

The complaint

Mrs H and Mr H complain in relation to windows they purchased that were financed with a fixed sum loan agreement with Shawbrook Bank Limited.

They are represented in this complaint by a third party, but for ease of reference I'll refer to submissions made by the third party as being made by Mrs H and Mr H.

What happened

In October 2016, Mrs H and Mr H were visited by a representative of a company I'll call 'A' and subsequently entered into a contract with A to purchase windows with a cash price of £7,183.34. This purchase was financed with a fixed sum loan agreement with Shawbrook Bank Limited ("Shawbrook"). The total amount payable under the agreement was £14,991.48 and Mrs H and Mr H were required to pay 96 monthly payments of £155.13.

Mrs H and Mr H complained to Shawbrook in 2019. They believed the credit agreement was mis-sold to them and that they were given a financial discount by A as an incentive to enter into this without being given time to fully understand the implications of this.

Shawbrook didn't agree the agreement had been mis-sold and so Mrs H and Mr H referred their complaint to our service. In doing so, Mrs H and Mr H said the following:

- A inflated the initial price for the windows before applying discounts to give the impression of a bargain. A also said these discounts were on offer for a limited time to pressure them into making a decision there and then.
- They could have paid for the windows in cash but were told they wouldn't get the discounts or warranty if they didn't use the package recommended by A.
- A failed to tell them that they would get a commission for introducing them to Shawbrook.
- The cash price of the windows was shown as different figures on the contract with A and the credit agreement with Shawbrook. As such, Shawbrook improperly executed the credit agreement, and the sale of the goods was misrepresented to them.
- Shawbrook didn't carry out appropriate affordability checks in respect of the credit agreement.
- A's contract showed an incorrect cancellation period of seven days rather than the permitted fourteen days.

Mrs H and Mr H said that Shawbrook should rescind the credit agreement and refund them all monies they paid to it, with interest.

Our investigator didn't uphold the complaint. He felt there wasn't enough evidence to show that A had misled Mrs H and Mr H into entering the credit agreement with Shawbrook and it wasn't unreasonable they were provided with a discount on the windows. He also felt the price of the windows shown on A's contract matched that shown on the credit agreement.

And he said Mrs H and Mr H were given a cooling off period of 14 days by both A and Shawbrook and they hadn't sought to cancel the contract or credit agreement at any point prior to their complaint.

So, our investigator felt no breach of contract or misrepresentation had taken place, which meant he felt that Shawbrook hadn't handled Mrs H and Mr H's claim under Section 75 of the Consumer Credit Act 1974 unreasonably.

Our investigator also considered Shawbrook's affordability checks. He said, in summary, that he wasn't satisfied Shawbrook had carried out proportionate affordability checks. However, he felt that, had they done so, it likely would have shown the agreement was affordable for Mrs H and Mr H.

I issued my provisional decision on this complaint on 10 August 2023, in which I said the following and which forms part of my final decision:

'Since we received Mrs H and Mr H's response to our investigator's view, we've asked them (via their representative) to confirm what they would like covered in this decision. This is because their response to the view only covered the affordability of the agreement.

Mrs H and Mr H have since set out that they would like me to consider that aspect. But also, that A's customer illustration form wasn't compliant with the Consumer Credit Act 1974 ("CCA") or the Financial Conduct Authority's Consumer Credit Sourcebook ("CONC").

I am therefore only concentrating on these particular complaint points in my decision, which I shall deal with in turn.

The customer illustration form

Section 56 of the CCA is relevant here. This sets out that statements made by a supplier in relation to a transaction financed or proposed to be financed under pre-existing arrangements between a credit provider and the supplier are deemed to be made as an agent for the creditor.

The FCA Principles for Businesses (PRIN) are also of relevance.

PRIN 6 says "A firm must pay due regard to the interests of its customers and treat them fairly."

PRIN 7 says "A firm must pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair and not misleading."

CONC also applies and is of relevance. In particular,

"CONC 1.2.2 R

A firm must:

(1) ensure that its employees and agents comply with CONC; and

(2) take reasonable steps to ensure that other persons acting on its behalf comply with CONC."

CONC 2.5.3 R concerning credit brokers states:

(1) “where it has responsibility for doing so, explain the key features of a regulated credit agreement to enable the customer to make an informed choice as required by CONC 4.2.5R;

(2) take reasonable steps to satisfy itself that a product it wishes to recommend to a customer is not unsuitable for the customer’s needs and circumstances;

(3) advise a customer to read, and allow the customer sufficient opportunity to consider, the terms and conditions of a credit agreement or consumer hire agreement before entering into it.”

CONC 3.3.1 sets out that:

“(1)

‘A firm should ensure that each communication and each financial promotion:

(a) is clearly identifiable as such;

(b) is accurate

(c) is balanced and should not emphasise any potential benefits of a product or service without also giving a fair and prominent indication of any relevant risks;

(d) is sufficient for, and presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received; and

(e) does not disguise, diminish, or obscure important information, statements, or warnings”.

(1B)

“A firm must ensure that, where a communication or financial promotion contains a comparison or contrast, the comparison or contrast is presented in a fair and balanced way and is meaningful”.

A gave Mrs H and Mr H a customer illustration form which detailed the various discounts that they would get if they bought the windows. It detailed the starting price of the goods and then the price after the various discounts were applied. There are various reductions to the price of the goods and there appears to be one that is specific to signing up to the finance agreement.

The price of the goods starts at £8,675.86 and then, after what was called a ‘Gold Discount’ of £1,492.52, the price was reduced to £7,183.34. The illustration shows that Mrs H and Mr H paid a deposit of £99 which reduced the amount that needed to be financed to £7,084.34. Both the deposit amount and the amount to be financed I’ve mentioned above are shown on the credit agreement with Shawbrook. So, I’m satisfied that there was no variance in the figures shown in the contract with A and the finance agreement with Shawbrook.

I find that the customer illustration was largely clear, in that it set out the discounts that were being offered, the total amount of the windows after these had been applied and the amount that needed to be financed. It also appears that Mrs H and Mr H were shown this illustration before they entered into the agreement with Shawbrook. The illustration, in my view, explained reasonably clearly and prominently the incentive for entering into the finance in context of the total charge for credit – and how much Mrs H and Mr H would have to pay

back in total at various points depending on how fast they repaid the loan, that would enable them to benefit from the incentives offered by A.

I note that Mrs H and Mr H have said that the customer illustration wasn't compliant with the CCA or CONC because it didn't show the document fee, the interest and the total amount payable under the credit agreement in the examples shown on how they could potentially pay less overall if they increased their monthly payments. I agree that the illustration could have been clearer in that regard. I'm not though bound to solely make a finding on whether the illustration wasn't compliant as Mrs H and Mr H say. I am also considering matters overall. And overall, I'm persuaded that the illustration was reasonably clear on the possible benefits that could have accrued if Mrs H and Mr H repaid the loan earlier. I also find that A likely explained the key features of their proposed contract and the associated regulated agreement with Shawbrook clearly to Mrs H and Mr H to enable them to make an informed choice.

The affordability of the credit agreement

Taking into account the relevant rules, guidance, good industry practice and law, I think there are particular questions I need to consider in order to decide what's fair and reasonable in the circumstances of this complaint.

These questions are:

1. Did Shawbrook complete reasonable and proportionate checks to satisfy itself that Mrs H and Mr H would be able to repay their agreement in a sustainable way?

a. If so, did it make a fair lending decision?

b. If not, would reasonable and proportionate checks have shown that Mrs H and Mr H would have been able to sustainably repay the agreement?

Before granting credit, Shawbrook were required to carry out a reasonable and proportionate assessment of Mrs H's and Mr H's ability to sustainably repay the debt. This is often referred to as an 'affordability check'. This check had to be borrower-focussed.

This means it needed to be concerned with whether Mrs H and Mr H could sustainably afford the borrowing (considering their specific circumstances), rather than how statistically likely they were to repay. The latter is the risk posed to Shawbrook as the lender, or its 'credit risk' but this is not necessarily the same as an assessment of affordability.

What's considered reasonable and proportionate will vary depending on several factors such as, but not limited to:

- The amount of credit;*
- The total repayable and the size of the repayments;*
- The duration of the agreement;*
- The cost of the credit; and*
- The consumer's individual circumstances.*

What this means is that there isn't a one-size-fits-all approach to what is considered proportionate as any of these factors (or others) might influence what a reasonable and proportionate check ought to be.

The total amount repayable on the credit agreement was £14,991.48 over 96 months and Mrs H and Mr H were required to make monthly payments of £155.13.

Shawbrook say they don't have much information about the checks they carried out as Mrs H and Mr H's application went 'straight through their system' with no supporting documentation being required. I gather though that Shawbrook asked them about their income and their employment status and that they carried out a credit check.

Shawbrook's records show that Mr H said in his application that he was working full time with an annual salary of £20,000, and that Mrs H said she wasn't working.

I've looked at the result of the credit check that Shawbrook carried out. This showed Shawbrook that Mr H had two actively used credit cards and that he'd recently taken out two new hire purchase agreements. It also showed that Mrs H had an active credit card. From looking at the data shown on the credit check, the balances on the credit cards were £147, £1,477 and £309 against limits of £8,250, £13,600 and £2,000 respectively. It also showed that Mrs H and Mr H hadn't missed any payments towards these accounts recently. So, they appeared to be managing these accounts without any apparent difficulties and weren't showing any obvious signs of over-indebtedness.

However, bearing in mind that the credit check also showed that Mr H was committed to paying £367 and £374 towards new hire purchase agreements, and that Mrs H and Mr H would need to pay down their credit card accounts, I think Shawbrook should have at least asked Mrs H and Mr H questions about their expenditure and not just relied on the credit check.

The credit check likely would have shown Shawbrook how Mrs H and Mr H had managed their existing and past credit commitments. Shawbrook would therefore have gathered some idea of what other expenses Mrs H and Mr H had, but they wouldn't have known what they spent on essential living costs.

So, I don't see how Shawbrook could have satisfied itself that Mrs H and Mr H had sufficient disposable income to cover the cost of the financial arrangement with them. I'm not satisfied therefore that Shawbrook carried out reasonable and proportionate affordability checks.

I can't be sure what information and evidence Shawbrook would have asked for or received had they carried out a reasonable and proportionate affordability assessment. However, given the size of the borrowing, the income Mr H had declared, and the extent of the existing credit commitments that Mrs H and Mr H had at the time, I do think Shawbrook ought to have verified Mr H's income and asked Mrs H and Mr H about their expenditure, so I've considered what I think they would likely have discovered had they done this.

Mrs H and Mr H have provided us with their bank statements which gives me a reasonable approximation of their income and committed monthly expenditure.

I can see that income totalling just under £2,200 went into Mr H's bank account in the month before Mrs H and Mr H entered into the finance agreement with Shawbrook. So, it seems likely that this was the figure that would have been disclosed to them had they asked Mr H to verify this. I've gone on to assess from the bank statements what Mrs H and Mr H would have likely told Shawbrook had they asked them for details about their committed monthly expenditure. I appreciate this has an element of theory because I can't be sure what would have been disclosed at the time. However, looking at Mrs H and Mr H's regular committed monthly expenditure for the three months leading up to the finance, including utilities, phone/broadband costs, insurance and council tax, their monthly expenditure was around

£600. If I add the hire purchase amounts of £367 and £374, that takes this up to around £1,300.

I can also see that Mr H had paid fairly high amounts towards the credit card accounts before the finance was entered into. This left the balances (as set out earlier in this decision) relatively low in comparison to the respective limits. So, I don't think Mrs H and Mr H would have told Shawbrook that they would have continued to pay these high amounts. I think that Shawbrook would have been entitled to think that Mrs H and Mr H would have set around £100 to £150 for this in total each month. I accept this is largely guesswork and I've already said it's difficult to know for sure what would have been disclosed. But I think the figure I've used here is reasonable.

So, had Shawbrook asked Mrs H and Mr H for details of their income and expenditure, I think this would likely have shown them that they had around £800 spare to meet the monthly repayments of the finance agreement and food costs, as well as any unexpected costs.

I've thought about whether Shawbrook should have done further checks, perhaps by verifying their expenditure, because of the number of existing credit commitments Mrs H and Mr H had. In other words, to determine whether they were overcommitting by taking out further credit. I don't think though that Mrs H and Mr H having those existing credit commitments should have concerned Shawbrook in that way. It's not uncommon for people to have existing credit commitments and I don't think the number of these should have alerted Shawbrook. It also seems that Mrs H and Mr H weren't struggling to meet these commitments at the time.

I think that, had Shawbrook completed reasonable and proportionate affordability checks, it's likely they would still have concluded the agreement was affordable. I therefore don't think Shawbrook needs to do anything in respect of the argument of affordability that's been made by Mrs H and Mr H.

For the reasons I've set out above, my provisional decision is that I do not uphold this complaint'.

I invited the parties to reply to my provisional decision.

Shawbrook didn't reply.

Mrs H and Mr H responded asking me to consider the testimony of A's salesman they sent when they submitted their complaint to us. They also reiterated that the customer illustration form wasn't compliant with CONC and the CCA and said while they understood my findings about the affordability of the finance agreement, the fact they had to ask for help from a debt charity proves beyond reasonable doubt that it was unaffordable.

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 thank Mrs H and Mr H for their comments on my provisional decision, and I will now address them.

Mrs H and Mr H have asked me to consider the testimony of A's salesman who I gather arranged the sale of the windows and brokered the finance agreement with Shawbrook. I have considered what he's said, however it's difficult to know how impartial these comments

are bearing in mind he is a former employee of A rather than a current one. I don't for example know the circumstances around why the salesman no longer works for them. So, I don't find I can rely on his comments as reasonably solid proof that the sales process involving Mrs H and Mr H was flawed.

In respect of the customer illustration form, I realise Mrs H and Mr H feel this wasn't compliant with CONC and the CCA. I did though address this in my provisional decision and I've not been provided with anything on this point that hasn't already been sent for my consideration.

So, I see no reason to change what I said in my provisional decision about this, which is that I'm persuaded that the illustration was reasonably clear on the possible benefits that could have accrued if Mrs H and Mr H repaid the loan earlier. And that A likely explained the key features of their proposed contract and the associated regulated agreement with Shawbrook clearly to Mrs H and Mr H to enable them to make an informed choice.

Mrs H and Mr H have said they sought help from a debt advice charity. I'm sorry to hear they needed to take those steps as I can appreciate this would have been a stressful situation for them.

However, I don't find this then shows that the finance agreement with Shawbrook was unaffordable. As I set out in my provisional decision, the key was whether Shawbrook took reasonable steps to assess the affordability and sustainability of the agreement, and that would mean the information they could and should have considered at the time of the application. I explained why I felt that Shawbrook didn't carry out proportionate affordability checks but also that they likely would have considered the agreement to be affordable and sustainable had they done so. I've not been provided with any further comments around these points. I see no reason therefore to depart from the provisional conclusion I reached on this.

So, for the reasons I've set out above including those set out in my provisional decision, I don't uphold this complaint.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr H to accept or reject my decision before 29 September 2023.

Daniel Picken
Ombudsman