

## The complaint

Mrs O complains about the quality of a boiler she financed through a fixed sum loan with Ikano Bank AB (publ) ("Ikano").

## What happened

I issued my provisional decision about this complaint in February 2022. An extract from that provisional decision is set out below.

### ***What I've provisionally 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.*

*I'm expecting to uphold this complaint, but I don't think the investigator has considered the use Mrs O has had from the boiler and the redress I'm expecting to order is therefore different: I'll explain.*

*Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.*

*I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.*

*When something goes wrong and the payment was made, in part or whole, with a fixed sum loan, as is the case here, it might be possible to recover the money paid through a section 75 claim. This section of the Consumer Credit Act (1974) says that in certain circumstances, the borrower under a credit agreement has a like right to claim against the credit provider as against the supplier if there's either a breach of contract or misrepresentation by the supplier.*

*When considering a complaint about a financial services provider, I'm not determining the outcome of a claim that a party might have under section 75. I take section 75 into account when I think about what's a fair way to resolve the complaint but I don't have to reach the same view as, for example, a court might reach if Mrs O made a claim through them for breach of contract or misrepresentation.*

*I think there has been a breach of contract here. In 2018 a report from the service company explained that the boiler hadn't been fitted to current standards and that remedial action was required. It's not disputed that that was the case.*

*The relevant legislation explains that a business has one opportunity to repair a fault that is present at the point of supply and I think it's clear this boiler hadn't been fitted properly and*

therefore had a fault at the point of supply. The faults that were reported in 2018 have yet to be fully rectified. Ikano say that attempts have been made to attend the property and that Mrs O hasn't provided the quotes she promised to get the work done.

I've considered Mrs O's testimony as well and I find it persuasive. It had been agreed that the supplier would repair the boiler on 11 August 2021. Mrs O says she and her husband were in all day. She emailed this service in the morning to explain that the supplier had still not arrived, and I think that suggests she was in and had been waiting.

Mrs O explained that she spoke to the supplier the next day and they explained that a plumber had attended. Mrs O says she asked for the engineer's company name and telephone number, but the supplier didn't provide that. By this point the seriousness of the situation must have been very clear to the supplier. Mrs O had been complaining for over three years and had already referred her complaint to this service. Had they attended and not been able to gain entry I think it's likely they would have contacted Ikano to explain and I would have expected to see evidence of phone calls to Mrs O and/or emails on the day the visit was planned. I'm persuaded it's likely the plumber didn't attend as scheduled and I think the repair has therefore failed.

And, even if I'm wrong about that, the relevant legislation says a repair should be completed in a reasonable period of time. Mrs O has now been waiting for nearly four years and I don't think that could be considered a reasonable period of time. I understand Ikano's arguments that Mrs O hasn't provided evidence she sent quotes to the supplier, but those quotes weren't discussed until July 2018 and by then the supplier had already failed to attend on 3 July 2018. I think it's reasonable for a consumer to expect a business to be more proactive when trying to resolve a problem.

I'm persuaded by Mrs O's consistent testimony that it's likely appointments were regularly missed and that also persuades me that a repair hasn't been provided in a reasonable time. In those circumstances the relevant legislation says the consumer should be entitled to reject the goods and that's what our investigator said should happen. She thought Ikano should end the finance agreement and return all monies paid including the deposit.

But the relevant legislation says that in these circumstances the business should be entitled to withhold some of the payments that have been made in respect of the use the consumer has had from the goods.

Here, Mrs O has been able to use the boiler although it's not been serviced and has problems. So, I think it's fair she pays for that use. But I'm not persuaded that the monthly repayments of over £48 a month are a fair reflection of what fair usage would be. This is because a proportion of those repayments went towards repaying interest and servicing. There isn't an exact formula for working out what a fair usage should be. In deciding what's fair and reasonable I've thought about the amount of interest charged on the agreement, Mrs O's likely overall usage of the boiler, the impact to the boiler's efficiency that may have resulted from a lack of servicing, and the likely cost of servicing. In doing so, I think a fair amount Mrs O should pay is £25 for each month she had use of the boiler. This means that I'm expecting to tell Ikano they can only retain £25 of each monthly payment Mrs O has, or will, make up until the end of March 2022, the point at which I think this complaint should reasonably be settled by. Anything Mrs O has paid including any deposit (although I don't think one was paid in this instance) in excess of that amount should be treated as an overpayment.

We'd usually tell the business to take ownership of the goods in those circumstances. But here that may present some problems as Ikano may not wish to incur the costs to have the

goods removed, the boiler will have depreciated in value, and I think it's unlikely to be economically viable for them to do so.

Mrs O may also not want the added hassle of having to replace the boiler and she may not wish, or be in a position, to take out a new credit commitment for a replacement if the boiler is removed. Although, if Mrs O keeps the boiler the repair work will still need to be completed and, in the absence of the credit agreement that was supposed to fund the service plan, she'll be without a plan.

Taking all that into account I'm not expecting to suggest Ikano take ownership of the goods. I think Mrs O should be allowed to keep them but to compensate Ikano for that loss I'm not expecting to ask them to pay any compensation in respect of the distress and inconvenience Mrs O has experienced.

I can see that an independent inspection of the boiler system was completed in August 2018. It's not clear from our file notes who paid for that inspection, although I note that Ikano have suggested the supplier would reimburse the cost. If Mrs O did pay for that inspection and hasn't received a refund I think it would be fair for Ikano to reimburse her on provision of the receipt.

### **My provisional decision**

For the reasons I've given above I'm expecting to uphold this complaint and to tell Ikano Bank AB (publ) to:

- End the agreement.
- Refund all the payments Mrs O has made, less £25 per month for each month from the date of the agreement to the end of March 2022 for fair usage.
- If Mrs O has paid more than the fair usage figure, Ikano should refund any overpayments, adding 8% simple interest per year\* from the date of each overpayment to the date of settlement. Or;
- If Mrs O has paid less than the fair usage figure, Ikano should arrange an affordable and sustainable repayment plan for the outstanding balance.
- Once Ikano has received the fair usage amount, it should remove any adverse information recorded on Mrs O's credit file regarding the agreement.
- Refund the cost of any independent inspection Mrs O has paid for and hasn't been reimbursed for if she can provide a receipt. Add 8% simple interest per year to any refund from the date of payment to the date of settlement.

\*If HM Revenue & Customs requires Ikano to take off tax from this interest. Ikano must give Mrs O a certificate showing how much tax it's taken off if Mrs O asks for one.

### **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.

Mrs O didn't provide any further information but Ikano did. They didn't dispute my provisional decision but asked about the fair usage calculation. They explained that they had suspended payments during the s75 claim as a gesture of goodwill and wanted me to clarify if the £25 per month I was suggesting they retain was to be calculated against what should have been paid or what had been paid.

As that amount is to recompense Ikano for the use Mrs O has had from the goods it should be retained for every month Mrs O has had the goods regardless of whether payments were suspended.

### **Putting things right**

I haven't been given any additional information that has led me to change my provisional decision and that now becomes my final decision on this complaint.

### **My final decision**

For the reasons I've given above I uphold this complaint and to tell Ikano Bank AB (publ) to:

- End the agreement.
- Refund all the payments Mrs O has made, less £25 per month for each month from the date of the agreement to the end of March 2022 for fair usage.
- If Mrs O has paid more than the fair usage figure, Ikano should refund any overpayments, adding 8% simple interest per year\* from the date of each overpayment to the date of settlement. Or;
- If Mrs O has paid less than the fair usage figure, Ikano should arrange an affordable and sustainable repayment plan for the outstanding balance.
- Once Ikano has received the fair usage amount, it should remove any adverse information recorded on Mrs O's credit file regarding the agreement.
- Refund the cost of any independent inspection Mrs O has paid for and hasn't been reimbursed for if she can provide a receipt. Add 8% simple interest per year to any refund from the date of payment to the date of settlement.

\*If HM Revenue & Customs requires Ikano to take off tax from this interest. Ikano must give Mrs O a certificate showing how much tax it's taken off if Mrs O asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or reject my decision before 23 May 2022.

Phillip McMahon  
**Ombudsman**