

complaint

Mr and Mrs B's complaint against Shawbrook Bank Limited is about the quality of the windows and doors they had fitted in December 2016.

background

In late 2016, Mr and Mrs B entered into a contract for the replacement of the doors and windows of their house. They agreed to pay over £8000 through a fixed sum loan agreement with Shawbrook.

The windows and doors were fitted by a third party company on 12 and 13 December 2016. The next day Mr and Mrs B complained they couldn't lock their front door and said there were problems with the trim around the back door.

The fitter returned to Mr and Mrs B's house on 15 December. He adjusted the front door. He also took a photo of the back door and said he'd report the problem.

Mr and Mrs B sent emails to the supplier of the windows and doors, and to Shawbrook, on 22 December to complain that the problems still hadn't been resolved.

On 3 January 2017, a representative of the fitters visited Mr and Mrs B's house. He made a snagging list and agreed that further remedial work should be done. A fitter came out on 10 January to do the work.

Mr and Mrs B were unhappy with the remedial work. They emailed Shawbrook on 14 January to say they wanted to reject the goods as "not fit for purpose". They said there'd already been two attempts at repair, but they'd made things worse.

Shawbrook acknowledged Mr and Mrs B's email on 18 January and said they'd look at it in line with their complaints procedure.

Another representative of the fitting company visited Mr and Mrs B's house on 18 January. He emailed their son the next day to propose a resolution to the dispute. He said this would include the rear door being remade and further work being done to the windows at the front and side of the house.

In March 2017, Mr and Mrs B complained that Shawbrook hadn't responded. They suggested splitting the cost of getting an independent expert to inspect the installation of the doors and windows.

Mr and Mrs B also brought their complaint to the ombudsman service at this point. They said they still wanted to reject the windows and doors. There'd already been two attempts at repair and they didn't want the fitters to come back.

Shawbrook sent Mr and Mrs B a final response on 8 May 2017 rejecting their complaint. They said they'd discussed the complaint with the supplier of the windows and doors. The supplier had told Shawbrook that, following the visit on 10 January, the only outstanding problem was the front door which wasn't fully square. They said the fitter wanted to complete the work and asked Mr and Mrs B to book a time.

One of our investigators looked into Mr and Mrs B's complaint. In his initial view he said Mr and Mrs B's complaint should be upheld. He said Mr and Mrs B should be able to reject the goods and receive a full refund.

Shawbrook disagreed with our investigator. They said the windows and doors were of satisfactory quality. Shawbrook said Mr and Mrs B had agreed that the only issue was the front door which was still not fully square in the frame. They said this required a fairly minor repair which could be done at no cost to Mr and Mrs B.

Having thought about what Shawbrook had said, our investigator changed his opinion on what should happen. He said there was no independent expert evidence to show that the windows and doors themselves were faulty. But it was clear the installation wasn't of satisfactory quality.

Our investigator said Shawbrook were now willing to cover the cost of repair works that could be carried out by a company of Mr and Mrs B's choice. He thought this offer was fair. He didn't think it would be fair for Mr and Mrs B to reject the goods and have their finance agreement cancelled. Mr and Mrs B disagreed with our investigator's view and so the case was passed to me for a final decision.

my provisional decision

I gave my provisional decision in January 2018. I said I was planning to uphold Mr and Mrs B's complaint.

I said I'd considered all the available evidence and arguments to decide what was fair and reasonable in the circumstances of this complaint. In doing so, I'd taken account of the relevant law.

The relevant law includes section 75 of the Consumer Credit Act 1974. Under section 75, Shawbrook - as the provider of the finance - are responsible for any breach of contract or misrepresentation on the supplier's part.

I said the relevant law also included the Consumer Rights Act 2015, which Mr and Mrs B had referred to. That gives consumers the right to reject goods that are of unsatisfactory quality within 30 days. Outside that period, a consumer has to give a trader one opportunity for the goods to be repaired or replaced. If the attempt at repair or replacement is unsuccessful, the consumer is entitled to reject the goods and get a refund.

In this case, I said that both parties accepted that something had gone wrong with the fitting of the doors and windows at Mr and Mrs B's house. But they had very different views about the extent of the problems and what should be done to put things right.

I said Mr and Mrs B bought brand new luxury doors and windows for their house. So it was reasonable that they'd expect them to be fit for purpose, free from even small defects and installed correctly.

I said it was clear that wasn't the case when the windows and doors were first fitted in December 2016. It was only one day later when Mr and Mrs B said they couldn't lock the front door and there were problems with the trim around the back door.

When a fitter came out on 3 January 2017, he identified that further work was needed to make good the trim around the front windows and the rendering around all the windows and doors.

A fitter came to carry out the repair work on 10 January. But Mr and Mrs B were still not happy. They emailed Shawbrook on 14 January to say they wanted to reject the windows and doors. They attached some photos to show what they thought was wrong.

Another representative of the fitting company visited Mr and Mrs B's house on 18 January. He agreed that work still needed to be done. He proposed remaking the rear door to give the required clearance on the arch in the doorway. He also suggested removing the PVC trims to the front and side windows and reapplying the render to improve the finish. As I understood it, no more work had been done at Mr and Mrs B's house since then.

So I said the installation of windows and doors at Mr and Mrs B's house had not been of satisfactory quality. And attempts so far to repair the problems had not been successful. I then looked at what Shawbrook should do to put things right.

I said that, since Mr and Mrs B first complained, both parties had made proposals to try and move things forward.

In March 2017, Mr and Mrs B had suggested to Shawbrook that they share the cost of an independent report into what needed to be done. Shawbrook didn't respond to that proposal. Our investigator had also asked if Shawbrook would meet the cost of an independent report, but they'd said they weren't prepared to do so.

On the other hand, Shawbrook had written to Mr and Mrs B in March 2017 asking them to allow the supplier to repair the front door. They said Mr and Mrs B were refusing access to their house. And our investigator had later asked Mr and Mrs B to get three quotes for the repair work. They didn't agree to this because they said there were other problems with the windows and doors and they wanted to reject them.

As things were at something of an impasse, I said I was planning to make a decision on the basis of the evidence available. And in doing so, I was going to take account of the actions of both parties since the installation.

I said that if there were only minor problems with the windows and doors, I didn't think it would be reasonable for Mr and Mrs B to reject them. That's what Shawbrook had consistently argued. In their final response to Mr and Mrs B, and in their reply to our investigator's first view, they said the only issue was the front door not being fully square in the frame. I said that if that was the case, then it would be sufficient for Shawbrook to pay the costs of repair.

But the evidence I'd seen suggested the problems were more significant than that. And I thought that should have been clear to Shawbrook before they sent their final response in March 2017.

I'd looked in particular at the email sent by the representative of the fitting company who visited Mr and Mrs B's house on 18 January 2017 – after the attempts at repair. He proposed remaking the rear door to make sure it fitted properly. He also suggested further work to the trim and render around the windows at the front and side of the house. Taken together, I said that sounded like more than minor repairs.

I noted that Mr and Mrs B had said since March 2017 that rain was leaking from the front door and some of the windows. I didn't have any independent evidence of this, but Mr and Mrs B had been saying it for some time. I said that if water was coming in, I could understand why Mr and Mrs B would be concerned about whether a further attempt at repair might be successful.

I said that I'd thought about telling Shawbrook to pay the costs of repairs and reduce significantly the overall cost of the windows and doors for Mr and Mrs B. But, based on the evidence available to me, I didn't think that would be the fairest outcome.

Mr and Mrs B had said they'd like to reject the windows and doors and have their finance agreement cancelled. And taking account of all the evidence, I thought that would be a fair and reasonable outcome.

Mr and Mrs B agreed with my provisional decision. Shawbrook disagreed. They said the defects with the windows and doors were relatively minor and capable of being put right in a cost effective manner. Shawbrook said they were prepared to pay for an independent professional to visit the house and prepare a list of all the defects.

independent report

An independent expert visited Mr and Mrs B's house in March 2018. His report said:

"The quality of the fabricated components is of a good standard compliant with the necessary thermal, security and performance criteria expected of products for this application. However, the following defects were noted with the components and installation workmanship..."

The report then listed ten separate defects and what could be done to put them right.

The conclusion of the report said:

"In my expert opinion, many aspects of the Installation are not fit for purpose or have been poorly executed to a standard that I consider provides the Property Owner with grounds to enforce further remedial work by the Installer under the terms of the contract or by way of consumer protection law. However, I do not consider the outcome of my findings is sufficient to provide the Property Owner with grounds to reject the Installation in its entirety."

In response to the report, Shawbrook have said they're not prepared to pay for further remedial work without knowing how much it will cost. We've asked Shawbrook if they would be prepared to obtain a quote for the work that's necessary, but they haven't done so.

Mr and Mrs B have said the report shows that, after two attempts at repair, they should be able to reject the windows and doors and cancel their finance agreement.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I've decided to uphold Mr and Mrs B's complaint.

I've looked closely at the independent report that's been provided since I wrote my provisional decision. I note that the report said the quality of the fabricated components is of a good standard. But it identified a long list of defects with the components and the installation of the windows and doors.

A few of the defects listed are quite minor, but a number are more significant. For example, the report says that:

- Two of the external doors and frames are "not presently fit for purpose". The rear door should be replaced, and the side door and frame should be refitted or replaced.
- The window handles are not fit for purpose and should be replaced.
- Several of the window gaskets need to be replaced and the window opening mechanisms need to be adjusted.
- The external render repairs are not fit for purpose and require further repair.

As I said in my provisional decision, Mr and Mrs B bought brand new luxury doors and windows for their house. So it was reasonable that they'd expect them to be fit for purpose, free from even small defects and installed correctly.

It's clear from the independent report that what Mr and Mrs B have bought currently falls a long way short of that. The report says that many aspects of the installation are not fit for purpose. The defects listed would clearly affect the day to day use of the windows and doors – for example, the report describes the "obvious security consequences" of faults with the rear door.

I've thought carefully about the expert report's comment that the defects are not sufficient to provide Mr and Mrs B with grounds to reject the installation in its entirety. I note that Shawbrook have said the defects could be repaired.

But I've also taken account of what's already happened. There have already been two attempts to repair the windows and doors. It's clear that significant defects remain, and I can understand why Mr and Mrs B are concerned about whether a further attempt at repair might be successful.

I've also thought about the amount of time that's elapsed and how Shawbrook have handled Mr and Mrs B's complaint. For a long time, Shawbrook said the only problem was with the front door not being fully square, and until recently they weren't prepared to meet the cost of an independent report. Neither have they been able to obtain a quote for the remedial work that remains necessary.

So, taking account of all the evidence I've seen, my decision remains the same.

what Shawbrook should do to put things right

Mr and Mrs B should be allowed to reject the windows and doors and the finance agreement should be cancelled. And Shawbrook should refund what Mr and Mrs B have paid to date.

In summary, Shawbrook should:

- Arrange for the windows and doors to be removed at their own cost. They should agree the specific date for that to happen with Mr and Mrs B directly – giving at least ten days' notice. That will allow Mr and Mrs B to arrange for replacements to be fitted.

- Cancel the finance agreement with nothing further owed, and remove it from Mr and Mrs B's credit files.
- Refund the deposit and all payments made under the finance agreement, plus interest at 8% simple per year from the date of each payment until the date of settlement*. Shawbrook should ensure that the full refund is with Mr and Mrs B by the day the windows and doors are removed.
- Pay a further £250 for the trouble and upset they have caused Mr and Mrs B.

If they haven't done so already, Shawbrook should also pay the cost of the independent report, as they agreed.

my final decision

For the reasons given, my final decision is that I uphold Mr and Mrs B's complaint against Shawbrook Bank Limited.

Shawbrook Bank Limited should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 13 July 2018.

Matthew Young
ombudsman

*If Shawbrook Bank Limited consider that they are required by HM Revenue & Customs to take off income tax from that interest, they should tell Mr and Mrs B how much they've taken off. They should also give Mr and Mrs B a certificate showing this if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.