

The complaint

Mrs M complains about the outcome of a claim she made to Ikano Bank AB (publ) ("Ikano") about spray foam insulation that was applied to her property. This includes how the product was sold and installed and its suitability. Mrs M also complains that the finance agreement with Ikano was unaffordable.

What happened

In February 2019, Mrs M agreed to enter into a contract with a company I'll call "T" for spray foam insulation to be applied to her loft space. The cash price for this was £7,166 and Mrs M paid a deposit of £359. She used a fixed sum loan agreement with Ikano to pay for the rest of the cost and was required to pay £74.85 over 119 months and a final payment of £73.88.

Mrs M engaged a claims management company (who no longer represent her) who sent Ikano letters of claim in 2022, alleging the following:

- T failed to tell Mrs M she would have a problem getting equity release or in selling her property due to the spray foam insulation being present in her loft.
- Ikano failed to carry out appropriate creditworthiness checks to determine whether Mrs M could afford to repay the finance agreement.
- The spray foam insulation wasn't needed in Mrs M's property and was only sold to her because T engaged in high pressure direct sales techniques.
- The product wasn't installed correctly.
- T misrepresented the benefits of the product by falsely claiming it would save her up to 50% in energy costs, increase the value of her property, improve air quality and reduce noise.

Ikano didn't uphold Mrs M's complaint. They said, in summary, that they carried out reasonable and proportionate affordability checks and their decision to lend following those checks was appropriate. Ikano also said there was no evidence to support Mrs M's claim that the insulation wasn't needed in her property or that she was pressured into making the purchase. And they said that T's salesperson hadn't been made aware that Mrs M might have taken certain decisions in the future about remortgaging her property or obtaining equity release, and there was no industry guidance available at the time about how spray foam insulation might affect either of those things.

Mrs M didn't agree with Ikano's response and so she referred her complaint to our service. Initially the complaint was upheld by an investigator. However, a second investigator re-reviewed the case and felt that the complaint shouldn't be upheld.

As the complaint remains unresolved, Mrs M's complaint has been passed to me for a decision.

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.

When considering what's fair and reasonable, I'm required to take into account; relevant law and regulations, relevant regulatory rules, guidance, standards and codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time. In this case the relevant law includes sections 56 and 75 of the Consumer Credit Act 1974.

Section 75 provides protection for consumers for goods or services bought using credit. As Mrs M paid for the spray foam insulation to be installed in her property using a fixed-sum loan agreement, section 75 applies here. This means that Mrs M could claim against Ikano, the creditor, for any misrepresentation or breach of contract by T in the same way she could have claimed against T, the supplier. So, I've taken section 75 into account when deciding what's fair in the circumstances of this case.

Section 56 is also relevant. This is because it says that any antecedent negotiations between Mrs M and T, as the supplier, are deemed to have been conducted by T as an agent of Ikano.

I also consider that the Consumer Rights Act 2015 ("CRA") is relevant to this complaint. This implies terms into Mrs M's contract with T that, amongst other things, the service being provided would be done so with reasonable care and skill and any goods provided would be of satisfactory quality. So, I've taken the CRA into consideration where appropriate.

Mrs M has made several separate complaint points, which I have set out in the 'what happened' section of my decision. I will deal with each of these in turn.

T didn't tell Mrs M that she could have a problem getting equity release, in remortgaging her property or in selling her property.

I've not been persuaded that there is sufficient evidence from the time of the sale that Mrs M was considering any of the above options. While current lending criteria for some firms may be against spray foam insulation, I've seen no evidence that this was the case at the time of the sale, or that there was common knowledge within the insulation industry (or from experts within that industry) that there may be a risk of firms not lending because of the presence of spray foam. Not only that, each mortgage lender has their own criteria for lending and I've not seen evidence that all lenders will always refuse an application because of the presence of spray foam in someone's property. And in any event, I've not seen evidence that Mrs M told T that she was considering equity release or was considering either selling her home or thinking of re-mortgaging it after the installation was completed or that she was considering this in the future.

Because of this, I can't conclude that this was a material consideration or something T had a duty to disclose. Equally, I don't think T had, or could have had, reasonable awareness that there might be a problem for Mrs M and her future access to finance should the installation proceed.

Ikano failed to carry out appropriate creditworthiness checks to determine whether Mrs M could afford to repay the finance agreement.

I'll briefly set out what we consider when looking at a complaint about irresponsible lending. Firstly, we consider what a firm did to check to understand whether the loan payments were affordable (asking it to evidence what it did) for the borrower and determine whether this was

enough for the lender to have made a reasonable decision on whether to lend.

When thinking about these matters, generally, we don't think it's unreasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship. But we might think it needed to do more if, for example, a borrower's income was low, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested it needed to know more about a prospective borrower's ability to repay.

It's for a lender to decide which checks to carry out, although we can form a view on whether we think what it did was proportionate to the extent it allowed the lender to reasonably understand whether the borrower could make the payments.

Ikano says that Mrs M told them that she was retired and owned her own home which was no longer mortgaged. Ikano also says Mrs M said her annual income was between £10,000 to £15,000. From this, they estimated that she had a monthly income of approximately £1,042. Ikano carried out a credit check which they say showed that Mrs M wasn't showing any signs that she was struggling to meet her existing credit commitments or that she was either over-indebted or in danger of being over-indebted. And from the credit check, Ikano worked out that Mrs M had a disposable income of £875.12 left to cover her living costs after they deducted her monthly credit commitments and the loan payments of the proposed finance agreement.

It's not clear to me whether Ikano sought independent verification of Mrs M's income or whether they simply took her word for it. If it was the latter, then that wouldn't in my view have been proportionate. I say this noting the requirement under the Financial Conduct Authority's Consumer Credit Sourcebook ("CONC") which says at CONC 5.2A.16(3) that it's not generally sufficient to rely solely on a statement of current income from the customer without independent evidence.

However, even if Ikano did only rely on what Mrs M told them about her income, I don't think further checks to verify this would have led them to think that she was receiving notably less than this.

Mrs M has provided us with bank statements for the months leading up to the loan and this shows she was receiving pension credits of around £950 to £970 in November 2018, December 2018 and January 2019. Ikano estimated Mrs M had income of around £1,042 which was more than the actual amount she received. However, even if Ikano had verified Mrs M's income, the credit check showed them that Mrs M was managing her credit commitments without apparent difficulty, in that she had balances on credit cards or store cards of £511 and £1,323 against limits £1,800 and £3,200 respectively (so well within each limit) and that she hadn't made any late payments or missed any payments.

In view of this and noting that the planned loan repayment was fairly low at £74.85, I don't think it would have been proportionate for Ikano to have verified Mrs M's overall financial situation and I think it was probably reasonable for them to have assumed that she would be able to afford the loan even if they had done more to check her income.

So, I don't find that Ikano would, or should, have declined Mrs M's application even if they had carried out a slightly more proportionate check than the one they did.

The spray foam insulation wasn't needed in Mrs M's property and was only sold to her because T engaged in high pressure direct sales techniques.

Essentially, the allegation here is that T 'cold-called' Mrs M and then pressured her into entering the contract with them. While 'cold-calling' someone isn't a banned practice, the fact that a customer didn't initiate contact initially with a company means that companies have to ensure they don't pressure someone to make a decision when the product they are selling wasn't one that a customer was anticipating buying.

At the time of the sale, The Financial Conduct Authority Handbook had in place Principles and Rules that firms had to adhere to when carrying out business; and firms had to always apply these Principles.

The 'PRIN' section of the Handbook sets out at Principle 6 that a firm is required to 'pay due regard to the interests of its customers and treat them fairly'. And Chapter 2 of the FCA's Consumer Credit Sourcebook says under section 2.2.2 that 'examples of behaviour by or on behalf of a firm which is likely to contravene Principle 6 include: (2) subjecting customers to high-pressure selling....'.

Mrs M has said that she told T that she couldn't afford to pay for the product and that their salesperson told her that he was only in the area for a short period of time and that she needed to make a decision about this quickly or lose out on a great opportunity. It's difficult though for me to make an assessment on how much pressure was applied. I realise that Mrs M says she felt pressured, but it was ultimately her choice to decide whether to enter into the agreement with T or the agreement with Ikano. Mrs M signed the finance agreement and didn't attempt to cancel or withdraw from it or the contract with T. Before signing the agreement, I think Mrs M was also shown pre-contract information that set out the key features of the loan agreement with Ikano. On balance, I don't think there's enough evidence for me to conclude that Mrs M was unfairly pressured into entering the agreement with Ikano or the contract with T.

The product wasn't installed correctly.

I've seen a copy of a report carried out by a third-party company which said that the spray foam had been applied between the rafters of Mrs M's roof and had sealed the space, so no air flow was being maintained in the roof area. It also said that if the spray foam wasn't removed, then the timbers would potentially suffer from wood rot and decay in the long time, which might lead to the whole roof needing to be replaced. As a result of this report, Mrs M agreed for the company to remove the spray foam at a cost of £4,140.

I've noted the contents of the report, but I do have concerns about its independence. I say this because the company's name includes the words 'spray foam removal' and I suspect their business is run on the basis that they would be employed to remove spray foam rather than necessarily assess whether it was installed correctly. I note also that the report was fairly damning about the characteristics of the product referring as it does to salespeople and installers calling it 'breathable' and then calling this an oxymoron.

I unfortunately can't shake the feeling I have because of the things I've mentioned that the company involved is against spray foam insulation in general, rather than them providing an objective, independent opinion on how it was applied to Mrs M's property. I may be wrong about this, but that's my view. And I would just add that there was no evidence that any damp, timber rot or decay had been caused by the product; the report only mentioned that that was a possibility.

T misrepresented the benefits of the product by falsely claiming it would reduce Mrs M's energy bills, increase the value of her property, improve air flow and help with sound reduction.

T's claims in respect of energy saving are that installation of spray foam could save customers up to 50% on their energy bills – and this language is reflected on their website. However, there's no language in any of the sales documents that I've been provided with that indicates that a specific promise was made in respect of Mrs M's energy bill savings; rather this is presented as being a potential benefit. Any form of insulation can deliver savings on energy bills over time by reducing heat loss, and therefore the amount of energy that needs to be expended heating a home, so I don't think the claim that energy savings could be achieved was unreasonable. I also note this was a statement made to the world at large, not bespoke, or specific to Mrs M's circumstances. There's no evidence that a bespoke energy saving quotation or promise was made to Mrs M.

Similarly, I don't think that T claiming that the spray foam would help with noise reduction or air flow was something that Mrs M considered was important to her (and why that was). So, even if T did talk about this as being a benefit, I'm not persuaded this was a material consideration for Mrs M to the extent that this influenced her decision to agree to the sale. Nor can I objectively assess whether any such claim from T was false bearing in mind it's not possible to establish the spray foam's effectiveness against noise or air quality as it's now been removed. And in respect of Mrs M's property value increasing, I don't think that I have enough to show that T misrepresented this to her in the sense that they gave her a false statement of fact. I would need to see reasonably persuasive evidence that the property value has been unduly affected by spray foam having been present, and I've not seen this.

Overall, and for the reasons I've set out above, I won't be upholding this complaint as I've not been persuaded that Ikano acted unfairly when it responded to Mrs M's claim and subsequent complaint. I would just though like to say how sorry I am to hear of Mrs M's financial difficulties and the action that was needed to address this.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 27 February 2025.

Daniel Picken
Ombudsman