

The complaint

Mrs M complains that Ikano Bank AB (publ) rejected her claim under section 75 Consumer Credit Act 1974 in respect of a faulty carpet.

What happened

In June 2020 Mrs M purchased a new carpet from a retailer I will call S. It cost £3,365 which was funded by a fixed loan from Ikano and a small deposit. The carpet was fitted in August 2020 and shortly afterwards a second room had the same carpet laid. It came with a 20 year wear guarantee. Mrs M was concerned the carpet was defective and contacted S. It sent a representative and her report states:

“The carpet in the lounge, dining room and HSL shows dullness and flattening in the traffic areas which the customer is very unhappy about also the stairs are baggy on the edges. The carpet is under 6 months old. I have seen this regularly with Epsilon. The customer says it is vacuumed using a roller regularly but this does not improve the appearance. The customer wants it to be replaced. The conservatory was fitted in the same carpet at a later date and as yet is not showing any sign of flattening however the join that has been put in is not straight and very visible. The landing carpet has formed a lump and is not secured into the doorbar (stet) correctly.”

However, S concluded that the appearance of the carpet was due to normal wear and tear. The matter was referred to an alternative dispute resolution service and they concluded the carpet was satisfactory.

Ikano also rejected Mrs M's claim and so she brought a complaint to this service. It was considered by one of our investigators who recommended it be upheld. Ikano didn't agree and said it was not reasonable to reach a different conclusion to the other dispute resolution service.

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.

This complaint has been submitted as a claim under section 75 of the Consumer Credit Act 1974. Section 75 offers protection to customers who use certain types of credit to make purchases of goods or services. Under section 75 the consumer has an equal right to claim against the provider of the credit or the retailer providing the goods or services, if there has been a misrepresentation or breach of contract on the supplier's part.

For section 75 to apply, the law effectively says that there has to be a:

- Debtor-creditor-supplier chain to an agreement *and*
- A clear breach of contract or misrepresentation by the supplier in the chain.

The is no dispute that the chain is intact and so I have to consider if there has been a breach of contract or misrepresentation.

I appreciate the view expressed by Ikano that an alternative service has taken a view on this matter. However, I am looking at the application of s 75 and I can reach a different conclusion on that matter.

The issue is whether there was breach of contract or misrepresentation. Mrs M purchased a carpet which was advertised with a 20 year wear guarantee and as being suitable for heavy domestic use. There were other suitably vague promises about the carpet being of a rich texture and opulent. All of which points to it being sold as a quality carpet. That means Mr M had reasonable expectation of it not suffering from wear and tear with a matter of months.

I recognise that carpets will show some flattening in areas of heavy traffic, but it would appear from the photographic evidence that it does not seem able to cope with the use it has received. I have compared the photos of those areas with ones where the use has been less. The carpet does not appear to be wearing well.

I have to rely on such evidence since no independent report has been supplied. The claim was made with six months and the onus is on the supplier and Ikano to demonstrate that there has been no breach of contract or misrepresentation.

In short, I cannot safely conclude that the carpet was as durable as the advertising suggested and I think that the claim under s 75 should be upheld.

Mrs M has told us a mirror was broken by the fitter and as our investigator has explained her testimony and supporting evidence is sufficient to allow me to accept that this was the case. I have noted the other damages which Mrs M has claimed, but I do not consider there is sufficient evidence to allow me to uphold those claims.

I also consider Mrs M had consequential losses in paying for the fitting of the carpet. I gather she was advised to pay the fitters separately and that cost was not part of the agreement with S nor was it funded by Ikano. However the cost was consequential to the purchase of the carpet and so I consider it should be covered by Ikano subject to Mrs M providing suitable evidence of payment.

Putting things right

Mrs M should be allowed to reject the carpet.

My final decision

My final decision is that I direct Ikano Bank AB (publ) to allow Mrs M to reject the carpet and to end the agreement with nothing further to pay. It should also refund any payments she has made and refund the deposit she paid. It should also cover the cost of fitting subject to evidence of payment being supplied and pay her £60 for the damaged mirror. If Ikano has placed any adverse entries on Mr M's credit file in relation to his loan it should arrange for these to be removed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 13 December 2022.

Ivor Graham
Ombudsman