DRN-4953305

The complaint

Mr A complains about the way in which Ikano Bank AB handled his claim under section 75(1) of the Consumer Credit Act 1974 ("section 75") following problems he had with a newly-built conservatory. The complaint has largely been pursued by Mr A's wife, so where I refer to his arguments and comments, I include those made on his behalf.

What happened

In December 2021 Mr A entered into a contract with a home improvement business (which I'll call "H") for the supply and installation of a conservatory. The documents produced at the time record that H was to remove the existing conservatory and replace it with a larger one.

Mr A paid a deposit, but the bulk of the price of the works was to be funded by a five-year loan from Ikano. The loan was arranged by H.

Mr A was unhappy with a number of aspects of the work which was carried out. His concerns included, but were not limited to:

- Breeze blocks, rather than brick, had been used on one of the external walls.
- Rubble had not been removed.
- Paving slabs in his garden had been damaged.
- Insulation had not been fitted.
- There were leaks in the roof.
- He had had to pay extra for flooring and tiles.
- The design meant an existing window had to be changed, at extra cost.
- No lighting was installed in the conservatory.

Mr A complained to Ikano. He said that the loan was taken out fraudulently, as funds were released to H even though he had not confirmed his satisfaction with the work. And he made a claim under section 75 in respect of the matters listed above.

Ikano did not accept that there was any issue with the loan itself. Funds had been released as they should have been, and loan payments were being collected in line with the loan terms. Those terms had set out clearly the amount of the loan, the interest rate, the monthly payments and other matters.

Ikano also considered the section 75 claim. It noted that there was little or no evidence of some of the matters which had been raised, but offered to resolve matters by giving Mr A three options. He could:

- obtain a quote to replace the incorrectly built wall;
- obtain an estimate of the amount by which the conservatory had reduced the value of the property; or

- accept a reduction in the price of £1,500 and further compensation of £500.

Mr A did not accept Ikano's offer or pursue any of those options. He said that he had paid around £3,000 in remedial works.

Mr A referred the matter to this service, and one of our investigators issued a preliminary assessment. He was not persuaded that Ikano should be liable for all of Mr A's claims. He did however recommend that Ikano either meet the costs of replacing the defective wall (subject to legitimate quotes being obtained) or agree to a price reduction of £1,800 from the contract price. He also recommended that Ikano pay Mr A a further £500 in recognition of the distress he had suffered and the inconvenience to which he had been put.

Ikano accepted the investigator's recommendation but Mr A did not. He asked that an ombudsman review the case.

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.

The loan agreement

I'll deal first with Mr A's complaint about the loan agreement itself. The documentation appears to be in the format required by regulations made under the Consumer Credit Act and which are intended to make it easier for borrowers to understand the commitments they are taking on when they take out a consumer loan. I believe the loan set out clearly what Mr A was borrowing, how much he had to pay, the term of the loan and the interest rate. There can be no question that he agreed to the loan and had the benefit of it.

The loan was arranged by and was paid to H, not to Mr A. That is normal in situations such as this one. Had the loan been paid to Mr A directly, he would not have had the protection of section 75.

Section 75 and the contract with H

The effect of section 75 is that, where a loan is arranged by a supplier and the borrower has a claim against the supplier for breach of contract or misrepresentation, the borrower can, subject to certain conditions, bring that claim against the lender. The conditions concern the relationship between the supplier and the lender and financial limits, and I am satisfied they were met in this case. I must therefore consider what Mr A has said about his dealings with H.

Mr A's contract with H was for the supply of the conservatory (and materials linked to it) and for the work involved in removing the old conservatory and building the new one. Under the Consumer Rights Act 2015 that contract was to be read as including terms that the materials supplied would be of a satisfactory quality and that work would be done to a reasonable standard.

Mr A's claims

Mr A's primary concern here is that one wall was built with breeze blocks rather than brick. The original specification was for a combination of the two – blocks inside, brick outside. There was discussion of a change, so brick was to be used both inside and out. It is clear from the pictures I have seen that blocks were used on the outside wall which faces Mr A's next door neighbour's property. It is not immediately visible from Mr A's property, since it is a

few centimetres from the boundary wall. It is however visible from the neighbour's property, and is clearly not what was agreed. And, even to the untrained eye, the workmanship appears to be very poor. I will discuss below how that should be remedied.

The work specification included removal of the existing structure and path/patio. It also included skip or soil removal. Mr A says that rubble was not removed and that he had to pay a contractor to collect it. He has not however provided evidence of what he paid or of what needed to be removed. So, whilst I accept that H agreed to remove debris, I have not seen sufficient evidence to show that it did not.

Mr A has however provided evidence of damaged paving slabs in his garden. The reference to removing the path/patio which I referred to above must, I think, refer to removing paving where the new, larger, conservatory was to be sited. The plans indicate that its footprint would cover the site of the old conservatory and part of an existing patio. The damage was to paving slabs which were to stay in situ. It appears to be scratches or scarring from machinery. I note however that the project schedule notes that it is the responsibility of the property owner to protect their driveway if, for example, a skip is to be used. And I note as well that Mr A has said replacement paving cost £3,000, but I have not seen evidence of that, or of what was replaced.

Mr A says that the walls were not insulated as agreed. Again, however, I have seen no evidence to show whether they were or were not.

Mr A says there are leaks in the roof of the conservatory. An inspection was carried out, but as the weather was dry at the time, it was not possible to establish whether there were any leaks. I am not aware that a further examination has been arranged, so again I do not believe I have enough evidence to conclude that there is or was a leak.

As far as the flooring is concerned, the contract did include a new floor with final screed, so it is not clear why Mr A had to pay extra for this. He has not however provided evidence of the cost of this. I do not believe however that tiling was included in the contract price.

Mr A says that an existing window had to be changed, because the new conservatory encroached on it. I do not believe however that H was responsible for this. It is not suggested, for example, that the change was needed because the conservatory didn't meet the advertised specifications.

Finally, the specification does not include any lighting, so I would expect this to have cost extra.

In summary, therefore, I believe there were some aspects of the work which were unsatisfactory – most significantly, the construction of and material used for the wall next to the property's boundary.

Remedies

The usual remedy where there is a breach of contract is to put the innocent party in the position they would have been in if the contract had been performed. In this case, that means, broadly speaking, that Mr A should have a conservatory that is built to the agreed specification and to a satisfactory standard at the agreed cost.

In addition, the Consumer Rights Act provides for a range of remedies, including a claim in damages, repeat performance (in effect, repairs), cancellation of the contract, return or replacement of goods and a refund or reduction in the contract price.

In this case, it seems unlikely that repairs are practical. Mr A says that some builders have said that the wall cannot be replaced except by taking down the entire conservatory. Others have said that it might be possible to prop up the roof while the wall is rebuilt, although even then access would be a problem. There are only a few centimetres between the conservatory and the boundary wall, and Mr A's neighbours have a conservatory a few centimetres beyond that. There is no indication of the likely cost of that work.

For obvious reasons, this is not a case where the contract can be cancelled or goods returned, so that the parties are returned to their original position.

The investigator took these matters into account and recommended therefore that the overall price of the work be reduced by £1,800, or that Ikano cover the cost of replacing the wall. As no quote has been provided for the cost of replacing the wall, in my view Ikano should pay Mr A £1,800 or reduce the loan balance by the same amount, at Mr A's option. It should also pay him a further £500 in recognition of the inconvenience he has suffered and the distress caused. Ikano has agreed to the investigator's recommendation, but I will make a formal award in any event, so that it can be enforced, if necessary.

It is not for me to say whether Mr A does in fact have a claim against A. Nor is it for me to decide whether he has a claim against Ikano under section 75. What I must do is decide what I consider to be a fair resolution of Mr M's complaint about Ikano, having regard, amongst other things, to any relevant law – including the Consumer Rights Act and the Consumer Credit Act.

My final decision

For these reasons, my final decision is that, to resolve Mr A's complaint in full, Ikano Bank AB should:

- reduce the loan balance on Mr A's account by £1,800 or pay him £1,800 (at Mr A's option); and
- pay him a further £500.

The loan reduction or payment should be made within 28 days of Mr A's acceptance of my final decision. After that, interest will accrue at the rate specified in the loan agreement from the date of acceptance until the reduction or payment is made.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 21 November 2024.
Mike Ingram
Ombudsman