

The complaint

Mrs B complains about the quality of furniture she purchased using finance provided by Ikano Bank AB (publ) ("Ikano").

What happened

I issued an initial provisional decision on this complaint in June 2022 and a further provisional decision earlier this month. An extract from that most recent 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 agree with the investigator's view of this complaint, but I don't currently agree with the redress he's suggested. I know that will disappoint Ikano but please let me explain why. 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 in whole, with a fixed sum loan, as is the case here, it might be possible to make a claim under section 75 of the Consumer Credit Act 1974 ("section 75"). That 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.

The Consumer Rights Act (2015) explains that if the fault occurs within the first six months we are to assume it was present at the point of supply, when Ikano were jointly responsible for the quality of the goods. In this case the furniture was over six months old when Mrs B complained to Ikano, so it is for Mrs B to demonstrate the faults were there, or developing, when the goods were supplied to her.

Mrs B has had a couple of inspector's visit her from the supplier. During one visit an attempt

was made to tighten fabric but the inspectors found no faults.

Whilst the supplier's internal technicians didn't think there was a fault with Mrs B's sofa the inspector she commissioned, who is independent of this issue, thought there were faults. He noted that the hinges were broken on the footstool and that the arm cushions were displaced. He thought both of these issues were manufacturing faults.

I'm persuaded by the independent inspector's expert, independent, view that Mrs B has provided sufficient evidence that there were faults developing on the goods when they were supplied to her.

The investigator suggested that Ikano should be given a further chance to repair the goods in line with the inspector's report. But the relevant legislation only allows a business one opportunity to attempt a repair. It does not give a business one chance to repair each separate fault that may occur. Whether goods are of satisfactory quality when supplied refers to the goods as a whole not each separate component. Indeed, the more separate faults - the more likely it is the goods aren't of satisfactory quality.

Putting things right

As a repair hasn't been successful Ikano should now allow Mrs B to reject the goods she bought under the agreement. As the goods were bought as a set this will mean the whole set will need to be collected from Mrs B and at no cost to her.

Ikano will need to refund any finance instalments Mrs B has paid but the relevant legislation allows them to retain some of the money that's been paid in respect of the use the consumer has had from the goods. Mrs B has explained that she started having problems early on and is clearly still experiencing those issues. Whilst the concerns raised by the inspector would have impacted on her comfort to some extent it's clear Mrs B has still been able to use the furniture. So, I'm asking Ikano to retain 75% of the finance instalments Mrs B has paid in respect of the use Mrs B has had but they'll need to refund the rest.

If Ikano don't collect the goods within a month of my final decision on this matter (if I'm not persuaded to amend this provisional decision) they will need to refund 100% of any instalments Mrs B makes after that point as it wouldn't be fair to expect Mrs B to retain the goods indefinitely.

My provisional decision

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

- *End the finance agreement and collect the goods at no cost to Mrs B.*
- *Refund all finance instalments paid, retaining 75% in respect of the use Mrs B has had from the goods.*
- *Refund any finance instalments paid more than one month after my final decision on this complaint if the goods haven't been collected by then.*

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.

Ikano didn't provide any additional information for me to consider but Mrs B did. She didn't think it was fair to ask her to pay 75% of the costs and she explained how uncomfortable the

furniture had been. She said the suite was “embarrassing to invite guests to sit on, as it is saggy, misshapen and terribly uncomfortable”.

Mrs B went on to explain that she hadn't made any payments towards her agreement and had paid by credit card to ensure she had some protection in case something went wrong – as had been the case here. She said she had complained to the supplier within the first six months although she hadn't raised the issue with Ikano until later. Mrs B also explained that she'd had to pay £48 for the inspection report to demonstrate the faults that were present; she wanted me to ask Ikano to refund that.

I've had a look at the credit agreement and can see that it was a fixed sum loan and not a credit card that appears to have been used to pay for the goods. Mrs B may have been confused about that, but it's clear the fixed sum loan covers goods purchased from the supplier Mrs B says she got the furniture from and for the same value. Ikano haven't sought to argue that point and I'm persuaded Ikano do have responsibility for this claim.

Mrs B has explained that she hasn't made any payments towards the agreement, but I still think it's fair she pays for the use she's had from it. For the same reasons I've given above I still think Mrs B should pay 75% towards the goods as she has had use from the goods over about a two-and-a-half-year period. If a balance therefore remains on the agreement Ikano should arrange an affordable repayment plan with Mrs B to pay that off in an affordable and sustainable way.

As I have been persuaded by the independent inspector's report that there is evidence the furniture was faulty when supplied then I don't think it matters when Mrs B first made her complaint about its quality. The redress is the same, although I appreciate Mrs B setting out the timeline for me.

I'm sorry I missed the fact that Mrs B had paid for the inspection report. She wouldn't have had to have done that if the furniture was of an acceptable quality. So, I think this was a cost she incurred as a consequence of the quality concerns she had. Ikano should therefore refund the £48 Mrs B paid for the report and they'll need to add interest to the refund as Mrs B has been deprived of that money.

As this changes the redress I'm suggesting I'm obliged to issue a further provisional decision to enable Mrs B and Ikano to provide any further comments they may wish to. I'm limiting the response time for those further comments as the issues to consider have been significantly narrowed and I don't want to keep Mrs B waiting for redress any longer than is necessary.

My provisional decision

I'm expecting to uphold this complaint and to tell Ikano Bank AB (publ) to:

- End the finance agreement and collect the goods at no cost to Mrs B.
- Refund all finance instalments paid, retaining 75% in respect of the use Mrs B has had from the goods. If a balance remains Ikano should arrange an affordable repayment plan with Mrs B.
- Refund, or waive, any finance instalments paid more than one month after my final decision on this complaint if the goods haven't been collected by then.
- Refund the £48 Mrs B paid for the inspection report and add 8% simple interest per year from the date of payment to the date of settlement.

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.

Ikano responded to my most recent provisional decision. They said it was unfair to treat the inspection visit by the supplier as a repair visit as no fault was found or repair completed. They said Mrs B therefore didn't have a right to reject the furniture. They also explained that they were unconvinced by the independent inspector's findings. They suggested the hinge damage could have occurred because of misuse and they didn't feel the photographs showed any faults. Ikano said they should commission a further independent report.

Mrs B didn't think it was fair to ask her to pay anything towards the suite. She explained that she'd had to use pillows to fold over the arms, so that they were not leaning on almost bare wood, and she said the furniture was clearly not of satisfactory quality. She didn't think it was fair for her to be paying for the use of the goods whilst the complaint had been processed. She said *"You have upheld my complaint, but I will have to pay Ikano Bank £1486.47 for two and a half years of discomfort and when I have done that, they will take the suite away and I will have nothing!"* and she added that she would have expected the suite to have lasted 10 years.

I don't agree with Ikano's additional comments. I think the supplier's visit was an opportunity for them to complete repairs and they attempted to tighten fabric, which was a repair attempt. The inspection completed by Mrs B has identified issues and it's the inspector's expert opinion that the faults are manufacturing faults and were therefore present from the onset. I think the photographs do show faults. The arrows the inspector has used direct us to problems with the trim. Although I accept the pictures of the hinge don't show a great deal, I think given the nature of that fault means it would have been difficult to demonstrate in a photograph. The trim fault alone gives Mrs B the right of rejection.

I've also considered what Mrs B has had to say. I agree that the goods haven't lasted as long as would reasonably have been expected but I don't think I have enough evidence to say that should have been 10 years. I've explained that in these circumstances the relevant legislation allows a consumer to reject the goods. But that legislation also allows the business to make a deduction of any rebate for any use the consumer has had, so I don't think it's unreasonable to do that here. It was Mrs B's decision not to pay for the goods and whilst I understand that leaves an amount to pay, I'm afraid I don't think it would be fair to tell Ikano to waive that. The agreement was set to run until 2024 and Mrs B won't be liable for all of it.

Putting things right

I've not been provided with information that has led me to change my second 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 finance agreement and collect the goods at no cost to Mrs B.
- Refund all finance instalments paid, retaining 75% in respect of the use Mrs B has had from the goods. If a balance remains Ikano should arrange an affordable repayment plan with Mrs B.
- Refund, or waive, any finance instalments paid more than one month after my final decision on this complaint if the goods haven't been collected by then.

- Refund the £48 Mrs B paid for the inspection report and add 8% simple interest per year from the date of payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 17 August 2022.

Phillip McMahon
Ombudsman