

The complaint

Mr B complains about a spray foam installation product and package that was financed by a fixed sum loan agreement with Shawbrook Bank Limited.

Mr B is represented in this complaint by a third party. However, for ease of reference, I shall refer to Mr B throughout my decision.

What happened

In 2018, Mr B was contacted by a company I'll call 'H'. He says that he was cold canvassed and pressured by H into taking out an icynene spray foam insulation product that was to be used in the roof of his property.

Mr B subsequently entered into a contract with H which set out that the cost of the package was £6,500. Mr B paid a deposit of £1,000 and the remaining amount was financed by a fixed sum loan agreement with Shawbrook Bank Limited ("Shawbrook").

Mr B complained to Shawbrook in October 2020 saying that he had been cold called by H and had no need for the product. He also said that H had misrepresented the benefits of the spray foam insulation to him and that no affordability checks were carried out by Shawbrook before they agreed to provide finance.

Shawbrook didn't uphold Mr B's complaint and so he referred the matter to our service. Our investigator looked into this but didn't uphold the complaint. She said, in summary, that she wasn't persuaded that Mr B had been pressured by H into taking out the spray foam installation contract or pressured into entering into the finance agreement with Shawbrook.

Our investigator also felt that there wasn't enough evidence to show that H had misrepresented the benefits of the product to Mr B or that the product was unsuitable for use in his property.

Mr B didn't agree and, in addition to the other points he had previously raised, said that he had tried to obtain equity release for his property and wasn't able to do so because of the spray foam insulation that had been installed in his roof. Mr B said this wasn't explained to him by H and so they had misrepresented the product.

Our investigator wasn't persuaded to change her view and also said that she wasn't persuaded that the finance agreement was unaffordable to Mr B.

Mr B asked for an ombudsman's decision and so his complaint was passed to me. I issued my provisional decision to both parties on 20 December 2022, in which I said the following and which forms part of my final decision.

'Mr B has raised several points as to why his complaint should succeed. I don't however intend to tackle each one separately and there is a good reason for this which I'll explain.'

When Mr B referred his complaint to us, he included as part of his submissions a copy of an independent report by a third party which resulted from an inspection of Mr B's roof and the way in which the icynene spray foam product had been used there.

I explained to Shawbrook recently that I intended to take this report into consideration in my decision. This is something that, up to now, hasn't been considered as part of Mr B's complaint. Shawbrook hasn't responded to my comments on this and so I will proceed on this basis.

I'd like to briefly set the relevant law and legislation in this case. Section 75 of the Consumer Credit Act 1974 makes Shawbrook equally liable for a breach of contract or misrepresentation by the supplier. In this case, H was the supplier.

I'm satisfied that the necessary debtor-creditor-supplier link was in place for Mr B to make a Section 75 claim against Shawbrook. Mr B, as the debtor, entered into a contract with H and paid for the spray foam installation to be completed under that contract with a fixed sum loan agreement with Shawbrook.

As Mr B bought goods and services under a sales contract, the Consumer Rights Act 2015 ("CRA") is relevant here. The CRA implies into a contract such as this a term that the contract will be performed with 'reasonable care and skill'. What is considered reasonable care and skill is not focused on the results achieved but the manner in which the service was carried out.

The independent report I've referred to above makes it clear in my view that the spray foam insulation product has been poorly applied and installed. It says that:

'The foam has filled the area between the rafters on the ceiling and it is my belief that the cracked tiles on the outside are bonded together by the foam. The foam has been sprayed right down into the eaves of the property and in between the joists covering all of the electrical cabling. There is no airflow into the loft space, the eaves have been completely blocked by the foam, which means the vented soffits to the outside are of absolutely no use to the property whatsoever'.

The report goes on to say:

'It is not a neat finish, it is not a professional finish and more importantly, the way in which the spray foam has covered everything in the loft leaves no air flow or ability for the moisture to evaporate or disperse as would happen in a typical roof'.

The report also mentions how this has affected Mr B's roof:

'...the rafter is already showing signs of damp, it is dark brown in colour and has a high level of moisture trapped within it. Using a..... damp meter, I was able to conclude a reading of 44% moisture content, for this meter that is at the top end of the scale, so is significant. In my opinion, if this spray foam loft insulation is not removed and air flow restored to the loft area, the timbers will never dry out and will only get worse, which ultimately could result in the whole of the roof needing to be replaced'.

Having considered this report, I am currently minded to say that the product Mr B purchased from H wasn't installed with 'reasonable care and skill'. This means that I am satisfied that there has been a breach of contract on the part of H, for which Shawbrook is equally liable under Section 75 of the Consumer Credit Act.

So, going back to what I said above, I don't consider that I need to determine the other parts of Mr B's complaint at this stage. I consider that the breach of contract in and of itself is enough for me to provisionally uphold this complaint. In saying this, I completely accept that the installation of the product hasn't been investigated as part of this complaint up until now. However, from a practical sense, I see little reason why the matter should be delayed by a new complaint being set up and investigated. I don't consider that to be in the best interest of either party. I think it fair for this matter to be resolved now and for our service to conclude their part in this.

The issue to now consider is how to put things right. I'm not persuaded that the 'right to repeat performance' as mentioned in the CRA is a fair remedy here bearing in mind how poorly the product was installed. I currently think Mr B is entitled to receive a price reduction and, in this case, I think that should equate to the full price of the contract. So, I currently think that it would be reasonable for Shawbrook to cancel the finance agreement, at no cost to Mr B, to refund his deposit and to refund all the payments he has made to the finance agreement, with interest added at 8% simple, from the date of each payment to the date of settlement. I also think that it would be fair for Shawbrook to remove any adverse information they have recorded on Mr B's credit file in relation to the finance agreement.

The issue that needs some more thought though is how to ensure that Mr B's roof is restored to a reasonable condition. The independent report I've referred to was completed in June 2021. So, it's been a year and half since then and I currently don't know whether the condition of Mr B's roof has deteriorated since and, if so, to what degree (if any) this has been caused by the spray foam insulation.

I can however only assess this on what I currently have. So, my starting point is that Shawbrook Bank Limited should ensure that the recommendations set out in the independent report are carried out, either by arranging for the work to be done in a reasonable period of time or by covering the cost of the necessary work upon provision of a quote from Mr B.

The independent report sets out that the following work needs to be carried out:

- Remove all the spray foam insulation from the loft area*
- Clear the vented soffits and make sure they are open so air can filter through the loft space*
- Install 270mm of traditional loft insulation throughout the loft area*
- Get an electrician to check all the junction boxes to make sure they are in good working order*
- Remove and repair the cracked and broken tiles to the outside of the roof*
- Treat all timbers with an approved timber damp treatment*

As mentioned above, I accept that the position may have changed since the independent report was carried out. I will of course consider any further evidence or submissions from either party in respect of this or indeed any part of my provisional decision before I issue my final decision.

My provisional decision was that I upheld this complaint and intended to direct Shawbrook to carry out the actions I described above.

I invited both parties to provide any further evidence or submissions. Mr B replied to say that the independent inspector was prepared to honour the quotation as provided in his report as well as any additional repair work needed.

Shawbrook didn't reply.

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.

As neither party has indicated that they disagree with my provisional decision, I see no reason to depart from the provisional findings I reached and the direction I intended to give to Shawbrook.

So, it follows that I uphold this complaint for the reasons given in my provisional decision, and which I have included in my final decision.

Putting things right

Shawbrook Bank Limited should cancel the finance agreement, at no cost to Mr B, refund his deposit and refund all the payments he has made to the finance agreement, with interest added at 8% simple, from the date of each payment to the date of settlement. Shawbrook Bank Limited should also remove any adverse information they have recorded on Mr B's credit file in relation to the finance agreement.

Shawbrook Bank Limited should ensure that the recommendations set out in the independent report are carried out, either by arranging for the work to be done in a reasonable period of time or by covering the cost of the necessary work upon provision of a quote from Mr B.

My final decision

My final decision is that I uphold this complaint and direct Shawbrook Bank Limited to take the actions I've described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 17 February 2023.

Daniel Picken
Ombudsman