

complaint

Mrs P complains about a decision taken by Shawbrook Bank Limited (“SBL”) to decline a claim she made to it for compensation following what she says was the poor install of eight windows to her property.

Mrs P is represented in this complaint by a third party. But for ease I will refer to any submissions made by the third party as if they had been made by Mrs P.

I would also like to apologise for the delay on my part in issuing this decision and to thank both parties for the patience they have shown, in particular Mrs P.

background

In January 2016 Mrs P placed an order, with a company that I will call Z, for the supply and fit to her property of eight windows. The cash price of the supply and fit was £6,851. Mrs P paid Z £100 and financed the balance of £6,751 with a loan with SBL. For reasons not material to this complaint this loan was repaid in full in December 2016.

In February 2016 the windows were fitted by a company that I will call J, a company appointed by Z.

In February 2016 Mrs P says she noticed cracks in her bedroom ceiling and walls.

In March 2016 Mrs P notified Z of the cracks she had noticed to her bedroom ceiling and walls. J attended her property and repaired the cracks with bonding plaster. However, Mrs P says the quality of this work was poor.

Mrs P then says it came to her attention that as well as the repairs undertaken by J being poor it had, in fitting the bedroom window, caused structural damage to the front gable.

Mrs P complained to Z about the above but was unhappy with its response. So, she had structural repairs undertaken, asbestos testing carried out, asbestos removed, and internal decoration undertaken.

In late 2017/early 2018 Mrs P complained to SBL and said that she was looking, by way of compensation, the following:

- £6,998.98 for the eight windows supplied by Z and fitted by J, on Z's behalf (£100 deposit, £6,751 capital sum financed and £147.98 interest)
- £7,380 for structural work undertaken on the property by a company that I will call M
- £120 for the asbestos test carried out by a company that I will call S
- The cost she incurred in having the asbestos removed from the property by a company that I will call C
- £1,623.98 for the internal redecoration of the property by a company that I will call V.

Mrs P also said that she was looking for a letter of apology from Z.

SBL didn't uphold Mrs P's complaint so she referred it to our service for investigation.

Mrs P's complaint was considered by one of our investigators who came to the view that it shouldn't be upheld. In summary he said;

- damage to the property appears to have been as a result of underlying structural issues with it
- the underlying structural issues with the property wouldn't have been known to Z (or J) given no structural survey was undertaken
- neither Z nor J undertook to carry out a structural survey of the property
- the terms and conditions of the supply and installation contract states;

'The main purpose of our surveyor's inspection is to ascertain the feasibility of the installation shown on the schedule of works. The inspection will be confined to those areas, which directly relate to the proposed installation and we will not undertake, nor shall we be responsible for, a general survey of the premises/property.'

'We will not be responsible for remedying any defect that existed before the installation or for any damage arising from such a defect.'

- neither Z nor J undertook to carry out anything other than a visual inspection of the immediate works area for the presence of asbestos
- there is insufficient evidence to find that the disturbance of the asbestos was as a result of any error on the part of Z (or J)
- the offer by Z of a resized window following structural repairs was fair.

Mrs P didn't agree with the investigator's view. In summary she said:

- asbestos was disturbed during the window install
- the ceiling panels containing the asbestos were right by the windows
- V said that it could and should have been apparent to Z (or J) that there was asbestos in the ceiling and the window installation shouldn't have commenced
- Z agreed to cover certain remedial costs but then went back on its word
- wrong plaster was used by J when repairing the ceiling, resulting in further costs being incurred

In support of the above Mrs P made specific reference to a number of pages of the 33-page technical survey report undertaken by J and a number of other documents (some previously submitted and some new).

The investigator considered Mrs P's response to his view but wasn't persuaded to change his mind. This was confirmed to Mrs P in a second view.

Mrs P didn't agree with the investigator's second view and provided reasons why. In the main these reasons were a reiteration and an expansion of her previous submissions.

The investigator considered Mrs P's response to his second view but wasn't persuaded to change his mind. This was confirmed to Mrs P in a third view.

Mrs P didn't agree with the investigator's third view and provided reasons why. In the main these reasons were a reiteration and an expansion of her previous submissions. These reasons were acknowledged by the investigator who also confirmed, to Mrs P and SBL, that the complaint would, in due course, be passed to an ombudsman for review and decision.

I issued a provisional decision on this case in February 2021. In summary I said:

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

It's clear both parties have very strong feelings about this complaint. They have both provided detailed submissions in support of their respective views which I can confirm I've read and considered in their entirety. However, I trust that both parties will not take the fact that my findings focus on what I consider to be the central issues, and that they are expressed in considerably less detail, as a discourtesy. The purpose of my decision isn't to address every point raised. The purpose of my decision is to set out my conclusions and reasons for reaching them. I would also point out that where the information I've got is incomplete, unclear or contradictory, I've to base my decision on the balance of probabilities.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider was good industry practice at the relevant time.

Mrs P's contract with Z was financed under arrangements between it and SBL. Under section 75 of the Consumer Credit Act 1974 if Mrs P has a claim for breach of contract against Z, she has a like claim against SBL. The Consumer Rights Act 2015 states that in order to conform to contract, services must be performed with reasonable care and skill. And that goods must be of satisfactory quality.

the supply and installation

Now I appreciate Mrs P's dissatisfaction and frustration, but I'm satisfied there has been no breach of contract by Z in respect of the supply and installation of the eight windows.

What is critical in me coming to this conclusion is the contract terms and conditions Mrs P agreed to be bound by, the survey that was carried out and the content of the survey report.

First, I would like to address Mrs P's most recent submission (the point not having been made before) that no survey was ever carried out, that she didn't sign any survey report and that all her purported signatures on the survey report are identical.

Now I've considered the survey report very carefully and given the detail that it goes into (including measurements in respect of all eight windows) I'm not persuaded a survey wasn't carried out. I've also looked at the signatures on the survey report that Mrs P says aren't hers, and which in her view are all identical.

But having done so I'm not persuaded, on the balance of probabilities, these signatures aren't Mrs P's. I say this because having satisfied myself that a survey was carried out, I see no reason why Mrs P wouldn't have been asked to sign the

report documenting that survey. I'm also not persuaded that these signatures are identical.

Furthermore, I would add that it's quite possible that given the passage of time Mrs P simply can't now recall signing the survey report and that she simply doesn't recognise the signatures as being hers because, as I understand it, she signed the survey report electronically – on a tablet for example – rather than by 'hand' on a paper copy.

I will now turn to the terms and conditions of the contract and the content of the survey report.

The contract terms and conditions state:

4 Survey

This agreement is conditional upon a satisfactory survey...

6 Premises

a) The main purpose of our surveyor's inspection is to ascertain the feasibility of the installation shown on the schedule of works. The inspection will be confined to those areas which directly relate to the proposed installation and we will not undertake, nor shall we be responsible for, a general survey of the premises/ property.

b) we will not be responsible for remedying any defect that existed before the installation or for any damage arising from such a defect

8) Additional Work

...

c) We will make good internally and externally, but we cannot be responsible for any non matching due to the weathering or ageing of existing finishes such as bricks, pebble dashing, rendering or tryolean etc. We will make good to a pre-decoration standard, but not any redecoration or retiling.

d) We cannot guarantee that wallpaper, tiles, woodwork or plaster immediately adjacent to the existing frames will not be damaged when the frames are removed.

The survey report states:

- Two man team only required
- There are no asbestos panels or fixtures
- Jacking Posts and Acros [*sic*] required

Mrs P submits that on at least one day in question only one man was present on site. Now I can't say for certain whether Mrs P's submission in this respect is correct, but I don't think its material to the outcome of the complaint. I say this because I'm not persuaded that whether one man was, or two men were, on site would have been, in itself, the cause of the damage Mrs P is seeking compensation for. It's also my understanding that reference to a two man team meant that no more than two men were required and there was no requirement for additional help, including a hoist.

Mrs P says that J only used acrows after structural movement was seen to be occurring. Now I know I can't say for certain Mrs P is wrong in her submission in this respect. But I just don't find such a submission to be plausible or persuasive. In my view with the surveyor having identified that jacking posts and acrows were required, and with their use not being particularly onerous, I see no reason why they wouldn't have been used by J and used by J correctly. Furthermore, had Mrs P observed J using acrows only after movement was seen to be occurring, I might have expected Mrs P to have raised concerns with both J and Z immediately, yet she doesn't appear to have done so.

Mrs P says that as part of the survey J could and should have identified that asbestos was present in her front bedroom ceiling. Now I'm not persuaded J could and should have identified that asbestos was present. But even if I'm wrong on this point I'm not persuaded that a failure in this respect by J has caused Mrs P the loss she is claiming.

I say this because had J identified the presence, or possible presence, of asbestos in the front bedroom then a sample would have to have been taken and tested, the asbestos would then have to have been removed and the bedroom re decorated, all at Mrs P's cost. And ultimately this is what Mrs P ended up having to do, albeit after installation rather than before.

I also think that it's worth pointing out here that the agreement states:

*We will make good to a pre-decoration, **but not any redecoration or retiling.***" [my emphasis]

And the survey report states:

*"Note 6 – **A charge** is applicable where this work involves the need to take a sample for subsequent scientific analysis to establish any asbestos content. Asbestos products can be removed as a normal part of our installation process. Asbestos Insulation Boards are subject to strict HSE Regulations and we will arrange for licensed contractors to remove these prior to our installation."* [my emphasis]

I will now turn to what I understand is Mrs P's main complaint point, and that is J's survey could and should have identified that there was an issue with the front gable, which she then later had to pay to have remedied.

I appreciate Mrs P will be disappointed, but I'm not persuaded that there has been any failing on the part of J here. Notwithstanding that the agreement states: *"we will not undertake, nor shall we be responsible for, a general survey of the premises/property"* I'm satisfied that it was entirely reasonable for the survey to be restricted to a visual inspection of the property window openings with the 'old' windows in situ and that such an inspection wouldn't have identified any issues with the front gable. I would also add, and I accept that Mrs P isn't a surveyor, that she herself hadn't noticed any issues with the front gable herself prior to works commencing.

I've considered the content of a letter provided by Mrs P dated 25 June 2017 from her own appointed structural engineer. But I'm unable to place much weight on this. This is because this letter was written after the install and after movement to the front gable had become apparent to all. It also doesn't state who might be responsible for this movement, or whether the potential for such movement could and should have been picked up before installation.

So, with the above in mind, and given that the agreement states the limitations of J's survey and that Z will not be responsible for remedying any defect that existed before the installation, or for any damage arising from such a defect, I find that it would be neither fair, nor reasonable to hold SBL liable for the sum of £7,380 Mrs P is seeking the recovery of.

'standard' warranty/guarantee

Z, as part of its supply and installation package, offered a ten-year guarantee to Mrs P at no direct cost. Now given that Z is no longer trading this guarantee, in essence, hasn't been provided – or at least it hasn't been provided for the full the ten years 'promised'. So, in my view, this constitutes a breach of contract for which Mrs P should be fairly compensated. And to fairly compensate Mrs P in this respect I find that SBL should provide the cover that would have been provided under this guarantee itself and for the remaining term.

additional warranty/guarantee

Z, as part of its supply and installation package, offered (at a cost of £90 a year), an additional guarantee underwritten by a company that I will call G. Now it's unclear from what has been provided whether Mrs P wanted, or believed she had purchased, this additional guarantee. But given that Mrs P has provided no documentary evidence that she paid for such cover, either at the outset or annually thereafter, or any other documentary evidence, such as a policy schedule or policy booklet, I find that on the balance of probabilities she neither wanted, nor did she believe she had purchased, the additional guarantee offered by Z.

other matters

I note that in response to the investigator's first view Mrs P made reference to a number of other issues, including one or more internal window boards (sills) not being installed, one or more window openers catching, an issue with the fire exit window and an issue with draughts. But I can't see that these issues have ever been brought to SBL's attention, so I make no finding in respect of them in this decision and these issues will need to be raised with SBL as a separate and new complaint.

SBL didn't respond to my provisional decision.

Mrs P responded to say that she didn't agree with my provisional decision. In summary she said:

- She finds it difficult to understand how I can conclude there were underlying structural issues with her property if no structural survey was carried out by J.

- There were no structural issues with her property when she purchased it, as confirmed in the structural survey carried out at the time.
- A structural survey carried out by an independent structural contractor after J had finished states *“the weight of the gable had pulled the supporting timbers forward and down”*.
- Although asbestos was present in her property prior to J commencing work, this was in an undisturbed state. And it was J that disturbed it.
- The technical survey report, running to 33 pages and containing technical information, instilled her with confidence and persuaded her to agree to works commencing.
- Z (and J) has breached its duty of care towards her and this breach has endangered her medical condition and resulted in structural damage to her property.

my findings

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

Mrs P says she finds it difficult to understand how I can conclude there were underlying structural issues with her property if no structural survey was carried out by J.

Now I accept that I can't say for certain what the structural integrity of Mrs P's property was prior to J commencing works and that no structural survey was carried out by J. But as I said in my provisional decision, where the information I've got is incomplete, unclear or contradictory, I've to base my decision on the balance of probabilities. And based on everything that has been said and submitted, I'm satisfied, on the balance of probabilities, that the structural issues with Mrs P's property were underlying and inherent and didn't occur as a result of what J did, or, failed to do.

Mrs P says there were no structural issues with the property when she purchased it, but I've seen no documentary evidence in support of this submission, for example a copy of the structural survey that Mrs P says was undertaken at the time. But in any event, it's quite possible that there were structural issues with the property at the time Mrs P purchased it and these were simply not picked up in the survey that was undertaken. It's also quite possible that structural issues with the property started to develop after Mrs P purchased it, but before J commenced works.

Mrs P says a structural survey carried out by an independent structural contractor after J had finished states *“the weight of the gable had pulled the supporting timbers forward and down”*.

Now I accept that Mrs P has a letter from her own appointed structural engineer (contractor), a copy of which I've seen. But this letter isn't a structural survey report. Also, as I said in my provisional decision, I'm unable to place much weight on this letter. This is because this letter was written after the install and after movement to the front gable had become apparent to all. It also doesn't state who might be responsible for this movement, or whether the potential for such movement could and should have been picked up before installation.

I accept, on the balance of probabilities, that J disturbed asbestos in Mrs P's property. But as I said in my provisional decision, I'm not persuaded this caused Mrs P any loss and I still hold this view.

Mrs P says that the technical survey report, given the manner in which it was written and its length, instilled her with confidence and persuaded her to agree to works commencing. Now notwithstanding I find it had to reconcile this submission with Mrs P's submission that no survey was ever carried out and that she didn't sign the report, I can't see how this submission helps Mrs P. Ultimately it was Mrs P's decision to agree to the works commencing and if there was anything in the survey report she was unsure about, or required clarity on, she was always free to ask J (or Z).

I appreciate Mrs P feels strongly about this matter, but I'm simply not persuaded that there has been any breach of duty by J (or Z). And because of this, and because of what I say elsewhere in this decision, I find that it would be neither fair nor reasonable to hold SBL liable for any structural damage to Mrs P's property, or liable for the costs Mrs P incurred in having that damage repaired.

Notwithstanding that I'm not persuaded that there has been any breach of duty by J (or Z), I would add that I've seen very little, if any, evidence that Mrs P developed a medical condition, or had an existing medical condition worsen, as a result of anything J did, or failed to do.

I appreciate that Mrs P will be disappointed but given what I say above I find no good reason to depart from my provisional findings and I now confirm them as final.

my final decision

My final decision is that Shawbrook Bank Limited should provide the cover that would have been provided under Z's guarantee itself, and for the remaining term, but it need do nothing further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 4 April 2021.

Peter Cook
Ombudsman