

The complaint

Mr N complains about the sale and installation of a brand new boiler, which he paid for using a fixed sum loan agreement with Ikano Bank AB (publ).

What happened

In early 2021, Mr N says he was contacted by a company, which I'll call 'A', who sold and installed boilers. Mr N says A told him they could replace his exiting boiler with a more efficient model free of charge, under a government scheme.

A week later, A installed the boiler and Mr N says he paid a nominal fee after signing a document on an electronic device. Mr N also says that A didn't leave him with any paperwork to look at after the installation.

Mr N says he wasn't happy with the performance of the boiler, so within a month of the installation, he complained to A. He says it was then he discovered that he had been given a fixed sum loan agreement with Ikano, to pay for the boiler and it's fitting.

Over the next few months Ikano progressed a claim under section 75 of the Consumer Credit Act 1974 ('section 75'). In the meantime, an engineer from the Gas Safe Register inspected the boiler and gave Mr N a report. The report concluded that a defect with the installation of the boiler wasn't to current standards.

After starting Mr N's section 75 claim, Ikano said they could consider quality of the boiler and the installation. They also said that A had offered Mr N £100 for their untidiness during the works. Ikano also said Mr N had signed a satisfaction note for the installation, along with paperwork for the fixed sum loan. They acknowledged that Mr N had asked to cancel the loan, but still said he was responsible for the cost of the boiler.

Mr N didn't accept Ikano's response to his section 75 claim and made a complaint. Ikano didn't change their position on the claim. This led Mr N to refer his case to our service.

One of our investigators looked into Mr N's case and found that Ikano had treated him fairly. She concluded that Mr N had signed the loan agreement forms and that A had made it clear there was a cost involved, for Mr N to pay. The investigator didn't find that the installation was of poor quality and said Ikano's offer to pay Mr N £100 was fair and reasonable.

Mr N didn't agree. He reiterated that neither A nor Ikano had given him a copy of the loan agreement forms and that A didn't leave his house as they found it before the installation.

The investigator didn't change her findings, so Mr N's complaint has now been passed to me to make a decision.

I sent Mr N and Ikano my provisional decision on this case, on 10 August 2023. I explained why I think the complaint should be upheld. A copy of my provisional findings is included below:

I'd like Mr N to know that I empathise with the difficult personal circumstances he's described

to us. The last two years must have been a difficult time for him and I hope things have started to improve.

I also want to acknowledge that I've summarised the events of the complaint. I don't intend any discourtesy by this, it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality.

But, I want to assure Mr N and Ikano that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

Mr N's complaint against Ikano is twofold. Firstly, he says he was unaware that Ikano had provided finance for him to get a brand new boiler. And secondly, he says the installation of the boiler was unsatisfactory, it doesn't work as well as his previous model and that A caused damage to his home. So, I've thought about each part in turn.

The start of the fixed sum loan agreement

Mr N has told us that he wasn't given any paperwork to keep, when the agent of A spoke to him about replacing his boiler. He also says he didn't have a chance to read anything on the electronic device, before he added his signature. Additionally, Mr N says he was told by A that he was eligible for the boiler and installation free of charge, because of a government scheme.

I've looked at the Contract of Sale between A and Mr N, dated 8 February 2021. This document outlines the make and type of the boiler, together with the total cost and proposed positioning in Mr N's home. The contract carries a handwritten signature and doesn't make any mention of a government discount scheme.

Ikano have also provided us with a copy of a Satisfaction Note and Declaration, dated 10 February 2021, from their records about Mr N's boiler installation. The Declaration also carries a handwritten signature and names Ikano as the finance provider. It says:

"I fully understand I'm entering into a credit agreement with the Finance Lender named within this document."

And

"I understand that I must pay the minimum monthly repayments set out in my credit agreement every month by direct debit."

Having thought about Ikano's records in the lead up to the installation of the boiler, I think the documents tell the reader about the cost and the payment arrangement they are entering into. Mr N has told us that he agreed to get a new boiler with A and that he did sign some documents. So, on balance I think Mr N added his signature to the Contract of Sale, the Satisfaction Note and the Declaration paperwork.

Furthermore, I don't think the evidence shows that the boiler would be provided or installed free of charge. And on balance, I'm not persuaded that either A or Ikano told Mr N that the cost would be waived under a government scheme.

I've also looked at the loan agreement forms, to consider how the fixed sum loan agreement was presented to Mr N by Ikano. Having done so, I can see that Mr N's personal details, information about his driving licence and details about his bank statement were recorded by Ikano. I can also see that the loan amount, monthly payment amount, term and rate of

interest is listed, along with the general conditions of the agreement.

In a difference to the other documents, the loan agreement form asks for an electronic signature. I can see that the electronic signature was added on 11 February 2021. Mr N has told us that he remembers signing a device used by A, but didn't see the information on the screen.

While I acknowledge what Mr N has said, I have to keep in mind that the evidence shows he wanted a new boiler from A and that there would be a cost involved. Having looked at all the paperwork we've been given from Mr N, A and Ikano, I'm persuaded that A gave Mr N the information he needed, before the fixed loan agreement started.

And from looking at the loan agreement forms, on balance, I think Mr N gave his authority for Ikano to start a fixed sum loan in his name. So, having considered everything, I think it's fair for Ikano to hold Mr N responsible for the repayments due under the agreement.

The section 75 claim

Mr N paid for the boiler and its installation using a fixed sum loan. This is a regulated consumer credit contract, and our service is able to consider complaints relating to these sorts of agreements.

I take into account the relevant law. So, in this case, section 75 makes Ikano responsible for a breach of contract or misrepresentation by A, under certain conditions. I think the necessary agreement between the parties exists and the claim is within the relevant financial limits.

The Consumer Rights Act 2015 (CRA) is also relevant to this complaint. The CRA implies terms into the contract that traders must perform the service with reasonable care and skill. And that services should be performed within a reasonable amount of time. The CRA implies terms into the contract that goods supplied will be of satisfactory quality. The CRA also sets out what remedies are available to consumers if statutory rights under a goods or services contract are not met.

It's important to note that I'm not considering a complaint against A. I'm considering a complaint against Ikano. So I have to consider Ikano's obligations as a provider of financial services. In this case their liability for breach of contract or misrepresentation under section 75.

It's also important to note that compensation for distress and inconvenience caused by a supplier is limited with this type of complaint. I appreciate Mr N is very upset about what's happened in his dealings with A. But, I have to consider what Ikano can be held responsible for, which is the like claim Mr N would have in court against the supplier for breach of contract or misrepresentation.

Courts do consider what's known as general damages. But damages aren't generally recoverable for distress or inconvenience. Awards in cases where there's been a breach of contract which caused the claimant physical distress or discomfort can be made, but they tend to be modest.

While I appreciate Mr N is unhappy he's been living with a boiler which he says is unsafe, I don't think the nature of the issues have caused significant physical inconvenience or discomfort. I therefore don't have the grounds to direct Ikano to pay significant compensation for this.

The quality of the boiler and its installation

Other than what Mr N has told us, neither Mr N nor Ikano have provided any evidence to show that the boiler itself has a fault. Mr N says the boiler doesn't perform as well as his previous model. While I accept different makes or models of boilers may have differences in performance, it doesn't follow that this means the model given to Mr N is defective.

Without any persuasive evidence here, on balance, I don't think a reasonable person would say the boiler is of unsatisfactory quality. So, although I cannot see that Ikano fully engaged with Mr N about the quality of the boiler, I think Ikano have treated this part of his section 75 claim fairly.

However, Mr N says that when A installed the boiler, it was fitted in the wrong place. To support what he says, Mr N has provided a Gas Safe Register report from October 2021. Having considered this report, I can see under 'Defects' it says:

"The clearance above the boiler measured 230mm, this is not as per the boiler manufacturer installation instruction (pages 16 & 18), which require a minimum clearance of 250mm."

So, I think Mr N has sent us persuasive evidence from an independent engineer, that the installation of the boiler hasn't been carried out in line with the manufacturer's instructions.

Despite the report being carried out over 18 months ago, Ikano have told us that they have only recently become aware of its findings. I acknowledge that Mr N may not have sent it to Ikano, when he first raised his section 75 claim. But, I don't think Ikano have engaged with Mr N, to ask him or A for information about the quality of the installation. And I don't think that should prevent Mr N from access to any remedy he is entitled to now.

I've considered the other submissions from Mr N and Ikano. Mr N has supplied some photographs of examples of things wrong with the installation of the boiler. Ikano has acknowledged where things have gone wrong. And I understand there's also been various attempts by A to remedy issues.

So I think there's enough to demonstrate there's been a breach of contract because the installation wasn't carried out with reasonable skill and care. Where rights under a services contract aren't met, the CRA sets out that depending on the circumstances, consumers can request a remedy. These remedies can include either repeat performance or a price reduction. So, I've considered what would be a fair remedy and resolution in Mr N's case.

The settlement to Mr N's complaint

Mr N has said there has been various attempts at repeat performance, but the boiler's position still isn't to his satisfaction. Given how long things have taken, under normal circumstances, I think it would be fair that a price reduction is explored. But, Mr N's contract with A is for one single amount and doesn't provide a breakdown of how much of that cost is for the installation.

Recently, Ikano have said that they are willing to arrange the repositioning of the boiler. This may be something which Mr N chooses, instead of finding another tradesperson himself. But, the boiler was installed by A in February 2021 and I think Ikano have had a fair opportunity to arrange a repeat performance, since they became involved. So, I don't think it's fair for Mr N to now be restricted to Ikano's offer to help.

I've spoken directly to A and they've not been able to confirm the cost of the installation. So,

I think it's fair for part of the remedy here, to include a reimbursement to Mr N for any reasonable costs he incurs in relation to the repositioning of the boiler. He'd have to provide details of the works and evidence of the costs. And I'm minded to say these costs should be capped at £750.

Overall, I think it's fair for Mr N to have the option to either have Ikano arrange for the works to be carried out, or for him to make his own arrangements. Either way, I leave it to Mr N to tell Ikano what he'd like to do, if he decides to accept my findings.

I've found that Mr N has been living with and using a boiler, which an independent engineer has said needs repositioning. I think it's reasonable to suggest that Mr N needed to use the boiler for his day to day life and that it's fair for him to pay for the goods financed by the loan. But, I also think it's reasonable that Mr N may have been hesitant to make payments towards something that wasn't fitted correctly.

Having thought carefully about Mr N's position here, I don't think it would be fair for him to suffer any negative impact, with the details passed to credit reference agencies. So, I think it's fair for Ikano to remove any adverse information recorded with credit reference agencies about the fixed sum loan in Mr N's name.

I've also considered where Ikano have had an opportunity to fully address Mr N's section 75 claim. Ikano wrote to Mr N about a section 75 claim in March 2021 and February 2022. On each occasion, Ikano told Mr N that they could start a section 75 claim if he wished. But I've not seen that they took any other steps to progress a claim.

Mr N has sent us copies of emails he sent to Ikano from around that time. I think Mr N makes it clear in his correspondence that, amongst other concerns, he wanted Ikano to also investigate A's installation of the boiler. Mr N brought his case to us in February 2022 and the inspection report was available some four months beforehand in October 2021.

In all the circumstances, I think Ikano caused a delay in looking into Mr N's section 75 claim and this has had an impact in getting the boiler repositioned. So, I think Mr N has been caused distress and inconvenience here and Ikano should make a payment to Mr N to reflect the worry this delay caused to him.

Having thought about everything, I think it's fair for Ikano to pay Mr N £150 for the distress and inconvenience he's experienced.

Finally, I'm aware that Mr N says A damaged a sink and stole items from his home. I've considered some photographs of the sink area and the emails Mr N sent to both A and Ikano.

Overall, I've not seen any persuasive evidence to show any damage A might have caused, or to support what Mr N says about a theft. So, I don't think it's fair to ask Ikano to reimburse Mr N for the items he raised concerns about here. I'm also aware that A made an offer to pay Mr N £100 for the untidiness of their work. To be clear, I make no finding on that offer, which may still be open for him to accept directly with A.

Mr N responded to the provisional decision and in summary, he said:

- He has found everything very stressful and Ikano and A have been deceptive throughout.
- He wasn't aware of the loan and didn't sign a loan agreement form.

- His previous boiler was in good working order and A had used carbonised paper to put his signature on to the loan agreement forms.

Ikano responded and accepted the provisional decision. But, in order to remove the adverse information from Mr N's credit file, they say he will need to sign an agreement form for a new loan.

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'd like to reiterate to Mr N that I have taken his difficult personal circumstances into consideration. I'd also like to reassure Mr N that I have thought very carefully about how he says A and Ikano have conducted themselves with him.

However, after looking at all the documents and listening to what all sides have said, I still think Ikano treated Mr N fairly, when the fixed sum loan agreement was signed and put into place.

Although I can understand how carbonised paper could be used by a fraudster to forge a signature, on balance, I don't think that is what happened here. I say this because of Mr N's conversations with A about getting a new boiler, the personal and financial details given to A and the various other pieces of paperwork that Ikano have shown were signed by Mr N. This is in addition to the signed loan agreement itself.

I also acknowledge that Mr N's previous boiler may have been in good working order. But, I don't think this in itself supports the argument that Mr D didn't authorise the opening of the fixed sum loan agreement with Ikano.

Ikano have told us that in order to remove the adverse information from the details recorded with credit reference agencies, they will need Mr N to sign a new loan agreement form. While I understand Ikano will have to make manual adjustments, should Mr N accept this final decision, I don't think it would be fair to expect him to be bound by a new, different agreement.

As an alternative, Ikano may be able to arrange for the removal of the adverse information and separately agree a repayment plan directly with Mr N for the outstanding balance he owes. Any repayment plan should be consistent and sympathetic with Mr N's financial circumstances.

Overall though, after looking at how Ikano handled Mr N's section 75 claim, I've concluded that this part should be upheld. In all the circumstances, I still think that it's fair for Ikano to either arrange for the repositioning of Mr N's boiler, or to pay Mr N up to £750, if he decides to organise for another tradesperson to carry out the work.

I also still think it's fair for Ikano to remove any adverse information from the records held about the fixed sum loan agreement with credit reference agencies. And for Ikano to pay Mr N £150 for the distress and inconvenience he's experienced.

Putting things right

I think Ikano Bank AB (publ) should:

1. arrange for the boiler to be repositioned, or reimburse Mr N the reasonable cost (up

to £750) for any works required to move the boiler, subject to a description of the works and evidence of the cost having been paid;

2. remove any adverse information about the fixed sum loan agreement in Mr N's name, from the records held with credit reference agencies; and
3. pay Mr N £150 for the distress and inconvenience caused.

Ikano must pay these amounts within 28 days of the date on which we tell them Mr N accepts my final decision. If they pay later than this, they must also pay interest on the settlement amount from the date of final decision to the date of payment at 8% a year simple.

If Ikano deducts tax from any interest they pay to Mr N, they should provide Mr N with a tax deduction certificate if he asks for one, so he can reclaim the tax from the tax authorities if appropriate.

My final decision

My final decision is that I uphold this complaint and require Ikano Bank AB (publ) to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 4 October 2023.

Sam Wedderburn
Ombudsman