

## The complaint

Mr W complains that Ikano Bank AB (publ) declined his claim under section 75 of the Consumer Credit Act 1974 for a refund of his purchase of a sofa.

## What happened

In November 2021 Mr W ordered a sofa with a *chaise longue* and paid for it with a two year, zero-interest fixed sum loan financed by Ikano. It cost £669. He also bought a matching footstool, and some other items, which were also paid for with that loan. He placed his order online, without having seen the sofa except on the supplier's website. It was delivered in December.

About a month later, in late January 2022, Mr W complained to the supplier that there was a design flaw with the sofa. He said that if he sat on the sofa where it joined with the *chaise longue* section, or if he lay down on the sofa, then he could feel a vertical wooden plank sticking up, and this was uncomfortable. Also, the *chaise longue* section was a little higher than the rest of the sofa, instead of being level.

The supplier sent an inspector to Mr W's home to examine the sofa. Mr W made an audio recording of this visit, which lasted for less than five minutes. He says that during the visit the inspector agreed with him that there was a problem with the sofa. But when the inspector presented his written report, he said there was nothing wrong with the sofa because this was the way it had been designed. So the supplier did not agree to repair or replace it, or refund Mr W's money.

Mr W then asked Ikano to refund his purchase under section 75. But Ikano did not accept that there was anything wrong with the sofa. So Mr W brought this complaint to our service. He wanted to reject the sofa, and also the matching footstool, which he had only bought because it went with the sofa. (He also complained about a direct debit payment being taken after Ikano had told him it would suspend payments until the matter was resolved; Ikano offered him £30 compensation for this.)

Our investigator upheld this complaint. She didn't think it was reasonable to sell a sofa which a person can't sit or lie on comfortably. She concluded that the sofa was not fit for purpose, and that this was a breach of contract by the supplier, for which Ikano was liable under section 75. She recommended that Ikano collect the sofa at no cost to Mr W, refund him 90% of the cost of the sofa (to reflect the use he has had of it), and pay interest on the refund at 8% a year from the date of purchase to the date of settlement. (She thought that Ikano's offer of £30 for the secondary issue was fair.)

Neither party accepted that decision. Mr W asked for a smaller reduction of the refund, as he had only had the sofa for as long as he had because Ikano had not upheld his claim. He wanted to return the footstool too. And he asked for compensation for his inconvenience. Meanwhile, Ikano argued that the sofa was fit for purpose. It was a three-seater sofa (two ordinary seats with the *chaise longue* at the end), and so it was simply not designed for someone to sit between the *chaise longue* and the middle seat. It would be perfectly comfortable if it was used as intended, instead of in the unusual way Mr W had been using it.

This had been the inspector's conclusion in his report, and Ikano argued that this was also a matter of common sense. Ikano said that if four people had been sitting on a three-person sofa, then this would be a clear misuse of the sofa.

Because no agreement could be reached, this case was referred for an ombudsman's decision. (That was in December 2022; I would like to take this opportunity to apologise to both parties for how long it has taken for this case to be assigned to an ombudsman.)

### **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.

Having done so, I uphold this complaint, for similar but somewhat narrower reasons than those given by our investigator.

Section 75 makes Ikano liable for any breach of contract by the supplier who sold Mr W the sofa. Under section 9 of the Consumer Rights Act 2015, it was an implied term of the contract for the sale of the sofa that the sofa would be of satisfactory quality. Section 9 elaborates on what that means, and it specifically states that satisfactory quality includes (in appropriate cases) that goods must be "fit for all the purposes for which goods of that kind are usually supplied."

Mr W alleges that the sofa was unfit for purpose. That doesn't always have to mean that there was some defect in its manufacture, or that some damage was present when it was sold, although that is what is usually alleged in the vast majority of cases about defective goods. Goods can also be unfit for purpose if their design falls short. In this case, it is not alleged that the sofa was damaged or that it was not manufactured according to the proper specifications, but that its design was so flawed that it is not possible to sit or lie on it comfortably.

In examining that claim, I have read the inspector's report, listened to the audio recording of his visit, and taken into account Mr W's own testimony about the sofa, and his and Ikano's arguments about whether the sofa is fit for purpose or not.

The report assists both sides to some degree. On one hand, the author clearly states the following:

*"Customer is complaining that when they sit in between the chaise and the sofa section they can feel the wood*

*This is the way this has been designed*

*I have explained that this is not made to sit in between cushion (sic) but customer wants a full refund"*

That supports Ikano's case that there is not a defect in the sofa, but it does not address the allegation that the design itself is flawed. As I have just explained, that is and has always been the real issue in Mr W's section 75 claim.

On the other hand, the fifth photograph in the report does show that the height of the *chaise* section differs from the height of the rest of the sofa by an inch or two. I derived no assistance from the other photos, but I think this one is sufficient for me to accept Mr W's evidence as true. The authenticity of his audio recording of the inspector's visit has not been challenged, and so I have also taken it into account, and it does record the inspector as

acknowledging that the sections do not match, but I could still have reached that conclusion myself without the recording.

While I do not accept Ikano's argument that sitting four people on a three-seater sofa amounts to misuse of the sofa, I am still not persuaded that being unable to sit comfortably on a particular point on the sofa means that the sofa is not fit for purpose. I would not have upheld this complaint on that ground.

However, I think that Mr W put his claim on a stronger footing when he said that it is not possible to lie down on the sofa comfortably. I think that lying down on a sofa is a perfectly normal and foreseeable use for a sofa. Or, to put it in the terms of section 9 of the 2015 Act, I think that lying down on a sofa is one of the purposes for which goods of that kind are usually supplied.

The report does not address that point, and it seems as though the inspector did not lie down on the sofa to test it for himself. But as I've said, his photo tends to corroborate Mr W's description of what lying on the sofa felt like, and so I accept what Mr W has told us about that. So I think that Mr W has proved his claim for breach of contract to the extent that he was sold a sofa which was not designed for lying on, and which one cannot lie down on comfortably. It follows that I am satisfied that Ikano should have upheld his section 75 claim, and so I uphold this complaint about the outcome of that claim.

### **Putting things right**

Since this is an issue with the design of the sofa, I don't think the sofa can be made to conform with the implied term that it be fit for purpose. So although the supplier of defective goods is normally allowed once chance to repair the goods, I think the alternative in section 24(5)(b) of the 2015 Act applies, and accordingly Mr W may reject the sofa instead.

As the matching footstool was bought with the sofa as a set, I think they can fairly be treated together as one item, a suite of furniture. So I will direct Ikano to collect both items, the sofa and the footstool; to that extent my decision differs from the investigator's.

Mr W's purchase of those items should be refunded, but not in full. I think that a deduction for use of 10% of the price is fair. I agree with Mr W that it is not his fault that he had them for this long, and that I should only make a deduction for the two months or so that he had the items for before the inspection in February 2022. But there will still be significant depreciation of this kind of furniture after only a couple of months of daily use, so I think a 10% deduction is fair. Mr W may not agree with me, but my decision against him on this point will be largely mitigated by the award of 8% interest on the refund from the date of purchase to the date of settlement.

As I think that Ikano should have upheld Mr W's claim, I will award £100 for his inconvenience. This includes the matter of the direct debit payment that was taken after Ikano said it wouldn't be; I think that Ikano's offer of £30 for that issue was fair.

### **My final decision**

So my decision is that I uphold this complaint. I order Ikano Bank AB (publ) to:

- Arrange to collect the sofa and the matching footstool at no cost to Mr W;
- Refund 90% of the price of the sofa and the footstool, with simple interest on the refunds at the rate of 8% a year from the date of purchase to the date of settlement;

- Pay Mr W £100 for his inconvenience.

Ikano Bank AB (publ) must pay the above compensation within 28 days of the date on which we tell it that Mr W has accepted my final decision. If it pays later than this, then it must also pay simple interest on the total outstanding compensation (including the interest element) at 8% a year from the date of my final decision (given at the top of page 1) to the date of payment.

If Ikano considers that it is required by HM Revenue & Customs to withhold income tax from the interest, it should tell Mr W how much it's taken off. It should also give Mr W a tax deduction certificate if he asks for one, so he can reclaim the tax from HMRC if appropriate. Mr W should refer back to Ikano if he is unsure of the approach it has taken, and both parties should contact HMRC if they want to know more about the tax treatment of this portion of the compensation.

(Mr W will still be liable to make loan payments, as he used the loan to buy some other items as well, so there will still be a balance to pay. But the loan will be paid off more quickly because the outstanding balance will be reduced. Ikano may offset the compensation against the remaining loan balance, except the £100, which I direct must still be paid to Mr W.)

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 3 July 2023.

Richard Wood  
**Ombudsman**