

complaint

Miss B acquired household fixtures and a driveway in March 2014, by means of a fixed sum loan agreement with Shawbrook Bank Limited. She says these acquisitions have exhibited a series of faults since they were installed, and she complains that they were not of satisfactory quality at the point of sale.

background

The background to this complaint, and my initial conclusions, were set out in my revised provisional decision dated 10 August 2017 – a copy of which is attached and forms part of this final decision. In my revised provisional decision, I explained why I thought an offer from Shawbrook (made in response to my earlier provisional decision dated 17 May 2017) represented the best way of settling this complaint.

Shawbrook's settlement offer is to refund the amount Miss B initially paid for her driveway. My revised provisional decision also included compensation of £250 to be paid to Miss B for stress and inconvenience.

Miss B and Shawbrook both responded to my revised provisional decision. Both clarified that Shawbrook had not advanced credit of a little over £13,800 to Miss B (as suggested in my revised provisional decision). The total cash price of goods acquired by Miss B was a little over £13,800, but she paid a deposit of just under £1,500, and so the credit advanced by Shawbrook was a little under £12,400.

Miss B's deposit was specifically linked to the household fixtures she acquired. On that basis, 51% of the loan related to the driveway, the interest on which was just under £3,800. So, the cost to Miss B of her driveway is the amount initially paid plus this interest, making a total of a little under £10,200.

Miss B asked whether Shawbrook would increase its offer to include a refund of her deposit. Shawbrook declined to do so, noting that Miss B's deposit related to her household fixtures, while its settlement offer and my provisional decision related to her driveway.

Miss B then decided to accept my revised provisional decision.

my findings

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

The figures for the cost to Miss B of her driveway are changed by the clarification of the amount of credit advanced by Shawbrook. But these changes are not sufficient to alter my view that Shawbrook's offer represents the best way of settling this complaint. Miss B has also now accepted my revised provisional decision.

And so, in the absence of arguments or evidence to the contrary, I continue to think that the settlement set out in my revised provisional decision is appropriate.

my final decision

For the reasons explained above, my final decision is that I uphold this complaint in part. In full and final settlement of it, I order Shawbrook Bank Limited:

1. To refund £6,366 to Miss B's loan account.
2. To pay compensation of £250 for stress and inconvenience directly to Miss B.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 16 October 2017.

Roy Mawford
ombudsman

**COPY OF REVISED PROVISIONAL DECISION
10 August 2017**

complaint

Miss B acquired household fixtures and a driveway in March 2014, by means of a fixed sum loan agreement with Shawbrook Bank Limited. She says these acquisitions have exhibited a series of faults since they were installed, and she complains that they were not of satisfactory quality at the point of sale.

background

The background to this complaint, and my initial conclusions, were set out in my provisional decision dated 17 May 2017 – a copy of which is attached and forms part of this revised provisional decision. In my first provisional decision, I explained why I thought that the complaint should be upheld in part, but that an increased settlement would be appropriate.

Miss B responded to my first provisional decision saying that, in addition to the examination of her driveway by a different (independent) inspector, she wanted Shawbrook to arrange and pay for her household fixtures to be independently inspected. She believed that such an inspection would show faults dating back to March 2014, and she provided photographic evidence of current faults.

Shawbrook responded saying:

- The total cash price of goods acquired by Miss B was £13,847, which it understood comprised the costs of household fixtures (£7,481) and her driveway (£6,366)
- To bring this matter to a full conclusion, it would be prepared to refund £6,366 to Miss B's loan account – this would enable her monthly payments to be reduced from just under £165 to a little under £60

my revised provisional findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where evidence is incomplete, inconsistent or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

household fixtures

I said in my first provisional decision: given the time that has elapsed since Miss B's household fixtures were installed, and what the supplier says has happened to these fixtures over this period, there is insufficient evidence (on balance) to link the outstanding faults back to the point of sale. The photographs provided by Miss B in response to my first provisional decision are of current faults – as such, this is not evidence linking back to March 2014.

And so, I find (again on balance) that it would not be appropriate to require Shawbrook to arrange for an independent inspection of these fixtures. I sympathise with Miss B – but, if she wants such an inspection to take place, she will need to arrange and pay for it herself.

driveway

Shawbrook advanced credit of a little over £13,800 to Miss B, on which it charged interest of a little under £7,400. 46% of this loan related to the driveway, the interest on which was just under £3,400. So, the cost to Miss B of her driveway is the amount initially paid (£6,366) plus this interest, making a total of just over £9,750.

My understanding of Shawbrook's settlement offer is that it would refund the amount Miss B initially paid for the driveway by crediting £6,366 to her loan account. But it would not refund the interest charged for this part of the loan. Miss B could then:

- Either continue to make the same monthly payments, and so repay the loan sooner
- Or repay the loan over its originally agreed term, but with her future monthly payments reduced by nearly two-thirds

This needs to be compared with what I said in my first provisional decision, which was that Shawbrook should pay for further work, if (but only if) an independent inspector identified faults linked back to the point of sale. Which meant it was possible that Shawbrook would not be required to make any further payment.

In the circumstances, and bearing in mind that my initial provisional decision in Miss B's favour was made on the balance of probabilities, I find Shawbrook's offer fair and reasonable, and I invite her to accept it.

stress and inconvenience

I also said in my first provisional decision: I feel that compensation of £250 for stress and inconvenience is appropriate, given the circumstances of Miss B's complaint. I see no reason to change this initial finding.

my revised provisional decision

For the reasons explained above, but subject to any further comments or evidence I receive from Miss B or Shawbrook Bank Limited by 10 September 2017, my provisional decision is that Shawbrook should:

3. Refund £6,366 to Miss B's loan account (which would enable her monthly payments to be reduced from just under £165 to a little under £60)
4. Pay Miss B compensation of £250 for stress and inconvenience

Roy Mawford
ombudsman

COPY OF PROVISIONAL DECISION
17 May 2017

complaint

Miss B acquired household fixtures and a driveway in March 2014, by means of a fixed sum loan agreement with Shawbrook Bank Limited. She says these acquisitions have exhibited a series of faults since they were installed, and she complains that they were not of satisfactory quality at the point of sale.

background

Miss B initially complained to the supplier of these goods. It carried out remedial work in August 2014 on the driveway, and in March 2015 on the household fixtures. Miss B told us:

- These attempts to correct the faults were unsuccessful
- Because the matter was not being resolved by the supplier, she asked another business to look at her household fixtures – this business told her these fixtures had been incorrectly installed and needed to be replaced

Miss B referred her complaint to Shawbrook in June 2016. It arranged for an independent inspection to be made of her driveway, to determine the remaining faults and what was required to put them right. This led to further work being undertaken by the supplier on the household fixtures (starting in August 2016), and on the driveway (starting in October 2016).

Miss B said:

- She came to question the inspector's independence – she found information which led her to believe that the inspector had a family connection with the supplier
- During October 2016, she was also unhappy with the work being carried out on her driveway by the supplier's representatives – and she told them to stop working
- This led to an unpleasant incident, as a result of which she installed a CCTV system at her home – and the work remains unfinished

Miss B referred her complaint to us in late October 2016. In order to resolve it, she wanted:

- An inspector, approved by a well-known driveway materials supplier, to examine her driveway
- The faults identified by this inspector to be repaired by a company approved by the materials supplier
- A suitably qualified independent inspector to determine whether or not the household fixtures had been installed correctly
- The costs of installing CCTV at her home to be reimbursed
- Compensation for the stress and inconvenience she had suffered

Shawbrook responded to Miss B's complaint, saying:

- In March 2015, the supplier found the household fixtures had been damaged, thereby invalidating the guarantee – it repaired these fixtures as a goodwill gesture
- In August 2016, the supplier again found the fixtures had been damaged, and repaired them as a further goodwill gesture
- The driveway was guaranteed for one year from being installed – and, to remain covered by this guarantee, Miss B was required to maintain it sufficiently
- The supplier found in 2016 that the driveway had not been properly maintained – but it started to undertake the required repairs, once more as a goodwill gesture
- While the supplier was on-site, a piece of driveway repair work was damaged overnight – which meant this piece of work had to be repeated
- The supplier had nearly finished the required repairs, when told by Miss B to stop
- In these circumstances, Shawbrook was unable to uphold Miss B's complaint

Our adjudicator thought the complaint should be partly upheld, saying:

- Although the goods were initially installed in 2014, it was clear from evidence provided to us that the matters being complained about had been on-going since then
- While he appreciated Miss B's reasons for installing a CCTV system, he did not feel that Shawbrook should be expected to reimburse her expenditure in doing so
- He was also unable with sufficient certainty to say about the household fixtures that the outstanding faults arose because the fixtures were not of satisfactory quality at the point of sale – he felt that environmental factors and the damage caused to the fixtures could also have led to these faults
- But very recent photographic evidence showed the driveway's surface had distorted in a way that clearly was not intended, and to which Miss B would not have agreed
- In these circumstances, it would be fair and reasonable for the driveway to be examined again, by an inspector whose independence was not being questioned

Our adjudicator recommended that:

- Shawbrook should arrange for the driveway to be examined by an independent inspector, agreed with Miss B.
- Miss B should then obtain quotes (two or three, as decided by Shawbrook) for the identified remedial work to be carried out – Shawbrook to select the quote to use, and to pay for the completed work.
- The work specified in these quotes must be sufficient to correct the outstanding faults from the point of sale – but it must not go beyond what the original supplier undertook to install.
- No other party should undertake, or interfere with, any on-going work on the driveway.

Shawbrook did not agree with the proposed independent inspection of Miss B's driveway.

Miss B accepted our adjudicator's CCTV and driveway recommendations, but she still wanted:

- Shawbrook to pay for a suitably qualified independent inspector to determine whether or not her household fixtures had been installed correctly
- Compensation for stress and inconvenience

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where evidence is incomplete, inconsistent or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

Shawbrook has a responsibility to ensure that goods of satisfactory quality, and corresponding to their description, have been supplied. This means that a reasonable person would have regarded the goods as satisfactory, taking into account all relevant circumstances. But there are limits to Shawbrook's responsibilities. In particular, faults must be present or developing at the point of sale.

Shawbrook is also responsible for the way in which it handles complaints. And, if Shawbrook were to be required to arrange the supply of further goods to rectify faults, it would be responsible for the quality of those goods at the time they were supplied (by either the original or a different supplier). But Shawbrook is not otherwise responsible for the quality of service provided by the original supplier, after the point of sale.

As our adjudicator pointed out, Miss B has an equal right to make a complaint against either the original supplier or the finance provider (Shawbrook). But she can only complain to Shawbrook about things that are within the limits of its responsibilities.

household fixtures

Given the time that has elapsed since Miss B's household fixtures were installed, and what the supplier says has happened to these fixtures over this period, I find (on balance) there is insufficient evidence to link the outstanding faults back to the point of sale.

driveway

But I find that the evidence linking (or not) the outstanding faults on Miss B's driveway back to the point of sale is much more evenly weighted. I also find (on balance) that Miss B could reasonably have lost faith in the (Shawbrook appointed) inspector's views – because she had sufficient cause to question this inspector's independence (whether or not he was actually independent).

In these circumstances, I find it is fair and reasonable that Shawbrook should arrange for a different (independent) inspector to examine Miss B's driveway. But this inspector will need to focus on faults present or developing at the point of sale – it will be up to the inspector to determine whether all, part or none of the outstanding faults fall into this category. And I agree with our adjudicator that, if faults in this category are identified, the process he recommended for remedial work should be followed.

I note in particular our adjudicator's recommendation that no other party should undertake, or interfere with, any on-going work on the driveway. This should help to ensure:

- Both that only a contractor selected by Miss B to quote will be working on her drive
- And that the contractor's work will not be interfered with or damaged

stress and inconvenience

I recognise that Miss B has suffered stress and inconvenience as a result of these long running events. I also do not agree with some aspects of Shawbrook's response to her complaint. I suspect that much of this stress and inconvenience has been caused by the original supplier – but, in my view, some has been caused by Shawbrook, even though it has only been involved with Miss B's complaint since June 2016.

In my view, this complaint has not been well managed by Shawbrook:

- It appointed an inspector whose independence has been questioned (see above)
- It made slow and unsuccessful efforts to resolve the complaint
- It did not provide a final response letter to the complaint until December 2016

There are technical notes about trouble and upset on our public website, in which we describe:

- how we decide whether to award compensation for distress, inconvenience, damage to reputation, pain and suffering
- how we decide what to award, where compensation is appropriate
- cases where we have awarded compensation

I feel that compensation of £250 in this instance is appropriate, given the circumstances of Miss B's complaint. It is consistent with our approach to awarding compensation, and with those case descriptions and awards.

conclusions

And so I find that I have come to the same conclusions as our adjudicator, except in relation to compensation for stress and inconvenience.

my provisional decision

For the reasons explained above, but subject to any further comments or evidence I receive from Miss B or Shawbrook Bank Limited by 19 June 2017, my provisional decision is:

5. Shawbrook should arrange for the driveway to be examined by an independent inspector, agreed with Miss B.
6. If the inspector identifies faults that can be linked back to the point of sale, Miss B should obtain quotes (two or three, as decided by Shawbrook) for the identified remedial work to be carried out – Shawbrook to select the quote to use, and to pay for the completed work.
7. The work specified in these quotes should be sufficient to correct the outstanding faults from the point of sale – but it should not go beyond what the original supplier undertook to install.
8. Both Shawbrook and Miss B should agree that no other party should undertake, or interfere with, any on-going work on the driveway.
9. Shawbrook should pay Miss B compensation of £250 for stress and inconvenience.

Roy Mawford
ombudsman