

The complaint

Mrs H complains that Ikano Bank AB (publ) ("Ikano") have been unreasonable to reject a claim she made to them under section 75 of the Consumer Credit Act 1974 ("section 75").

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead I'll focus on giving my reasons for my 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.

I know it will disappoint Ikano, but I agree with the investigator's view of this complaint.

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 with a fixed sum loan, as is the case here, it might be possible to make 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.

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 when considering breach of contract or misrepresentation.

From what I can see, all the necessary criteria for a claim to be made under section 75 have been met.

Section 49 (1) of the Consumer Rights Act (2015) says that:

"Every contract to supply a service is to be treated as including a term that the trader must perform the service with reasonable care and skill".

I think there has been a breach of contract here as I don't think the installation has been performed with reasonable care and skill.

I say that because the independent inspection commissioned by Mrs H said that. The inspector explained:

“the installation is not up to the standard we would expect.”

He noted amongst other things that, the windows and door set were undersized, the kitchen windowsills were not proprietary, there was evidence of a leak, the bedroom windows were poorly insulated, and there were holes and filled areas on the frames.

He suggested that the *“only viable method to alleviate (the problems) would be to replace the windows.”*

I'm persuaded by his expert opinion that is the case.

I can see that when Mrs H first referred her complaint to this service she was concerned that a finance agreement had been established. She had no recollection of entering into a finance agreement. The agreement was signed electronically on 23 September 2020 and I'm persuaded, on balance, it's likely to have been signed by Mrs H as I've not seen an explanation about how an electronic signature could have been obtained without Mrs H's approval. I'm not persuaded therefore that Mrs H didn't agree to the finance and it's helped her here as she's been able to raise a section 75 claim she wouldn't have been entitled to raise had she paid in cash.

Putting things right

Ikano will need to end the finance agreement and they'll need to refund any money Mrs H has paid towards it.

Legislation allows Ikano to withhold some of that refund in respect of the usage Mrs H has had from the goods. I've therefore thought about how much they should be allowed to retain.

It's clear the goods are of particularly poor quality. The inspector noted there was evidence of a leak and that the lack of insulation in the bedroom would not help noise reduction; an issue I've read Mrs H was particularly keen to tackle when ordering the windows. I don't therefore think Mrs H has had too much use from the windows that were installed. The benefits she may have gained have been impacted by lack of insulation, leaks, and poor acoustic properties she's experienced. All told I think it would be fair for Ikano to withhold any finance instalments paid or due before they issued their final response on the section 75 claim in June 2021 but any payments made or due after that should be refunded to Mrs H, with interest, or waived if due and not paid.

Mrs H has also had to fund an independent inspection to illustrate the concerns she had with the installation. She wouldn't have had to do that if the window installation was of the correct quality. Ikano should therefore refund the £300 that inspection cost and they should add interest to the refund.

My final decision

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

- End the finance agreement.
- Refund all payments made (or waive them if they were due and haven't been paid) since they provided their final response on Mrs H's section 75 claim in June 2021. Add 8% simple interest per year from the date of payment to the date of settlement,

to any refund.

- Refund the £300 Mrs H paid for her independent inspection and add 8% simple interest per year from the date of payment to the date of settlement.
- Remove any adverse information they may have reported to Mrs H's credit file in relation to this issue.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 20 December 2022.

Phillip McMahon
Ombudsman