

## **The complaint**

Mr W has complained about an installation for windows and doors he paid for using a fixed sum loan agreement with Allium Money Ltd ("Allium").

## **What happened**

In November 2022 Mr W entered into a contract for the supply and fit of windows and doors. The installation cost around £36,000. He paid a deposit of around £10,500 and the balance was funded using a two-year fixed sum loan agreement with Allium.

The installation was carried out in 2023 by a company I'll call "S". Mr W wasn't happy with the installation and contacted S in March 2023. S responded to say it would carry out remedial works. But it also said Mr W should speak to his own builder on site because he was having other works carried out. S noted the house didn't have a proper roof in place which was causing water ingress. Mr W didn't agree. He said the poorly fitted windows and doors caused the issue.

I understand Mr W signed a satisfaction note in April 2023. But wrote to S to put in a claim for damages. In summary, he said:

- The fitting team didn't arrive on the installation week, and later said the order wasn't ready.
- The fitting of the windows was substandard. Gaps were too wide causing significant ingress of rainwater, which caused interior damage and repairs being required.
- Brickwork was damaged during the removal of the old windows. These needed replacing and repointing.
- Installation was completed on 12 April 2023, which was over a month after the planned completion date (9 March 2023).
- Scaffold was provided by Mr W during the extended installation period (9 March – 12 April) used solely for the fitting of the windows.
- Mr W requested alternative accommodation costs returned for the extended installation period.

Mr W put in a claim with S for around £43,000. This was made up:

- Around £31,500 for remedial building work.
- Around £6,000 for rental of an equivalent house.
- Around £5,000 for distress and inconvenience.

S said it noted Mr W had used his own scaffold on the contract and not S's. So it agreed to reduce the price by £833. It asked for evidence of the rental costs, and the itemised breakdown of the remedial work. Mr W responded to highlight the entire house refurbishment was put on hold during the window and door fitting. He said it took two months longer than it should have done. He said he had to pay his own builders to repair damage caused by S's installation. He said he was generally happy with the quality of the windows and doors, but the fitting was poor, and the communication was poor too.

S ultimately said the remedial building work quote was completely disproportionate, particularly regarding the labour element. It didn't agree to cover it. It declined to cover the rental costs and referred to terms in the purchase agreement highlighting there could be delays for reasons beyond its control. It also declined to pay the compensation for distress that was requested. However, it offered £300. And it highlighted remedial satisfaction notes that were signed in April and May 2023.

Mr W wasn't happy and decided to refer his complaint to the Financial Ombudsman, and Allium was contacted and asked to respond to Mr W's claim.

Allium sent a final response letter in June 2023 saying didn't uphold the claim or complaint. It said it was unable to help with compensation claims. Allium also liaised with S and said, in summary:

- The pictures provided by Mr W were taken mid-installation and didn't show the finished installation.
- It was important to note Mr W was carrying out a full renovation of the property and builders were onsite when S arrived, and still present when the installation was completed. There was no roof on the property, and it was only protected from the elements by poorly constructed covers.
- It had refunded Mr W £833 in relation to the scaffolding because S used the scaffolding that was already in place. It couldn't understand why Mr W was claiming for scaffolding costs.
- Mr W had shown a photo of a damaged section of brickwork (3 or 4 bricks in total). It couldn't understand how this could incur a repair cost of £3,500 as it could be easily fixed by a competent builder within a short timescale.
- It attached a video showing the water ingress wasn't coming via the window. I understand a team member offered to take Mr W up to the roof to show him where the water was coming in from.
- Mr W had signed satisfaction and remedial notes.
- It saw no reason for the payment of £8,500 set out in the further quote Mr W provided:
  - £3,500 for scaffolding.
  - £3,500 for brickwork damage.
  - £1,500 for interior plaster damage.

Our investigator looked into things and ultimately said, in summary, he thought the costs put forward by Mr W weren't properly evidenced. He said the issues with the scaffolding raised a lot of questions and the evidence of the remedial work required wasn't present. He said Mr W hadn't done enough to show the water ingress came from S's installation. He said without clear evidence, he wasn't able to say the £300 offer from S was insufficient.

Mr W didn't agree. He said it was impractical and financially burdensome to expect him to commission an independent report. S had acknowledged faults. The compensation offered was trivial compared to the scale of the issue and associated costs, and he'd not received the compensation. He also highlighted S was supposed to return to carry out several minor repairs in December 2023, but this didn't go ahead because S went out of business. He said Allium had been uncooperative in helping him resolve the minor repairs since.

Our investigator said we may be able to look at the new issues once Mr W raised a complaint about them, if he was unhappy with Allium's response. But for the complaint that was raised originally, as things weren't resolved, the complaint was passed to me to decide.

I arranged for our investigator to ask Mr W some questions. In summary, I wanted to know:

- If there were current issues with the installation that remain unresolved. I requested an explanation along with evidence.
- If there was a reason he didn't ask S to fix the brickwork when it carried out remedial works.
- If he could supply a timeline for when the work was carried out, including when he had scaffolding up. I asked when the roof was completed and if he had supporting evidence. I asked for broken down costs.
- If Mr W could supply a breakdown of the £3,500 for the work in relation to damaged brickwork. I pointed out we'd been shown damage to one area of brickwork but not how the works would have reasonably cost £3,500 over 3 days to resolve.
- If Mr W had paid for works that were part of his original claim and for supporting evidence.
- If trims and so on were fitted after photos Mr W supplied were taken.
- If Mr W had evidence he'd paid an extra £8,500 for extra works that he's claiming for?

Mr W responded to say, in summary:

- There were current issues. He said several doors/windows had incorrectly fitted locking mechanisms. One door was drafty. And there was moisture coming through the bottom of a window.
- S refused to address the brickwork but said he could submit a compensation claim. He said S refused to help when he submitted that claim.
- The scaffolding was set up in January 2023 and that the roof maintenance lasted from January 2023 to July 2023. He said building work was suspended from March to April due to the issues with S's installation. He said his claim was reasonable taking into account S's offer of £833 for four days of scaffolding.
- The details of the brickwork repair were set out in the report.
- He could show he'd made payments for remedial works.
- Trims were fitted by S during remedial work, but other damaged areas were repaired at his own cost.

We contacted Allium about outstanding issues Mr W highlighted. It let us know it had sent another final response letter to Mr W. I understand further repairs were carried out in January 2024 by a third-party company I'll call "C" and Mr W had signed a satisfaction note.

I issued a provisional decision that said:

*I want to acknowledge that I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I want to assure Mr W and Allium that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.*

*Mr W paid for the home improvements using a fixed sum loan agreement. This is a regulated consumer credit agreement, and our service is able to consider complaints relating to these sorts of agreements.*

*I note there's been two final responses issued for this complaint. The complaint that was referred to us was in relation to the first final response letter. And so generally speaking I'm primarily required to consider what happened up to that final response letter because those events relate to the period Allium had the chance to consider. But given the second, more recent final response letter, also addressed issues off the back of S's installation, I think it seems practicable to deal with everything together. If either party has any strong objections to that they can let me know in response to this provisional decision.*

*I take into account the relevant law. So, in this case, I don't think section 75 of the Consumer Credit Act 1974 applied because the cash value of the goods or service is over £30,000. But I think section 75A would apply here. Section 75A applies to breach of contract claims for fixed sum loans like this over £30,000 and up to £60,260. I understand the supplier is now insolvent, and at the time Mr W put in the claim with Allium he'd taken reasonable steps to pursue it against S. So I think the claim was validly raised.*

*The Consumer Rights Act 2015 (CRA) is also relevant to this complaint. 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. The CRA also sets out what remedies are available to consumers if statutory rights under a goods or services contract are not met.*

*It's important to note I'm not considering a complaint against S. I'm considering a complaint against Allium. So I have to consider Allium's obligations as a provider of financial services – in this case its liability for breach of contract under section 75A.*

*Where rights under a services contract aren't met, the CRA sets out that depending on the circumstances consumers can request either repeat performance or a price reduction. Consumers can also seek other remedies such as damages. Mr W has said there's been various attempts at repeat performance, and he's incurred financial losses to put things right.*

*It doesn't seem to be in dispute there were issues with the installation, and that there were several attempts to put things right. The installation was supposed to be carried out in March 2023. There was remedial action in April and May 2023. And, from what I've seen, further remedial action took place in January 2024. Mr W said the more recent issues were for minor problems, which I think have been resolved in the last set of remedial action. It looks like the work has now been carried out and the supply conforms to the contract. I don't think Mr W has supplied sufficient evidence of outstanding issues, despite our more recent request. If there are brand new or future issues, I think the claim may have to be considered by Allium in the first instance.*

*S said its terms allowed for delays for reasons outside of its control. But given the several remedial attempts required, I think there are grounds to say there was a breach of contract. I think what needs to be decided is whether Allium needs to do more to put things right. I think it was difficult for Allium to assess matters because Mr W put in significantly costly, and differing claims. I think Mr W was seeking at least £8,500 for works he said he needed to have carried out as a result of the workmanship from S. But based on what I've seen, I don't find Mr W has shown those alleged losses need to be paid by Allium.*

*The sort of things I need to think about are whether the losses were directly flowing from the breach of contract and whether Mr W has tried to mitigate those losses; whether they were reasonably foreseeable; or too remote. And, importantly, whether there's sufficient evidence of the actual losses.*

*Mr W said he needed to have the scaffolding for two months longer than he wanted due to the delays from S. But I'm also conscious there was other works being carried out at the property, including for the roof. The scaffolding was there from January – before the work from S was carried out. And Mr W said work carried on until July 2023 – some time after the first set of remedial works were carried out. Mr W received a partial refund in relation to S not requiring a scaffold. I've not seen the grounds Allium needs to pay him more than that.*

*Mr W said the damage to the brickwork cost £3,500 to remedy. But I've not seen a breakdown for why the cost was this high. The damage was on a small area, and I've not seen enough to determine Mr W paid £3,500 to repair it. And even if I had, I don't think I can*

*fairly say Mr W did enough to mitigate the loss given it seemed like a relatively minor issue to resolve.*

*Moreover, there's a dispute as to whether the damage to the plaster was due to water ingress through the windows and doors or through the roof. It's also not totally clear if the plaster was damaged through the general installation of the windows. I find there are further evidential challenges here. And I think Allium would have faced those challenges as well when deciding what, if anything, needs to be done to put things right.*

*While I understand why Mr W chose not to arrange one, I think it's important to note, there's no independent report on the issues that have been alleged.*

*Mr W has also requested significant compensation. It's also important to note that compensation for distress and inconvenience caused by the supplier is limited with this type of complaint. I appreciate Mr W is very upset about what's happened and he's been put to inconvenience with having various visits and inspections over a long time. But I have to consider what Allium can be held liable for – which is the claim Mr W could have pursued against S for breach of contract. Courts do consider what's known as general damages. But damages aren't generally recoverable for distress or inconvenience. Awards in building cases where there's been a breach of contract which caused the claimant physical distress or discomfort can be made, but they tend to be modest.*

*Overall, I'm conscious Mr W paid nearly £36,000 for windows and doors. It doesn't seem to be in dispute there's been some issues, and it took several attempts to resolve things. I think the major issues with the actual installation were resolved in the first couple of months. And more minor issues were resolved more recently. I don't think Mr W was staying at the property while the major issues were being resolved – he said he was staying with a family member. So I don't consider there would have been physical distress or discomfort, and I therefore don't think there are grounds for compensation for that. But, as I said, there was still inconvenience caused as a result of the remedial attempts, although I think the impact has been tempered seeing as though other works were being carried out at the property, and I don't think Mr W was living there.*

*S made an offer of £300. But I need to be mindful I'm not considering a complaint against S – I'm considering a complaint against Allium. I think Allium broadly seems to have answered the claim in relation to the complaint that was referred to the Financial Ombudsman within a reasonable amount of time, but I think it needs to take ownership of putting things right for Mr W due to its liability under section 75A for breach of contract. There's no exact science, but in all the circumstances, seeing as though I think Mr W had fair grounds to request a moderate price reduction, I'm going to propose Allium pays Mr W £750 compensation.*

*Mr W responded to say neither S nor Allium ever requested any sort of independent report to be conducted. He said it's unfair to the consumer that S and Allium dispute evidence at a later date when a survey is no longer possible. He also said he'd given all the evidence he could.*

*Allium responded to say it was broadly in agreement with the decision. It said it had no objections to the subsequent complaint being included. But it thought its actions for the subsequent complaint needed to be considered. It said it was willing to honour the £300 offer from S. But it also wanted to highlight it had taken ownership of putting things right for Mr W by covering additional work costing around £1,100 and that additional compensation on top of the £300 wasn't merited.*

## **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 the parties for their responses. I take Mr W's point that neither S nor Allium requested an independent report. While it may have been helpful, I can't see it was something Allium was obliged to arrange when considering the claim. I think Allium and S were more focussed on making attempts to resolve the issues for Mr W through repeat performance.

I also take Allium's point that it took ownership of the claim by covering additional work. I think this was the right thing to do because of its liability under section 75A.

I'm conscious I'm required to resolve complaints by deciding what I think is fair and reasonable in all the circumstances of the case, while taking the law, amongst other things, into account. I also need to resolve complaints quickly and with minimum formality.

I've taken into account relevant guidance on where things go wrong with services contracts, such as the guidance set out in the "Consumer Rights Act: Guidance for Business" published by the Department for Business, Innovation and Skills. This sets out that if the consumer is significantly inconvenienced by having the trader come around and redo the service more than once, they'd be entitled to a reduction in price. While I appreciate Allium thinks £300 is sufficient, in all the circumstances, even though the impact had been tempered as I set out in the provisional decision, given how many visits, and how long things took to resolve, I think £750 is fairer, even taking into account the cost that Allium had to bear to put things right. I think those costs need to be considered separate.

Having considered everything from the parties, I'm not going to depart from the conclusions I reached in my provisional decision.

## **My final decision**

My final decision is that I uphold this complaint and, to the extent not done so already, direct Allium Money Ltd to pay Mr W £750.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 13 June 2024.

Simon Wingfield  
**Ombudsman**