

The complaint

Ms L complains about a decision by Ikano Bank Ab (publ), who I'll call "Ikano", not to uphold a claim she made to them under section 75 of the Consumer Credit Act 1974 ("section 75").

What happened

I issued my provisional decision on this complaint in May of this year. An extract from that provisional decision is set out below.

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 don't currently think this sofa has been of satisfactory quality and I'm inclined to tell them to allow Ms L to reject it. 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 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.

Miss L had her cushions repaired on 20 April 2022, but emails and photographs show she was complaining about the stitching coming adrift again only a couple of weeks later. The photographs at that time show the stitches parting, but by the time of the inspector's visit in June 2022 the area had torn.

The inspector suggested the damage had been caused by Ms L's dog, but I don't think the photographs demonstrate that. There are no claw or teeth marks visible for instance. I'm persuaded by Ms L's testimony, and the relatively short period before she complained about the fault reoccurring, that the repair had most probably failed. So, I think there has been a breach of contract here as it seems the sofa has not been of satisfactory quality. I don't

therefore think Ikano have been reasonable to reject Ms L's section 75 claim.

Putting things right

The relevant legislation is the Consumer Rights Act (2015). That gives the business one opportunity to repair a fault that is present, or developing, at the point the goods are supplied. But if that repair fails, as I think has been the case here, the consumer should be allowed to reject the goods and end the finance agreement. I can see that is Ms L's preferred option.

In those circumstances, the business should end the finance agreement and refund the instalments paid less an amount for fair usage. I've considered what that fair usage should be. Ms L took receipt of the sofa in November 2020, so she's had use of it for about 29 months. But that usage has been impaired because of the damage Ms L has explained she's had to cover up. In the circumstances, I think Ikano should be entitled to retain 70% of all instalments paid in respect of the use Ms L has had, but they'll need to refund the remainder and they should add interest to that refund as Ms L has been deprived of the money.

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 finance agreement with nothing more to pay and collect the sofa at no charge to Ms L.*
- *Refund 30% of all finance instalments Ms L has paid and add 8% simple interest per year to the refund from the date of payment to the date of settlement. If payments were due but haven't been paid Ikano should waive them.*
- *Remove any adverse information they may have reported to Ms L's credit file in relation to this issue.*

Additional comments or evidence

Ms L accepted my provisional decision and Ikano didn't provide any further comments or evidence.

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've not been provided with any additional comments or evidence that would lead me to change my provisional decision.

Putting things right

My provisional decision therefore becomes my final decision on this complaint.

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 with nothing more to pay and collect the sofa at no charge to Ms L.
- Refund 30% of all finance instalments Ms L has paid and add 8% simple interest per

year to the refund from the date of payment to the date of settlement. If payments were due but haven't been paid Ikano should waive them.

- Remove any adverse information they may have reported to Ms L's credit file in relation to this issue.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L to accept or reject my decision before 30 June 2023.

Phillip McMahon
Ombudsman