

complaint

Miss B feels that Shawbrook Bank Limited has treated her unfairly in relation to a finance agreement regarding work done on the external parts of her house.

background

Earlier this month I issued a provisional decision which both parties have now responded to. I shall address those responses in my findings. The background of the matter is as follows.

In June 2018, Miss B entered into a contract with a home improvements company for improvements to parts of her front roof and her rear roof. This work by the home improvements company was paid for through finance provided by Shawbrook.

After a survey and some external work done by the home improvement company Miss B engaged a third-party roofer (the "Roofer") who attended the property and did some significant work in the internal/structural parts of her roof in those areas. The Roofer charged £995 for the work on the rear roof and £1150 for the front part of the roof.

There then was a period of disagreement between the home improvements company and Miss B. She spoke to Shawbrook and they withheld paying the finance advance to the home improvement company. There was then significant three-way discussions between Miss B, Shawbrook and the home improvement company. Eventually the finance agreement was reworked due to changes in position. This included the home improvement company removing £300 from the price of the works for the felt issue and the amounts and deposit due being altered.

This new finance agreement was signed in November 2018 by Miss B for a total price of £5500, repaid over 96 months and a total credit amount of £5301. Miss B signed the customer satisfaction note in December 2018 after the works were completed and after that Shawbrook released the funds to the home improvement company.

Miss B remained unhappy and complained to Shawbrook. It had been involved in the dispute with the home improvement company for an extended period of time. Its position is that a discount had been applied to the work by the home improvement company, the work had been completed to Miss B's satisfaction, that the delays suffered were not its fault and that the remaining unhappiness Miss B has towards the home improvement company are customer service issues for which Shawbrook isn't responsible under its obligations under Section 75.

Shawbrook and Miss B agree that all the work originally required has now been done. However Miss B remained unhappy. She says she shouldn't have had to pay for the Roofer work as she says she was told that it would be part of the agreed price with the home improvement company. She says the customer service she has received has been awful. She says she has found the entire process hugely stressful. She feels there should be also a reduction in the amount she owes to redress what happened.

As the views of our Investigator were not accepted this complaint comes to me to decide.

my findings

I have considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In my provisional decision I made the following comments (in italics) and made the following findings:

There is no dispute that Miss B entered into an agreement with the home improvement company to do external work on her house and used a Fixed Sum Loan Agreement with Shawbrook to pay for it. It's also clear that this was reworked and reagreed in November 2018. And Miss B signed off the work in December 2018. The original agreement was signed in June 2018. So clearly these events took time.

Miss B is complaining under Section 75 of the Consumer Credit Act 1974. The general effect of Section 75 is that if Miss B has a claim for material misrepresentation or breach of contract against a supplier of goods or services (the home improvement company), she can also bring that claim against the credit provider (Shawbrook here) provided certain conditions are met. Shawbrook says that all matters it is responsible for under section 75 have been settled with the completion of the work in December 2018.

I found that the conditions for a Section 75 claim as set out in the Act had been met in this case. But I had disagreed with the findings of the investigator and explained my position contrary to those of the Investigator. Miss B has accepted my decision and Shawbrook has provided further comments from the home improvements company. Both parties have my provisional decision and accordingly I see little to be gained by explaining my reasoning on the elements of complaint that I didn't uphold as Miss B has accepted my position and Shawbrook don't disagree with my position therein.

I then pointed out that Miss B had tried to cancel the contract. My key points were as follows.

Miss B requested to cancel in July 2018 by email and at that point said she was still missing some of the products that were meant to be supplied under the contract. I can't see any persuasive evidence that this was disputed by the home improvement company at the time. So I think Miss B should have been allowed to cancel at this point.

So Miss B was left in the position that she couldn't make an informed choice about what to do next and instead had to arrange for the roof repairs to take place immediately. She could though have cancelled the agreement albeit she may have had to pay the home improvement company the costs it had incurred up to that point. But when she asked to cancel it seems likely she was told she couldn't. So I do think there has been a breach of contract which Shawbrook needs to put right.

So I think the fairest thing to do to put things right is to remove the interest applied to the additional borrowing Miss B took to complete the works, this would put Miss B in the same position she would have been in had she saved the money to pay for the repairs before contracting the home improvement company to do the work. So Shawbrook should rework Miss B's account removing any interest applied as a result of the additional borrowing she took out under the second agreement. The additional borrowing should not incur any interest for the remainder of the agreement and Miss B's payments towards the agreement should be allocated to the portion of the borrowing where interest is chargeable first.

Accordingly I currently think this complaint should be upheld and Shawbrook should rework the agreement as I've described. I appreciate that all parties are somewhat resolute in their positions and that this position may not find universal favour. But I think this cancellation issue is the only area where Shawbrook hasn't done as it should. And as for the numerous other issues that have been raised I think they've either been resolved by the work being completed or are issues which Miss B has with the home improvement company which sit outside of the responsibilities that Shawbrook has under Section 75. And hence my position as described.

Shawbrook seemingly unaware of this cancellation attempt asked for the evidence I relied upon, which was then provided. Shawbrook then provided comments of the home improvement company but has chosen not to make any representations itself. It is unclear why Shawbrook didn't address this matter when Miss B first took her claim under Section 75 some time ago.

The home improvement company accept the terms allowing for cancellation are correct. I doesn't dispute the email Miss B sent or my pointing towards it. It says that Miss B did have an opportunity to make an informed decision at the point of cancellation. But it is clear that Miss B's cancellation wasn't accepted on receipt. But rather there were was ongoing correspondence and discussion and she had to seek external parties to do further work at her extra cost.

The home improvement company says she was at liberty to cancel if she wished. But I'm not persuaded her cancellation attempt was fairly dealt with and I note that the home improvement company have not provided or pointed to any evidence to the contrary. It simply disagrees. I am obliged to consider things fairly and reasonably. And in the absence of any persuasive evidence to the contrary it is clear to me that Miss B did cancel and was allowed to in the circumstances at the time she did under the contract. So she should have been allowed to do so. So Shawbrook should put things right. The fact that she accepted the works when finally completed were complete doesn't mean she didn't try to get out of the contract in the email I've pointed to. But as I've argued she has had the benefit of those works and hence my position.

Miss B has accepted my position and made a number of other comments. I appreciate her position and what she's been through. But I see little to be gained by commenting on her comments in light of her accepting my provisional decision.

Having considered everything that has been said and done and all the circumstances here I am satisfied in the round that Shawbrook has done something wrong which it needs to put right.

Putting things right

Accordingly I direct Shawbrook to rework Miss B's account removing any interest applied as a result of the additional borrowing she took out under the second agreement. The additional borrowing should not incur any interest for the remainder of the agreement and Miss B's payments towards the agreement should be allocated to the portion of the borrowing where interest is chargeable first.

My final decision

For the reasons set out above I uphold the complaint about Shawbrook Bank Limited and direct it to rework the account as described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask [insert anonymised name here] to accept or reject my decision before 29 April 2021.

Rod Glyn-Thomas
Ombudsman