

The complaint

Mr K complains that Shawbrook Bank Limited, who I'll call "Shawbrook", were unreasonable to reject a claim he made to them under section 75 of the Consumer Credit Act 1974 ("section 75"). He's also upset with Shawbrook's handling of his complaint.

What happened

I issued my provisional decision on this complaint in May of this year. An extract from that provisional decision is set out below.

What happened

In December 2019 Mr K entered into a contract with a company I'll call "A" to supply and fit a front door and frame.

He is unhappy with the quality of the door and says it's not aligned properly, is jamming, sticking, paint is coming away from where it's sealed, and the lock needs to be regularly oiled to make it work properly. He also says the door was misrepresented to him as he wasn't told it was a "slam shut" design.

Mr K complained to Shawbrook, and they consulted the supplier who visited the property in December 2021 and in January 2022 but couldn't find fault with the door. So, Shawbrook didn't uphold Mr K's complaint.

Mr K referred his complaint to this service and our investigator thought it should be upheld and that Shawbrook should arrange for the door to be repaired or replaced. She also thought Shawbrook hadn't handled Mr K's complaint well and suggested they pay him £100 in compensation for the distress and inconvenience caused.

Shawbrook disagreed. They said the complainant wasn't an eligible one and they explained there was no fault found with the door. They therefore asked for a final decision by an ombudsman.

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 know it will disappoint Mr K, but I don't think I have sufficient evidence to suggest Shawbrook have been unreasonable to reject his section 75 claim. But I do think they could have handled the claim better and I'm expecting to ask them to pay some compensation. 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, 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.

Eligible complainant

I think there's been some confusion here as the complaint was originally set up in Mr K's partner's name and, as it's only Mr K who has a regulated credit agreement with Shawbrook to fund the supply of the door, his partner wouldn't be an eligible complainant under the rules that govern this Service. But towards the end of last year our investigator rectified that issue and recorded Mr K as the consumer in this complaint. She advised Shawbrook of that and I'm persuaded that Mr K is an eligible complainant and is entitled to escalate his complaint to this service.

Misrepresentation

Misrepresentation is, in very broad terms, a statement of law or of fact, made by one party to a contract to the other, which is untrue, and which materially influenced the other party to enter into the contract.

Mr K says he was unaware that the door was of a "slam shut" design where the latch retracts on contact. I've reviewed the contractual paperwork and I can't see that any specific latch design was offered. I'm not therefore persuaded there is evidence a false statement of fact was made and on that basis I don't think Shawbrook were unreasonable to reject that claim.

Breach of contract

If the door wasn't of satisfactory quality when supplied or if the work to fit it wasn't completed with reasonable care and skill, I would think there had been a breach of contract.

In those circumstances the relevant legislation (the Consumer Rights Act 2015) gives the business one opportunity to repair the goods. The evidence supplied by Shawbrook, and A suggests that there were attempts to rectify issues in August 2020 and in December 2021. So, if there was evidence those repairs had been unsuccessful the relevant legislation would support the replacement of the door or its rejection.

I've not, however, been provided with sufficient evidence there is a fault with the door. Whilst I understand Mr K's testimony, the supplier has visited the property and explained that they can't find fault with the goods. Whilst the slam shut design may mean the door has to be pulled, or slammed, shut, I don't think that in itself is evidence of a fault and Mr K hasn't provided any evidence to counter that assertion e.g. an expert opinion from an independent source.

On that basis I don't think Shawbrook have been unreasonable to reject his section 75 claim.

Shawbrook's handling of the section 75 claim

I don't, however, think Shawbrook have handled this claim well. Their system notes show that they failed to log the complaint for Mr K when he called them in October 2020, and I think that's delayed matters for Mr K. In those circumstances, I think Shawbrook should pay Mr K £100 to compensate him for the distress and inconvenience caused.

My provisional decision

I'm expecting to partially uphold this complaint and to tell Shawbrook Bank Limited to pay Mr K £100 to compensate him for the distress and inconvenience caused.

Further comments

Shawbrook didn't provide any further comments for me to consider but Mr K did, he said:

"I am quite disappointed that we are still at the same level of compensation as we were a few months ago, which at the time Shawbrook refused to acknowledge nor has bothered to pay.

Our level of distress should be compensated more than that as this has dragged on for over 3 years now and will continue until we can afford to get a new door.

When we purchased this door we told the salesman we were out during the night as we have a taxi business and most of our pickups are during the night ok and from the airport.

We were never told that this was a 'slam shut door'.

Why would we want that when we're out at these times as it would wake our neighbours.

The door frame seal is coming apart from the wall with the paint peeling which looks horrendous.

We've had the lock itself changed which is still sticking and we've been told to oil it every few days. Why would you spend £2000 on a door to oil it every few days so the keys doesn't stick.

This whole experience dealing with (the supplier) and Shawbrook has been horrendous. We have been lied too and ignored for years."

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 explained in my provisional decision that *"I can't see that any specific latch design was offered. I'm not therefore persuaded there is evidence a false statement of fact was made..."* So, whilst I understand Mr K isn't happy with the type of latch I don't think it would be fair to suggest that means the door was misrepresented or that it's not been of satisfactory quality.

As the lock has been changed it also wouldn't be fair to suggest the new sticking lock is Shawbrook's responsibility and, as I've not been provided with any independent expert evidence to counter the expert advice provided by the supplier, I'm afraid I'm not persuaded I

have sufficient evidence to suggest Shawbrook were wrong not to uphold Mr K's complaint.

Having considered the guidance this Service publishes on distress and inconvenience payments I'm also not minded to increase the compensation I suggested in my provisional decision.

Putting things right

I've not therefore, been provided with evidence that has led me to change my provisional decision and that now becomes my final decision on this complaint.

My final decision

For the reasons I've given above, I uphold this complaint in part and tell Shawbrook Bank Limited to pay Mr K £100 to compensate him for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 26 July 2023.

Phillip McMahon
Ombudsman