be covered by the benefits provided by the system and that he wasn't provided with any documents setting out the benefit. He said that no specific benefit figures were mentioned, and benefits were spoken about in a global basis and that his finance payments would be redeemed within seven to eight years.

So, Mr T's testimony isn't particularly consistent – the time period within which the supplier supposedly told him the system would pay for itself has changed. He also earlier broke down the benefit figures he was assured he would get, but now says no specific benefit figures were mentioned but rather discussed on a global basis. I have to bear in mind that memories can fade over time and Mr T's testimony is the only evidence brought in support of this claim. I would add that, if there was a specific representation that a consumer had relied on that convinced them to enter into such a substantial purchase, I would expect a consumer to remember that – as that's what drove the purchase.

In order for me to uphold this case, I would need to be satisfied that the salesperson did more than make generalist comments about how well these solar panels usually perform – or that they promoted the system to him - that's the nature of selling items. I'd need to be satisfied that the salesperson made a specific misrepresentation about Mr T's system, and that he relied on this misrepresentation and bought the system on that basis. I'm afraid that doesn't appear to be the case here.

I've also thought about the other evidence available in this case. Ikano has provided a sample document used by this supplier which does show it set out the benefits and costs clearly to its consumer's – and this made it clear that the system would not be self-funding.

As explained above, neither Ikano nor Mr T have been able to provide the documents related to this sale and the supplier stopped trading in 2020. I understand Mr T says he was never given documents rather than he hadn't retained them. However, while that may be the case, the sample documents do give us an indication as to the supplier's sales practices and it does look like, in some cases at least, it did make the cost and benefit clear.

I've then gone on to think about the wider circumstances of this case. I understand that the supplier was trading for a number of years after the sale of Mr T's system, and I've seen no

evidence that Mr T raised this with either the supplier or Ikano until 2022. I think if Mr T was genuinely disappointed with the benefits he was receiving and expected the benefits to cover the cost of the system, when this didn't materialise, I would have expected him to have raised this and I've seen no evidence that he did. While I understand the CMC's comments that a consumer has six years to raise a claim, considering the significant sums Mr T says he was promised, that he hasn't received, I would have expected him to have raised concerns sooner than he did.

I also have to bear in mind that, outside of Mr T's very testimony, there is no other evidence from the time of sale that, the supplier was promoting the systems as being self-funding when Mr T bought his system.

I've thought very carefully about Mr T's testimony, bearing in mind this is the main evidence Mr T has submitted. But having done so, I'm not satisfied that there is sufficient evidence here that the system was mis-represented to Mr T on the basis it would be self-funding or that Mr T relied on a statement like this, and this was the main reason he purchased the system. Each case is decided on the individual merits of that case, and on balance, I think the evidence suggests that it is unlikely there was a misrepresentation that would enable me to uphold this complaint.

I've gone on to consider whether a court may conclude that there existed an unfair relationship under section 140A the Act. A sufficient inequality of knowledge and understanding is considered a classic source of unfairness in a relationship between a creditor and a consumer. But considering Ikano says it didn't pay any commission and I haven't found any misrepresentation, I think a court is unlikely to conclude that there is an unfair relationship under section 140.

I've also thought about Mr T's claims that Ikano didn't carry out sufficient credit checks and the supplier applied pressure to convince him to buy the system. As Ikano has explained, it looks like it did do a range of automated checks, Mr T has maintained payments for a number of years since the sale and has never contacted Ikano with any affordability concerns. So there doesn't seem to be any evidence the loan was unaffordable. And pressure can be subjective, and Mr T hasn't said anything that makes me think undue pressure was applied. So, I don't uphold Mr T's complaint for these reasons.

## **Summary**

Having carefully considered the evidence provided by all parties in this complaint, I'm satisfied that there were no untrue statements of fact made by the supplier that induced Mr T to enter into the contract for the system, and I have found no other reason to uphold this complaint. So, I don't think Ikano's decision to not accept the claim was unfair.

## **My final decision**

For the reasons explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 25 December 2023.

Asma Begum

**Ombudsman**