

## **The complaint**

Miss M entered into a fixed sum loan agreement with Shawbrook Bank Limited to pay in part for windows and doors. She says the installation of the windows and doors hasn't been carried out with reasonable care and skill.

## **What happened**

Miss M entered into a contract with a supplier of windows and doors (the 'Supplier') on 31 January 2021. The total cost of the installation was £8,870 of which Miss M paid a £199 deposit and intended to pay £4,236 directly to the Supplier. The remaining £4,435 was intended to be paid by way of a fixed sum loan with Shawbrook. The funds from Shawbrook would be released directly to the Supplier on receipt of a signed customer satisfaction note. Miss M says that the windows and doors haven't been installed with reasonable care and skill and after several attempts to resolve the issues with the Supplier she raised a complaint under section 75 of the Consumer Credit Act 1974 with Shawbrook.

Shawbrook issued a final response letter dated 21 November 2022. It said that in response to Miss M's complaint about the quality of the installation provided by the Supplier it arranged for an independent inspection. This took place in April 2022 and identified a number of issues. The Supplier then proposed a schedule of works, which was agreed, with work commencing on 10 October 2022. Shawbrook said that the Supplier also investigated the issue raised with the structure of Miss M's bay window, despite it not being part of the contract. Shawbrook said that the Supplier completed the works on 31 October 2022 and that the work had then been completed to a satisfactory standard. Shawbrook said that the Supplier had offered Miss M a £700 discount to the cash balance and it also said it would pay Miss M a further £200 compensation.

Miss M wasn't satisfied with Shawbrook's response and referred her complaint to this service. She said that the Supplier had been out to her on eight occasions and caused extensive damage to her property. She said she raised her complaint with Shawbrook in early 2022, and after a lot of back and forth and chasing, Shawbrook sent a final response saying that the issues had been resolved, but they hadn't.

Following this a second independent inspection was carried out in April 2023. This reported repairs and other remedial work that should be undertaken.

Our investigator issued a view in May 2023, upholding this complaint. He said that the Supplier had had the opportunity to remedy the issues with the installation on several occasions and as issues remained, he thought it fair that Miss M was provided with a price reduction. He noted the outstanding issues that had been identified in the inspection reports and didn't think the offer by the Supplier of a £700 price reduction was enough given the likely cost of the remedial work.

Our investigator thought that Shawbrook needed to do more to resolve Miss M's complaint and recommended that it reduce the cash price by 25% to cover the remedial and replacement works stated in the independent inspection reports (noting that Miss M didn't want the Supplier to attend her property again). He also said that Shawbrook should pay

Miss M £300 compensation for the distress and inconvenience caused by the issues and noting the time that these had been ongoing. He noted that as this complaint was against Shawbrook he couldn't award compensation for the upset caused by the service provided by the Supplier.

Miss M was pleased that her complaint had been upheld but didn't think the suggested redress was sufficient. She said that since Shawbrook closed her complaint in November 2022, she had been ignored by both the Supplier and Shawbrook even though issues were still outstanding. She said the Supplier had employed intimidation tactics by threatening legal action and saying additional costs would be added. Miss M explained the distress and upset she had been caused since January 2021 by this ongoing issue and said that having sourced quotes for some of the remedial work this was likely to cost thousands. She said that taking the above into account she felt the only fair outcome was for her to be released from the contract.

Following our investigator's view, Shawbrook raised a question about whether this was an eligible section 75 complaint. It noted that no funds had been provided and no payment made. We asked for further details about the funding and Shawbrook explained that Miss M emailed it on 14 December 2022, to request that the finance agreement with Shawbrook be terminated as it was not required and that she wanted the supplier to treat her account as a cash/cheque payable account. In addition, it noted that Miss M said in an email reply to it dated 6 December 2022, that she didn't consent to any funds/payment being released to the Supplier from the finance arranged with it. Shawbrook said that it appeared Miss M didn't want to have finance from Shawbrook and that this raised concerns about there being an eligible complaint against it as no funds were borrowed.

#### *My provisional conclusions*

I issued a provisional decision on this complaint. My provisional conclusions are set out below.

*There are many issues that have been raised through this case and so I will first set out the basis on which I can consider this complaint. Miss M entered into a fixed sum loan agreement with Shawbrook in January 2021. For a complaint to be considered by this service it needs to be brought to us by an eligible complainant. There are two parts to this test. As this complaint is brought by Miss M as an individual, she meets the first part of the test as she is a consumer. The second part of the test relates to the relationship between the complainant and the respondent and covers issues arising from matters where the complainant is either a customer or potential customer of the respondent. So, given Miss M entered into an agreement with Shawbrook I think it reasonable to say she is an eligible complainant. Therefore, I can consider the service that Shawbrook has provided to Miss M in regard to the issues raised.*

*I have then considered that the complaint was raised under section 75. Section 75 says that in certain circumstances the debtor under a credit agreement has an equal right to claim against the creditor if there's either a breach of contract or misrepresentation by the supplier of goods or services. There needs to be a debtor-creditor- supplier relationship in place for there to be an eligible claim. In this case, Miss M entered into an agreement to acquire the installation of windows and doors by the Supplier. This was to be funded in part by the fixed sum loan agreement. This would suggest the relevant relationship was in place while the fixed sum loan agreement was in place. The complication in this case is that the loan funds haven't been drawn down and Miss M said in December 2022 that she no longer wanted the loan in place. In June 2023, Shawbrook said that due to the loan proceeds not being drawn down and the ongoing dispute, the loan had been categorised as 'Not Taken Up' and that Miss M would need to make a new application if she wanted the loan. However, since our*

recent information request it appears that Shawbrook has sent Miss M new loan documentation for signing.

Having considered the issue raised about the eligibility of the claim, even though the funds hadn't been provided Miss M had paid for part of the contract through the credit agreement she had signed. Miss M raised her claim while the agreement was in place (even though money hadn't been drawn down) and had a reasonable resolution been agreed the funds would have been drawn down and contract paid, so I think it reasonable to consider this claim.

When considering a claim that goods weren't of satisfactory quality and or services weren't provided with reasonable care and skill, the Consumer Rights Act 2015 (CRA) is relevant. The CRA implies terms into the contract that traders must perform the service with reasonable care and skill. And that services should be performed within a reasonable amount of time. In this case, there have been two independent reports issued (in April 2022 and April 2023) which have listed several issues with the installations provided by the Supplier. I find that these show the installations provided weren't carried out with reasonable care and skill and as such there was a breach of contract by the Supplier.

I have therefore thought what I consider to be a reasonable remedy. I have taken into account that the Supplier has had many opportunities to remedy the issues but there are still several issues outstanding. I note Miss M's comments that she made it clear to the Supplier that its remedy attempt in October 2022 was to be the last time she would allow it to try to carry out the necessary repairs and I can understand why she no longer wishes the Supplier to carry out further work on her property. Because the relationship has broken down and noting the time that Miss M has spent trying to resolve the issues, I find it fair that she is now provided with a price reduction to allow her to source the remedial work from another provider.

Miss M has said she feels the fair resolution to the issues she has experienced is for her to be released from the contract with nothing further to pay. I can understand her position, but I have to take into account, while remedial work is still needed, the windows and doors have been installed. Miss M paid an initial amount of £199 but I do not find that I can say it is fair she pays nothing else given the installation has been provided.

Our investigator recommended that the total cost be reduced by 25%. Miss M didn't accept this, but I think this is reasonable. I say this because having looked through the list of outstanding issues, the remedial work required is mainly to do with repairing or replacing mastic, sealants, bonding and mortar around the installation and there is nothing to suggest the windows and doors themselves aren't of satisfactory quality. So, I do not find that Miss M should be removed from any obligation for payment through the contract and based on the evidence I have seen I think a reduction in the total cost to £6,652.50 (25% reduction) is fair to reflect the work that is still needed. If Miss M has evidence that the works as listed in the April 2023 report will cost more than the price reduction provided, then I can consider this.

Additional to the price reduction I have considered the service that Shawbrook has provided Miss M in response to her claim. I can see that it arranged for the work to be inspected but following this it appears that it hasn't provided the service it should have in working with Miss M when she explained issues were still outstanding. As our investigator explained, the distress and inconvenience awarded is for the service provided by Shawbrook (and not the Supplier) and while I can understand that delays and the issues arising from building works can be particularly stressful, this compensation is for the service Shawbrook provided in its response to the claim raised. It previously offered to pay Miss M £200, but I agree with our investigator that this compensation should be increased to £300. For the avoidance of doubt

*this is £300 in total (so if the £200 initially offered has already been paid, a further £100 should be paid).*

*As I find that the contract price should be reduced to £6,652.50, I have to consider how this will work in practice. I note that the Supplier made an offer to reduce the price to this amount following our recent correspondence. This complaint is against Shawbrook and so my direction is in regard to the actions I need Shawbrook to take. There is the outstanding issue that the initial loan wasn't drawn down and the question as to whether Miss M wishes to make use of a loan from Shawbrook (and I note she was sent new loan agreement documents but was reluctant to sign these). So, in this case, I find the reasonable action to take is for Miss M's original loan to be reinstated but reflecting the price reduction set out in this decision. If Miss M accepts this decision, then these funds will be made available for payment to the Supplier as would have happened had the initial installation been accepted. Miss M and the Supplier could then discuss the remaining outstanding balance.*

*In conclusion, while I have taken relevant regulations into account, my decision is based on what I consider fair and reasonable given the unique circumstances of the complaint. In this case, I think it was right that Shawbrook considered Miss M's claim under section 75. However, I think more should have been done in response to this claim. Because of this, Shawbrook should pay Miss M compensation of £300. Also, as the issues with the installation haven't been fully resolved I find a price reduction of 25% (to £6,652.50) is fair.*

Shawbrook accepted my provisional decision.

Miss M provided further evidence in response to my provisional decision.

### **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 have looked at all the additional information that Miss M has provided in response to my provisional decision and listened to the calls. I am sorry that this experience has been so stressful for Miss M and the impact it has had on her health and personal circumstances. Having listened to the calls I can hear how upset she is and how difficult she has found dealing with the issues arising from the installation of the windows and doors. I appreciate this has been ongoing for a long time and that Miss M feels let down by Shawbrook (as well as the Supplier).

For the reasons I set out in my provisional decision, I am upholding this complaint. Having considered the evidence provided and placing specific weight on the independent inspection reports carried out in April 2022 and April 2023 (following remedial work having been undertaken) I find it reasonable to accept that there was a breach of contract by the Supplier as the installation wasn't made with reasonable care and skill. I do not find that I have evidence to say that the goods (being the windows and doors) weren't of satisfactory quality but I agree the installation wasn't to a reasonable standard.

During this investigation the issue of the funds not being drawn down and the finance agreement no longer being active were raised. There was a suggestion that this meant Miss M didn't have an eligible claim under section 75. But as I explained in my provisional decision, I think there is enough to say that even though the funds hadn't been provided, as Miss M had paid for part of the contract through the credit agreement she had signed, and she raised her claim while the agreement was in place it is reasonable to consider this claim.

As Shawbrook accepted my provisional decision, my conclusions haven't changed that Miss M has an eligible claim under section 75 due to a breach of contract by the Supplier.

The outstanding issue is whether my recommendations for a remedy provide a fair resolution to this complaint. There were two parts to my redress recommendation. First was a 25% price reduction and the second was a payment of £300 for the distress and inconvenience caused by how Shawbrook have dealt with Miss M's section 75 claim. I have considered all the original evidence provided alongside Miss M's additional submissions in response to my provisional decision and while I know she will find this disappointing; I find that the recommendations I made in my provisional decision are reasonable. I have provided further explanation for this below.

When considering a fair outcome in this case, I have taken into account that the windows and doors have been provided and while there is clear evidence that the installation wasn't to a standard that would be expected, I do not have anything to say that the windows and doors themselves aren't of satisfactory quality. Therefore, I do not find I can say that Miss M isn't required to pay anything beyond the initial £199 deposit.

However, as the works haven't been completed to a reasonable standard, and the Supplier has had several opportunities to undertake remedial work and issues are still outstanding, I understand that Miss M doesn't want the Supplier to carry out any more work at her property. As the relationship has broken down between Miss M and the Supplier, I find a price reduction to the original contract is a fair outcome.

When considering the price reduction, I factored in that the doors and windows have been installed. I have then considered the remedial work that is still required. I have looked again at the independent inspection reports carried out in April 2022 and April 2023. Following the April 2022 report, a schedule of works was agreed between the Supplier and Miss M, and I can see this reflects the issues identified by the April 2022 report. Work was undertaken but this didn't resolve all of the issues. The two inspection reports were undertaken by the same inspector which I think is helpful as he will have been able to build on his knowledge of the work and issues identified in April 2022 when producing his report in April 2023. Therefore, I have specifically considered the outcome of the April 2023 inspection report in my assessment of the scale of works still to be undertaken.

Having listened to the calls between Miss M and Shawbrook it is clear how upsetting this process has been and there are several mentions of the house being damaged by the works being undertaken. While I do not underestimate the upset that has been caused and the testimonies that have been provided, I find it reasonable in this case to place weight on the recommendations set out in the April 2023 report. While this lists several areas of remedial work, these are mainly to do with repairing or replacing mastic, sealants, bonding and mortar around the installation.

In my provisional decision I said that if new evidence of the costs of remedial work was provided, I could consider this. Miss M has provided a quote for works which she says is only to put right some of the outstanding issues. This quote is for £2,050. I have looked at the works included in the quote and compared these to the list of recommendations in the April 2023 report. I can see that the quote covers most of the main areas recommended in the April 2023 report, particularly when considering it includes the silicone to be scraped out and re-siliconed on every window. It also includes making good plaster work in the living room and office. I have looked at the schedule of works from September 2022 and can see that plaster work was carried out in these rooms but, while the April 2023 report does say that the joint between the new plaster over the lintel and the existing ceiling is rough, there aren't recommendations in regard to the plaster work in these rooms. That said, I also note the comment Miss M has made about the work not standing the test of time.

Taking all of this into account, I find that my recommendations set out in my provisional decision of a price reduction of 25% (equivalent to £2,217.50) is a fair outcome.

The second part of the redress is to reflect the distress and inconvenience that has been caused. Having listened to the calls I can hear how upsetting this issue has been. But as I noted in my provisional decision this complaint is against Shawbrook in response to how it has dealt with the section 75 claim. Miss M raised a section 75 claim in August 2021. Following this further work was undertaken by the Supplier which it claimed was of satisfactory quality. While this wasn't the case, I do not find that Shawbrook was wrong at that time to think the issues were being resolved.

Miss M contacted Shawbrook again in February 2022 when the outstanding issues were discussed. An independent inspection was arranged and took place in April 2022. I find this a reasonable next step to confirm the issues with the installation. Following this a schedule of works was agreed with the Supplier. Information was then provided to Shawbrook by the Supplier and based on this, Shawbrook issued its final response in November 2022. In this response it offered to pay Miss M £200 to reflect the delays in this process.

Unfortunately, this wasn't the end of the claim for Miss M as the work undertaken by the Supplier still hadn't resolved the issues. I can see that Miss M then tried to raise a new complaint with Shawbrook in February 2023 and that her complaint was referred to this service (providing the November 2022 final response letter and details of the ongoing issues) in March 2023. A further inspection report was arranged by Shawbrook to identify the remaining issues, and this has been considered as part of our investigation and my decision. I understand that delays and the issues arising from building works can be particularly stressful and I do not underestimate the distress Miss M has experienced by the underlying issue of the installation not being to a reasonable standard. But, taking everything into account, I still find that the recommended £300 compensation for the distress and inconvenience arising from how Shawbrook has dealt with Miss M's section 75 claim is fair.

This complaint is in regard to Miss M's section 75 claim relating to the quality of the installation of her doors and windows. As part of this the issue of the activation of the loan agreement has needed to be considered. I understand that Miss M was then caused further distress in November 2023, as she was contacted about the loan agreement being reinstated without her knowledge. However, this is a separate complaint and should be raised directly with Shawbrook if Miss M wishes. Shawbrook can then respond to the upset this caused Miss M and if Miss M isn't satisfied with the outcome she can refer this to our service.

### **Putting things right**

Shawbrook Bank Limited should ensure:

- The price of the contract is reduced to £6,652.50 to reflect the issues that have been identified with the installation of the windows and doors. If Miss M accepts this decision Shawbrook should reinstate Miss M's original loan reflecting the reduced contract price.
- Pay Miss M a total of £300 compensation for the distress and inconvenience she has been caused.

### **My final decision**

My final decision is that Shawbrook Bank Limited should take the actions set out above in

resolution of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 1 March 2024.

Jane Archer  
**Ombudsman**