

## **The complaint**

Mrs and Mr Y complain about the way Shawbrook Bank Limited handled a claim they made to it.

## **What happened**

The parties are familiar with the background details of this complaint – so I will briefly summarise them here. It reflects my informal remit.

Mrs and Mr Y financed double glazing with a fixed sum loan from Shawbrook in April 2022. However, they say that there were several repairs required which caused significant inconvenience.

Mrs and Mr Y approached Shawbrook about the issues with the installation. They were concerned if the repairs had been done correctly. And also wanted compensation for the issues to date. Shawbrook concluded there was no persuasive evidence of issues with the quality of the work carried out. And said it would pass Mrs and Mr Y's claim for compensation to the supplier to look into.

Mrs and Mr Y escalated their complaint about Shawbrook's response to their claim to this service.

Our investigator did not uphold the complaint. But Mrs and Mr Y disagreed and asked for an ombudsman to look at things for a final decision.

I issued a provisional decision which said:

### ***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.*

*While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes informally.*

*I am sorry to hear Mrs and Mr Y are unhappy with the double glazing installation they paid for. However, it is important to note that my decision here is about the actions of Shawbrook– and what it should fairly have done for them in its position as a provider of financial services. In looking at how it handled the claim Mrs and Mr Y brought to it I consider the information reasonably available to it at the time, along with the relevant consumer protections available, namely Section 75 of the Consumer Credit Act 1974 ('Section 75').*

## Section 75

Section 75 in certain circumstances allows Mrs and Mr Y to hold Shawbrook liable for a 'like claim' for breach of contract or misrepresentation in respect of an agreement by a supplier of goods or services which is funded by the fixed sum loan.

There are certain requirements that need to be met in order for Section 75 to apply – which relate to things like the cash price of the goods or services or the parties to the agreement. After considering these factors I think the requirements are in place for Mrs and Mr Y to have a valid Section 75 claim against Shawbrook. So I have gone on to consider if there is persuasive evidence of a breach of contract or misrepresentation which would reasonably have been available to Shawbrook at the time it considered the claim. And if so, what Shawbrook should fairly do now to put things right.

The Consumer Rights Act 2015 is of particular relevance to this complaint. It says that under a contract to supply a service there is an implied term that the service will be carried out with reasonable 'skill and care'. Which is not precisely defined but is usually taken to be the level of skill and care that would be expected in that particular industry.

Furthermore, in respect of any goods, there is an implied term that "the quality of the goods is satisfactory". The Consumer Rights Act 2015 ('CRA from here') says the quality of goods are satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances.

Mrs and Mr Y have explained that before approaching Shawbrook for help they had issues which were not right with the installation. They have explained that:

- None of the windows were installed correctly;
- repairs were difficult to arrange with the supplier – with it not getting back to them, not turning up when arranged and carrying out repairs over numerous visits rather than all together (due to lack of the correct equipment and other things); and
- when they thought everything had been done they still found further fault.

Mrs and Mr Y have produced email trails which back up the claims that the process was somewhat protracted and had to constantly chase for repairs to be made. Furthermore, from correspondence that Mrs and Mr Y have shown from the supplier – I am satisfied that there is no dispute that there were multiple faults with the windows that needed rectifying post initial fitment – including leaks, cosmetic and mechanical issues. And as a result I am satisfied that the supplier breached its contract with Mrs and Mr Y in that it failed to carry out the installation with reasonable skill and care – or that goods installed were not of satisfactory quality.

Furthermore, Mrs and Mr Y have since explained to me the notable impact of these follow up repairs on them. In particular because Mrs Y suffers from disabilities.

I don't see where Shawbrook investigated things itself. It appeared to have simply passed on information to the supplier. Had Shawbrook investigated things itself (as I think it reasonably should have done considering its liability via Section 75) it would have likely found out these things too. And while I appreciate some issues have occurred post the claim made to it – it seems likely that the majority of the problems related to the period leading up to Mrs and Mr Y approaching it.

I note that one of Mrs and Mr Y's requests at the time they approached Shawbrook was to have a surveyor check the windows and the quality of repairs. However, there appeared to

*be no indication at the time that the repairs had not been carried out properly – or that the windows were still faulty. I appreciate that Mrs and Mr Y wanted reassurance – but the CRA remedy for a service (like an installation of windows) not being carried out with reasonable care and skill is usually repeat performance. And if it were the units that were faulty – repair would be a reasonable option (which Mrs and Mr Y appeared to be seeking). So I don't think that it would have been reasonable for Shawbrook (at the time) to take action in respect of getting a surveyor, direct further repairs or look to apply a price reduction.*

*I appreciate that Mrs and Mr Y found leaks with the windows after they made a claim to Shawbrook (which I now understand have been remedied) – but Shawbrook would not have known this at the time they considered the claim – so I don't consider it fair to say it should have taken action in that respect at the time.*

*Furthermore, I note that Shawbrook is not responsible for general customer service issues via Section 75 that Mrs and Mr Y experienced with the supplier. However, where there is a breach of contract in relation to the supply of goods and services (as I am satisfied there was here) it should also consider whether there is a basis for an award of damages via its liability under Section 75.*

*When considering damages for breach of contract I consider what a court might award and it is generally established that a court will not make awards for distress and inconvenience as a matter of course when it comes to breach of contract. This is more likely to occur where the contract is for something specifically meant to give enjoyment – like a holiday or a wedding. And even where a court is minded to make such an award – these will usually be modest.*

*In the case of building work/home improvements – it is generally expected that there will be a level of disruption and inconvenience that comes with such a contract. However, where the level of disruption is so great as to cause physical discomfort then a court might make a modest award to reflect the distress and inconvenience that has occurred.*

*I have asked Mrs and Mr Y to elaborate on the impact of the faults and attempts to get these remedied (leading up to Shawbrook issuing its response to the claim). Mr Y has provided further information, which I think would have been reasonably available to Shawbrook had it looked into things at the time. He has explained that there were multiple visits from the supplier (about 4) and about 3 missed appointments. He explained there was a lot of issues getting these repairs sorted out – and in the meantime they had to 'suffer through water ingress on multiple occasions with various windows leaking'. He has explained how this and the knowledge of water coming in was extremely stressful and difficult in particular for his wife who suffers from anxiety and other chronic conditions. He has explained that due to the numerous arrangements for repair visits (sometimes at short notice) furniture had to be moved for access and if he was not available to help this then fell to his wife who would end up aggravating muscle and joint conditions.*

*From what Mr Y has explained I am satisfied overall, that there has been a degree of physical discomfort stemming from the breach of contract in particular respect of Mrs Y's disabilities. So I think an award of damages is appropriate here in respect of the Section 75 claim. As a way of deciding what is fair I have looked to what this service might award for distress and inconvenience in similar circumstances – but also noting that any award by a court for breach of contract is likely to be modest. Considering what has occurred here and noting that compensation is not a science I think an award of £300 is fair and reasonable here.*

*As I have said, my role here is an informal one. Mrs and Mr Y are free to reject my decision and pursue the matter in court if they wish. However, I hope that both parties will see this as a fair way to resolve the matter and move forward.*

***My provisional decision***

*I uphold this complaint and direct Shawbrook Bank Limited to pay Mrs and Mr Y £300.*

Both parties accepted my 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.

Neither party has given me cause to change my provisional findings – which I still consider fair for the reasons already given (above). These findings now form my final decision.

**Putting things right**

I direct Shawbrook to put things right as set out below.

**My final decision**

I uphold this complaint and direct Shawbrook Bank Limited to pay Mrs and Mr Y £300.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs Y and Mr Y to accept or reject my decision before 7 October 2024.

Mark Lancod  
**Ombudsman**