

The complaint

Ms S complains about the outcome of a claim she made to Shawbrook Bank Limited (who I'll call "Shawbrook") under section 75 of the Consumer Credit Act 1974 ("section 75").

What happened

I issued my provisional decision on this complaint earlier this month. An extract from that provisional decision is set out below.

In May 2021 Ms S entered into an agreement to supply a new door and windows to her property. She financed the deal through a fixed sum loan with Shawbrook.

Ms S wasn't satisfied with the work, and she complained to Shawbrook.

The supplier attempted to rectify the issues Ms S complained of but when she was still dissatisfied with the work Ms S commissioned an independent inspection of the installation. The inspection was completed in late 2022 and was critical of the work that had been completed.

Our investigator didn't think Shawbrook had been reasonable when rejecting the claim Ms S had made to them under section 75. She thought the business should take some action to put things right.

As Shawbrook didn't respond to the investigator's most recent view the complaint has been referred to me, an ombudsman, to provide a decision.

What I've provisionally 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 think there has been a breach of contract here and I'm asking Shawbrook to put things right for Ms S. As I'm suggesting a narrower redress than the investigator had proposed I'm issuing a provisional decision so that the parties can, if they wish, comment further.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

When something goes wrong and the payment was made with a fixed sum loan, as is the case here, it might be possible to make a section 75 claim. This section of the Consumer Credit Act (1974) says that in certain circumstances, the borrower under a credit agreement has a like right to claim against the credit provider as against the supplier if there's either a breach of contract or misrepresentation by the supplier.

I'm not determining the outcome of a claim that a party might have under section 75. I take section 75 into account when I think about what's a fair way to resolve the complaint, but I don't have to reach the same view as, for example, a court might reach when considering breach of contract or misrepresentation.

From what I can see, all the necessary criteria for a claim to be made under section 75 have been met.

When a business is asked to consider a section 75 claim where there's been a breach of contract we'd expect them to try to put the consumer in the position they would have been in if the contract had been performed.

There's been a breach of contract here as the independent inspector who is an expert in these matters says the installation is of an unsatisfactory quality. He said:

"This installation has many defects with the product and the way it has been installed. It fails to comply with the building regulations on multiple counts...The lack of support used in the installation of the bay windows has and will continue to cause damage to the property and should be remediated as soon as possible...extensive remedial works would be required to bring the installation up to an acceptable and compliant standard... The overspray evident on the majority of the windows cannot be removed, it has bonded to the UPVC. If the homeowners choose not to accept this defect, then the windows and door will have to be replaced."

So, I think the correct resolution is, as far as possible, to put Ms S in the position she would have been in if the contract had been performed and I don't think Shawbrook have been reasonable not to uphold the section 75 claim.

Ms S is reluctant to have the original supplier complete the work. I understand her concerns as the independent inspector has identified many areas of deficiency and poor workmanship. I don't therefore think it would be reasonable to expect Ms S to allow the original supplier to put things right. That should be done by an alternative business.

Putting things right

Our investigator suggested two options. She said Shawbrook should either:

- *Organise the replacement of the products by a new supplier. Ms S would need to find a few suppliers which she'd be happy to use and provide Shawbrook with quotes.*
- *Unwind the agreement and remove the products at a convenient time for Ms S so that she may source replacements herself. Here she felt it would be appropriate for Shawbrook to pay the difference if there was an increased price for like for like products.*

I'm not persuaded that the second option is practical. It would mean that Ms S would potentially be left without windows and doors whilst waiting for the new supplier to fit them. And, even if the work of the current supplier and the new supplier could be effectively coordinated, the question of who would pay if there were delays in being able to start the work because of any delay in removing the products, may raise further issues.

I'm therefore expecting to tell Shawbrook to organise replacements of the products by a new supplier. To facilitate that, Ms S will need to provide three up to date quotes for the work for Shawbrook to select from. Shawbrook will also need to refund the cost of the independent

inspection report Ms S commissioned, on provision of the receipt, and they'll need to add 8% interest to that refund as Ms S has been deprived of the money.

My provisional decision

For the reasons I've given above I'm expecting to uphold this complaint and to direct Shawbrook to put things right in the manner I've set out above.

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.

Shawbrook responded to my provisional decision and said:

“We have considered the Ombudsman’s comments. On the whole we agree with the findings, but would like to make a third redress offer, which is:

- Shawbrook agrees to cancel the loan, which means Ms S will not have to pay the remaining loan balance of £1,737.56
- Refund Ms S the loan repayments adding 8% interest – payments made to date totals £5212.44, plus 8% net 275.15 – total refund £5,487.59
- Refund the £2000 deposit she paid to the supplier
- We note the RISA report is dated 3 November 2022, which is after we provided our final response to Ms S and also after she referred her complaint to your Service. Given Ms S has, on the face of it, made the decision herself to instruct RISA, and Shawbrook was not given an opportunity to discuss, or agree the appointment of an independent inspection, we would not normally agree to refund the cost of the independent report. However, in this instance, as a gesture of goodwill only, we will refund the cost of the report on receipt of the invoice.
- The loan cancellation and refund will allow Ms S to source, and pay for new windows from a supplier of her choice”.

So, I ran that option passed Ms S and I explained that if she didn't agree my view would be that Shawbrook should:

- Organise the replacement of the products to the original specification and by a new supplier. Shawbrook can select from three quotes Ms S is to provide from suppliers she'd be happy to use.
- The agreement should stay in place and the balance outstanding should continue to be paid on the same terms.
- Refund the cost of the independent inspection report Ms S commissioned, on provision of the receipt from Ms S. Add 8% simple interest to that refund from the date of payment to the date of settlement.

Ms S explained that she preferred to follow the second option and have Shawbrook organise the replacement of the products to the original specification.

I think that puts Ms S in the position she would have been in if the contract had been carried out as expected and I don't therefore see any reason to deviate from it.

Ms S also questioned whether VAT would be included. As I'm asking Shawbrook to organise replacement of the products they'd also be responsible for paying any VAT that may be due on any new bill they may be paying. If there's VAT on the independent inspection report Shawbrook will need to refund that along with the cost of the report.

Ms S also explained that there would be plastering to do around the windows. She asked if the cost of that plastering could also be ordered. I'm not persuaded to include that expense as Ms S didn't make the request until after the deadline I had given for comments to my provisional decision. It wouldn't be fair to extend that deadline further as I had already refused to do so when Shawbrook requested an extension. I think Ms S has had ample time to advise this Service of those expenses; I can see, for instance, that the investigator's view of this complaint was issued in November 2022.

Putting things right

I'm therefore telling Shawbrook to put things right in the way I've set out below.

My final decision

For the reasons I've given above I uphold this complaint and tell Shawbrook Bank Limited to:

- Organise the replacement of the products to the original specification and by a new supplier. Shawbrook can select from three quotes Ms S is to provide from suppliers she'd be happy to use.
- The agreement should stay in place and the balance outstanding should continue to be paid on the same terms.
- Refund the cost of the independent inspection report Ms S commissioned, on provision of the receipt from Ms S. Add 8% simple interest to that refund from the date of payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 24 April 2023.

Phillip McMahon
Ombudsman