

complaint

Ms W complains that the soffits, fascia and guttering supplied and installed at her home are of unsatisfactory quality. Her complaint is against Shawbrook Bank Limited, as the finance provider.

background

In early May 2016, Ms W entered into a contract for a third party supplier to supply and fit soffits, fascia and guttering at her home. The cash price for the work was just under £5,000. Ms W was going to pay a deposit of £2,200 directly to the supplier along with a loan from Shawbrook to pay the rest of the balance.

During the installation, Ms W had concerns about the standard of work. She explains that the guttering leaks and causes water to gather when it rains and that her adjoining neighbours have expressed concern. She stopped the deposit payment. The supplier attempted remedial work. Ms W says this wasn't successful and that she's lost confidence in the ability of the supplier to do the job.

In September 2016, Ms W complained to Shawbrook. Shawbrook asked the supplier for its comments. Then Shawbrook gave Ms W the option to refer her complaint to us. It said it wasn't able to issue a final response because it hadn't received any response from the supplier.

Our investigator looked into things. Initially she thought it would be fair for Ms W to obtain a quote for the remedial work from the company of her choice and for Shawbrook to cover the cost of putting things right. But then Ms W told our investigator that she'd had an expert come out to inspect the work. Based on the conversation she had with Ms W, our investigator suggested that a 50% refund along with the supplier fixing the soffit and fascia would put things right.

Shawbrook told us that the supplier was willing to refund 50% of the cost of the guttering and carry out the required work. But Ms W didn't agree. She said the investigator had misunderstood and that she didn't want the supplier to carry out any more work to her property under any circumstances. Ms W suggested that a 75% refund would resolve things. The investigator asked Shawbrook if it had a breakdown of how the job was costed.

Before Shawbrook responded, Ms W contacted the investigator and said that things had been going on for too long and that she should get a full refund. As the investigator had been waiting for Shawbrook to respond for over six weeks, she suggested that Ms W should get a full refund now to bring matters to a close. Shawbrook didn't respond, so the complaint was passed to me.

Since then, I've had extensive contact with both Ms W and Shawbrook. Shawbrook provided me with a copy of Ms W's account transaction history. It showed that the supplier had paid 50% of the total job price directly to Shawbrook in March 2017. Shawbrook explained that the supplier had also reduced the deposit amount by around £500 because of Ms W's concerns. It explained that because of the 50% reduction, Ms W had almost completed the repayments for her loan.

I asked Ms W to provide the expert evidence she'd told our investigator about, plus the invoices for the work that still needs to be done, along with any further information about the work that her neighbours needed to do to fix their guttering because of this installation.

I contacted Shawbrook again and pointed out that it hadn't really taken its own view on matters. I asked whether Shawbrook would consider paying for an expert report to look at the condition of the work and determine what needs to be put right.

Shawbrook responded to say that an expert report wasn't needed because it would be willing to pay for the work that needs to be repaired or replaced if Ms W provides some quotes. It felt putting Ms W back in the position she was in before this contract started wasn't practical and leaving her home without guttering and protection could cause further damage.

I spoke to Ms W over the phone. I explained that although the cash price for the work was close to £5,000, she hadn't paid that much. I asked Ms W if she could obtain quotes from three reputable contractors. Ms W said her preferred option was now for Shawbrook to refund the money she had paid and unwind the contract. I explained that Shawbrook might then want to take the guttering, soffit and fascia away.

Shawbrook pointed out that Ms W had a ten year guarantee from this supplier that would be invalidated if she instructed other people to do the work. I explained that I wanted to wait for Ms W's quotes before making a decision as I'd not seen anything to show what remedial work actually needed to be done.

Ms W contacted me to say that she'd obtained a quote of £720 for the remedial work but she didn't send it in. She said she didn't want to continue with the contract and pay the remaining balance to the supplier when she could get the work done properly for £720. Ms W didn't agree that it would be fair for Shawbrook to take back the installed materials if the contract was unwound.

Ms W told me the facia and soffit are okay and only the guttering needs to be replaced. She suggested that Shawbrook should keep the money that she's paid and let her walk away from the contract.

I asked Shawbrook for its thoughts based on the new information and whether it could obtain a breakdown of the job's costings given that the facia and soffits seem to be okay.

Shawbrook said it didn't have a breakdown, but in its experience, the cost of the facia and soffit is likely to be most of the contract price. It suggested the guttering would be around 10% of the overall cost. It added that it would be unfair to cancel the contract if most of it is correct.

I asked Ms W for her signed authority so the supplier could release information about the job to me. I also asked Ms W to provide copies of the quotations she's obtained. Ms W responded to say the situation had been going on for too long and that she wanted a full refund of the money she'd paid.

my provisional decision

In October 2017, I issued my provisional decision. In it, I explained that Ms W was relying on the rights she believes she has under Section 75 of the Consumer Credit Act 1974.

I noted Shawbrook accepted that in principle Ms W is entitled to make a claim against it under Section 75. Ms W thought the response to that claim should be a full refund. I pointed out that I'm required to decide what, if anything, Shawbrook should do to resolve this complaint. In doing that, I'm deciding what I think is fair and reasonable, having regard to (amongst other things) any relevant law. Relevant law includes Section 75.

Both parties broadly accepted that something had gone wrong with the installation at Ms W's home. Ms W described the stress this has caused. I'd been able to view a video clip of the guttering leaking when it rains, along with photographs to show water pooling around the doors and patio. And I didn't think the supplier would've reduced the deposit amount and then later paid half of the job cost directly to the finance provider if everything had gone to plan.

Whilst it wasn't in dispute that the supply and fit of at least some of the installation wasn't carried out to a professional standard, there wasn't clarity around exactly what work wasn't up to standard or what needed to happen in order to put things right. Ms W's video and photographs showed the impact of a bad installation. But they didn't show me anything about what should happen to correct the cause of these problems or how much this work might cost. I accepted there's a difference between a quality job and making the best of a bad situation. But without expert evidence or quotations from competent tradespeople, I didn't feel that I was able to fairly distinguish between the two in this case.

Ms W suggested that the fascia and soffit now don't need to be re-done. But she didn't provide copies of any quotations that she received to show what work was outstanding and neither side was able to show a breakdown of how the cost price for the contracted work was reached. So, against this backdrop, I had to consider what Shawbrook should fairly and reasonably have to do to put things right.

Ms W initially said that she was looking for the total contract price back. I pointed out the remedy for a breach of contract isn't automatically a full refund. The correct remedy is to put Ms W back in the position she would've been in had the contract been carried out correctly, not the position she would've been in if the contract had never been made at all.

Based on the conversations I'd had, I felt that Shawbrook accepted the principle that it is responsible for the costs of redoing the work to meet the contractual specification. But Shawbrook needed to see evidence of what the costs to bring the work to a satisfactory standard would be to be able to move forward on this. I didn't think this was unreasonable.

Ms W didn't think this way forward would help her. Whilst Shawbrook is in theory willing to pay the costs to put things right, Ms W estimated that these costs would be less than the amount of the deposit that's outstanding.

I could see why Ms W would be reluctant to pay the supplier the outstanding £1,500 deposit if it won't cost this much for her to get the outstanding work fixed independently. But I can't overlook the fact that Ms W entered into a contract for the supplier to do this work for this price. I explained that I don't have the power to say that the supplier should release Ms W from this obligation.

I pointed out that even if Ms W provides evidence to show what needs to be done and Shawbrook then covers that cost of bringing the work up to a satisfactory standard, the supplier may well decide to pursue Ms W directly for the outstanding deposit amount.

I recognised Ms W does not now want to pay the full contractual price for the work. She suggested the supplier's price for this job wasn't competitive since she's shopped around. But I thought this was something quite different to whether Shawbrook has treated Ms W fairly. From what I've seen, I thought Ms W's suggested solutions went beyond what she's entitled to under Section 75. So I didn't feel able to recommend that they would be fair ways to resolve this dispute.

I suggested that Shawbrook would be responsible for covering the cost of any re-work that is required to bring the work up to the contractual specification. To determine that re-work, I thought that Ms W should provide three quotations from contractors that she would be happy to use. I thought that it would be fair for Shawbrook to choose which of the three quotations to take forward.

responses to my provisional decision

Ms W received my provisional decision. She explained that she was struggling to find people that would be willing to provide quotes. She gave me details of the websites she'd approached.

Shawbrook said it would get a company to go out and review the guttering.

Ms W contacted me to say she'd not heard anything more about this. She provided me with a copy of the letter Shawbrook sent to her in November 2017. It said that a national firm would be instructed to make contact with her and to review and repair the guttering at Shawbrook's cost.

Ms W said it would resolve matters if the guttering was replaced with a good quality product. She pointed out how long things had been going on for.

I called Shawbrook to find out what was happening. It said that it would chase up matters with the national firm as a matter of urgency.

my findings

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

Shawbrook has proposed to arrange for a national firm to review and repair the guttering. So it accepts that Ms W is entitled to ask to be provided with guttering that is of the same quality and standard as the guttering she would've got if the original contract had been carried out correctly. And Ms W accepts that it would resolve matters if the guttering was replaced with a good quality product.

As such, it follows that I've not seen anything that makes me think I should depart from my provisional conclusion that Shawbrook is responsible for covering the cost of any re-work that is required to bring the work up to the contractual specification. As Ms W has struggled to find local suppliers to provide quotes, it seems reasonable to proceed with the national company Shawbrook has suggested.

As I indicated in my provisional decision, the outstanding deposit amount is a matter between the supplier and Ms W. Ms W entered into a contract for the supplier to do this work for this price. And I don't have the power to direct the supplier to release Ms W from this obligation.

my final decision

My final decision is that Shawbrook Bank Limited should arrange for the re-work required to bring the guttering up to the contractual specification to be done at no cost to Ms W.

This means that Shawbrook Bank Limited should cover the costs of any new materials that may be needed and must also be responsible for all costs relating to any materials that need to be removed. This work should begin as soon as is reasonably possible.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 22 January 2018.

Claire Marsh
ombudsman