

## The complaint

Mrs L complains about the way that some replacement windows and doors, that she paid for using a fixed sum loan agreement with Shawbrook Bank Limited, were sold to her. She also complains about some issues with the replacement windows and doors. She's being represented in her complaint by a professional adviser.

## What happened

Mrs L used a fixed sum loan agreement with Shawbrook Bank that she electronically signed in March 2019 to pay for some replacement windows and doors. The loan was for £6,248 which she agreed to repay by 120 monthly instalments of £113.79.

Mrs L's representative complained to Shawbrook Bank in October 2019 about the way that the replacement windows and doors and the loan agreement were sold to Mrs L and about some issues with the replacement windows and doors. Shawbrook Bank said that it had arranged for one of its approved suppliers to inspect and quote for the remedial work required which it had approved and was booked but it didn't uphold the other aspects of her complaint. Mrs L wasn't satisfied with its response so complained to this service.

Our investigator recommended that her complaint should be upheld in part. She didn't consider that the replacement windows and doors had been misrepresented to Mrs L or that the agreement had been mis-sold to her but she thought that there were some outstanding issues with the replacement windows and doors that needed to be put right. She recommended that Shawbrook Bank should pay for the outstanding repairs – she said that Mrs L should obtain two more quotes for the required work and that Shawbrook Bank should choose which of the three quotes to proceed with. She recommended that Shawbrook Bank should also pay £250 compensation to Mrs L for the stress and inconvenience caused.

Mrs L's representative, on her behalf, has asked for this complaint to be considered by an ombudsman. Her representative says, in summary and amongst other things, that:

- the supplier misrepresented itself as a related company and had Mrs L known that it was a new company, that the related company had stopped trading and that it had been fined, she wouldn't have purchased the replacement windows and doors;
- incorrect information was given on the credit agreement so there was a qualifying misrepresentation under section 75 of the Consumer Credit Act 1974; and
- the documentation used by Shawbrook Bank breaches section 61(1) of that Act because it's not accurate or in line with the sales contract signed by Mrs L.

Shawbrook Bank says that some issues with the replacement windows and doors have been repaired, these are different issues and the repairer that it used would be appropriate to assess the remedial work. It has also explained why it wouldn't expect to have to pay any compensation for distress and inconvenience for what it says would effectively be a warranty claim.

## 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 agree with the outcome recommended by our investigator for these reasons:

- Mrs L used credit provider by Shawbrook Bank to pay for the replacement windows and doors and, in certain circumstances, section 75 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier;
- to be able to uphold Mrs L's complaint about Shawbrook Bank, I must be satisfied that there's been a breach of contract or misrepresentation by the supplier of the replacement windows and doors and that Shawbrook Bank's response to her claim under section 75 wasn't fair or reasonable – but I'm not determining the outcome of Mrs L's claim under section 75 as only a court would be able to do that;
- we offer an informal dispute resolution service and try to resolve complaints by customers about financial businesses by looking at what we consider to be fair and reasonable in the circumstances – Mrs L's representative has made many detailed points in support of Mrs L's complaint – I've considered all of those points but, if I haven't specifically referred to one of those points, it's because I've focussed on the issues that I consider to be relevant to my decision on her complaint;
- Mrs L's representative has provided documents that have been signed by Mrs L relating to her purchase of the replacement windows and doors – that includes the supplier's terms and conditions which clearly refer to the supplier and say that the account option price was £6,248 which Mrs L agreed to pay, a carefree agreement which identifies the supplier, a feature home agreement and subsidy analysis which also identified the supplier and used a trading style;
- under the feature home agreement and subsidy analysis Mrs L agreed to participate in a feature home promotion and a feature home price of £6,248 was confirmed for the replacement windows and doors;
- Mrs L electronically signed the fixed sum loan agreement in March 2019 and it set out that the total cash price of the replacement windows and doors, and the amount of credit, was £6,248 - and the other required information (including the interest rate, the total amount payable and the number and the amount of the monthly repayments) were also clearly set out in the loan agreement;
- the loan agreement said that the credit intermediary was a company that had stopped trading and which was related to the supplier – that was clearly incorrect but the supplier was correctly identified on the other documents that Mrs L had signed and it was using a trading style that used part of the name of the related company;
- Mrs L's representative has provided a report about some legal proceedings against the related company in which it was convicted of using high-pressure sales tactics – but it hasn't provided a copy of the court judgment so I've not been able to fully consider those proceedings – but those legal proceedings are about the related company and not the supplier and they aren't enough to show that the supplier used those high-pressure sales tactics when selling the replacement windows and doors to Mrs L;
- I consider that Mrs L would have known, or ought reasonably to have known, that the supplier was the company identified on the documents and that the loan was being provided to her by Shawbrook Bank – even though the credit intermediary was

incorrectly shown on the loan agreement - and I'm not persuaded that there's enough evidence to show that she was induced into making the order, or entering into the loan agreement, by a misrepresentation about the identity of the supplier;

- Mrs L's representative says that the loan agreement isn't accurate so doesn't comply with section 61(1) of the Consumer Credit Act – but Mrs L had agreed to pay £6,248 for the replacement windows and doors, which was the amount of credit provided to her under the loan agreement, and I'm not persuaded that the error about the credit intermediary would be enough to cause the loan agreement not to comply with section 61(1) or not to have been properly executed (but that would be for a court to decide);
- the replacement windows and doors were installed so Mrs L received the windows and doors that she'd agreed to pay for but she's complained about the sales tactics that were used by the supplier and about some issues with the replacement windows and doors;
- Mrs L agreed to pay £6,248 for the replacement windows and doors, which included the subsidies that were shown on the feature home agreement, and I'm not persuaded that there's enough evidence to show that the supplier misrepresented the replacement windows and doors or the loan agreement to Mrs L at that time or that it used sales tactics that would cause Shawbrook Bank to have any liability to Mrs L under section 75 for the way that they were sold to her;
- the terms and conditions say that the supplier would accept a cancellation of the contract if it received notice in writing within 7 days and the loan agreement said that Mrs L could withdraw from the loan agreement within 14 days – if Mrs L felt that the supplier had pressurised her into the sale or used inappropriate sales tactics I consider that it would be reasonable to expect her to have tried to cancel the order and withdraw from the loan within those periods - but I've seen no evidence to show that she did either of those;
- Shawbrook Bank arranged for some issues with the replacement doors and windows to be repaired but Mrs L has complained about further issues with them and her representative arranged for them to be inspected by an independent expert in February 2021;
- the expert's report said that: “... *the overall fitting of the product is really poor* ...”; and: “... *the windows are not installed correctly or professionally* ...”; and the report identified a number of issues with the replacement doors and windows;
- I consider it to be more likely than not that there are some further issues with the replacement windows and doors that are described in the expert's report and that the replacement windows and doors weren't of a satisfactory quality when they were supplied to Mrs L because of those issues;
- I consider that to be a breach of contract by the supplier for which Shawbrook Bank is liable under section 75 and I find that it would be fair and reasonable for Shawbrook Bank to pay and arrange for the replacement windows and doors to be repaired as described below.

## Putting things right

Our investigator recommended that Mrs L should get three quotes for the required work and that Shawbrook Bank should then choose which quote to accept. Shawbrook Bank says that it would like the work to be done by the repairer that it used for the other repairs of Mrs L's replacement windows and doors. I consider that it's fair and reasonable for Mrs L to have a choice of the repairers that she gets to quote for the work and I'm not persuaded that

it would be fair or reasonable for me to require her to accept repairs by the repairer that Shawbrook Bank has previously used for her repairs. I find that our investigator's recommendation is fair and reasonable in these circumstances and that, when it's received the quotes from Mrs L, Shawbrook Bank should then arrange and pay for the repairs identified in the expert's report to be completed.

Shawbrook has arranged for the replacement windows and doors to be repaired but further repairs are required. I consider that to be a result of the supplier's breach of contract and that that these events will have caused further distress and inconvenience to Mrs L. I find that it would also be fair and reasonable in these circumstances for Shawbrook Bank to pay £250 to Mrs L to compensate her for that distress and inconvenience.

### **My final decision**

My decision is that I uphold Mrs L's complaint in part and I order Shawbrook Bank Limited to:

- Arrange and pay for the remedial work required on the replacement windows and doors to be completed as described above.
- Pay £250 to Mrs L to compensate her for the distress and inconvenience that she's been caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 16 March 2022.

Jarrold Hastings

**Ombudsman**