

## **The complaint**

Mr Y complains about how Specialist Lending Limited, trading as Duologi, dealt with his claim under section 75 of the Consumer Credit Act 1974 about some foam insulation.

## **What happened**

In January 2021 Mr Y entered into a regulated fixed sum loan agreement with Duologi to finance the purchase and installation of open-cell foam insulation for his loft. Its cash price was £3,005:80; he paid a deposit of £700 and the rest was to be paid over 36 monthly instalments (with no interest). The insulation came with a 25-year warranty from the manufacturer.

In February 2023, Mr Y experienced difficulty in re-mortgaging his property because of the foam insulation. He obtained an independent report about it, which said that the insulation had caused structural damage, and recommended replacing the roof. He instructed another third party to do that, and then he raised a claim for a refund with Duologi.

Duologi declined Mr Y's claim. It said that not every mortgage lender has an issue with foam insulation, and Duologi would not comment on the lending policies of different lenders. It also said that Mr Y had not allowed the supplier of the foam to try and repair it under warranty before instructing a third party to remove it. The supplier had however attended Mr Y's home and inspected the foam, and had found it to be dry, and had told Duologi that Mr Y had been misadvised.

Mr Y brought this complaint to our service. As well as the independent report, he provided videos and photos to show that the insulation was waterlogged.

Our investigator upheld Mr Y's complaint. He agreed with Duologi that it did not have to comment on mortgage companies' lending criteria. But he accepted the findings of the independent report, which said that the roof had been damaged by moisture build-up in the foam, and that it needed to be replaced. He said this evidence was supported by Mr Y's videos and photos, which showed dampness and damage. So he was persuaded that there had been a breach of contract by the supplier, and that Duologi was liable for this under section 75.

The investigator also said that although Mr Y had not allowed the supplier to remove the insulation itself, he pointed out that the supplier had still been able to inspect the insulation and had found nothing wrong with it. He did not accept the supplier's evidence about that, as it was not independent and it was contradicted by the independent report. And as the author of the report was not the same person who had carried out the roof replacement, the investigator thought that the report had been impartial.

The investigator recommended that Duologi cancel the agreement with nothing further to pay, refund his deposit and all his payments (with interest at 8% a year), and remove any adverse information from Mr Y's credit file. And as replacing the roof had been a consequential loss, he said that Duologi should reimburse Mr Y the cost of that, which was £15,500.

Mr Y accepted that decision; Duologi did not. After consulting with the supplier, it argued that the damage to the roof had been caused by DIY work before the supplier had installed the insulation. They said that the independent report was very short (one page) and lacking in detail, it contained no photos, and the author had apparently been trading for only a year (when the report was written) and he had no professional qualifications. The supplier disputed many of the findings in the report, and said that the report made no mention of some lining which the supplier had installed at the same time as the insulation. The supplier provided photos from before and after the installation, showing mould inside the roof prior to installation, and showing the new lining being installed.

The supplier said they had tried several times to gain entry to Mr Y's home but had been refused, and legally they were entitled to one attempt to repair the roof. They suggested that Mr Y was just trying to get a new roof for free.

Duologi adopted the supplier's comments, and added that it had provided the loan in good faith and so it was reasonable to expect that this would be repaid in full.

The investigator did not change his mind, so he referred this case for an ombudsman's decision. I wrote a provisional decision which read as follows.

### **What I've provisionally decided – and why**

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

I agree that Duologi is not responsible for the lending criteria of mortgage providers. So I can't say it is Duologi's fault that Mr Y was declined for a mortgage.

However, Duologi is liable if the supplier failed to carry out the installation with reasonable care and skill, or if the foam insulation was not fit for purpose. Those were implied terms of Mr Y's contract with the supplier, by virtue of sections 9 and 49 of the Consumer Rights Act 2015. And section 75 of the Consumer Credit Act 1974 makes Duologi jointly responsible for any breach of those terms by the supplier. (It also makes the supplier liable to Duologi for any compensation which Duologi has to pay Mr Y for what the supplier did. So if Duologi has to cancel the loan agreement and refund Mr Y's payments, then it may pursue the supplier for its loss under section 75(2).)

I have read the House of Commons Library briefing paper "*Spray foam insulation and mortgages*," dated 5 February 2024.<sup>1</sup> It says that foam insulation can cause dampness and damage to timber-framed roofs "if incorrectly installed or used inappropriately," but it does not suggest that it causes damage otherwise (although some mortgage providers may still be reluctant to grant mortgages for properties with foam insulation because the foam prevents inspection of the rafters). So if there is damp- or condensation-related damage to Mr Y's roof, then I can potentially infer that this is the result of incorrect installation, but I can't uphold his complaint that the mere use of foam installation prevented him from getting a mortgage.

I have read the independent report. It is very brief, being only one page long, and it contains no photos; this is not as detailed as I would normally expect from a report of this nature. I don't know what professional qualifications the author has, but he doesn't claim to have any in the report. His entry on the Companies House database shows that he was only 20 years old at the time of writing the report, so he cannot have a great deal of experience in the

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<sup>1</sup> See <https://commonslibrary.parliament.uk/spray-foam-insulation-and-mortgages/>

trade. So while I do accept that he was independent and impartial, I do not think it would be safe to simply adopt his evidence in preference to the supplier's. I have therefore considered the supplier's evidence carefully.

The supplier has stated the following:

- Prior to the installation, the existing liner was found to have perished, and so new liner was added (without removing the old one). This is visible in photos taken at the time. The new liner has a life expectancy of 15 years, so it was unlikely to have perished after only two years. The independent report does not mention the new lining.
- Mr Y's second video shows the new lining to still be in good condition.
- Condensation is normal in a loft, especially in February (when the report was written).
- The foam is breathable and is supposed to hold moisture during cold months, which then evaporates over the warmer months, and goes through the liner, which is also breathable. There is nothing wrong with the foam, and the moisture content shown in Mr Y's videos is quite normal for that time of year.
- The installation was carried out correctly, and complied with BS5250 (which is the code of practice for the control of condensation in buildings).
- The foam and the moisture within it have not caused damage to the roof timbers or the tiles. Such damage could not in any event occur in a period of only two years. If the roof was old and happened to require replacing due to wear and tear, then this was not because of anything the supplier had done. (One 30cm wooden purlin was broken off, but the supplier thought that this was likely to have occurred during the removal of the roof tiles.) And it had not been necessary to replace the tiles.
- The photos taken prior to installation show some mould inside the loft roof, suggesting that there was already an issue with condensation. The supplier suggested that this was the result of a botched DIY job earlier.

I will deal with the last point first. The evidence provided by the supplier includes a document containing installation instructions, which says that the moisture content of roof timbers must be measured and must be less than 20% before the foam is applied. A certificate provided by the supplier to Mr Y at the time of the installation states that the reading was 13%. Since that was within acceptable parameters, I don't think I need to comment further about that point.

I accept that the supplier sold and installed a new liner. It is visible in the photos provided by the supplier and also in the videos provided by Mr Y, and apart from a couple of places where it appears to have been torn during the removal of the roof, it seems to remain in good condition. It is mostly between the wooden purlins and the foam, to keep the foam away from the purlins, but I can see in Mr Y's video that some of the foam has still got past the liner and has reached the purlins nonetheless. (I will come back to that.)

I accept that the foam insulation is breathable, because evidence provided by the supplier via Duologi shows that it is open-cell insulation, and that it has a water vapour resistance factor ( $\mu$ ) of 3.3, meaning that a given thickness of the foam will only prevent the passage of water vapour through it to the same extent as 3.3 times that thickness of still air. Open-cell insulation is preferable to the closed cell kind, because it is less likely to trap moisture and thereby cause damage to the rafters.<sup>2</sup>

However, another website<sup>3</sup> says:

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<sup>2</sup> See <https://www3.rics.org/uk/en/journals/built-environment-journal/understanding-spray-foam-insulation.html>

<sup>3</sup> Footnote omitted (see the provisional decision).

“Extreme care must be taken to avoid a situation where moisture is retained close to wood and other building and structural materials. Moisture can migrate through [the foam] to condense on cold surfaces. This destroys insulating value.”

I would add that when this happens, it can also damage the timbers by causing them to rot.<sup>1</sup>

Mr Y's videos clearly show that the foam insulation is completely water-logged. I accept that some condensation is normal in a loft, especially in the winter months. But although the presence of some moisture is to be expected, I am sceptical that it should really be as much as can be seen in the videos. I think that such a large amount of moisture means that something has gone wrong. One cause of this can be a lack of proper ventilation, and the installation instructions repeatedly emphasise the importance of ensuring that the space where the foam is to be used must be properly ventilated. So such a high level of moisture could indicate that insufficient care was taken during installation to ensure that the loft was sufficiently well ventilated. On the balance of probabilities, I am currently minded to find that the installation was not carried out with reasonable care and skill.

Having that much moisture next to the timbers is likely to cause damage over time, in places where the foam is directly next to the wood, such as by the rafters, or by the purlins where the foam got through to the other side of the new liner.

However, I do not think that the timbers which are visible in the videos appear to have rotted yet. And the purlin which broke off was still in place when Mr Y took his photographs, as can be seen in the picture “roofpic1.jpg”. In the video “roofvideo1.mp4” it has broken off, but I don't think that is evidence of damage caused by the supplier. On balance, I am not persuaded that it was necessary to replace the timbers, notwithstanding what the independent report says.

The roof tiles were concrete. The independent report says that some of the foam had got past the liner and reached the tiles. However, it does not go so far as to say that the tiles have been damaged as a result, and I can't see why they would have been. So although the report does go on to say that the roof needs to be urgently replaced, it does not say that this includes replacing the tiles (as opposed to just the timbers). There is no evidence that there was anything wrong with the tiles.

I think it would have been sufficient to just remove the foam insulation instead. That would have cost considerably less than replacing the roof did; perhaps £3,500.<sup>4</sup>

So my provisional decision is that I am currently minded to uphold this complaint, and to require Specialist Lending Limited (trading as Duologi) to:

- cancel Mr Y's loan agreement with nothing further to pay,
- refund Mr Y's deposit and all of his payments;
- pay Mr Y interest on those refunds at 8% a year from the dates of payment to the date of settlement,
- pay Mr Y £3,500 (the estimated cost of removing the foam insulation),
- remove any adverse information from Mr Y's credit file.

### **Responses to my provisional decision**

Duologi did not accept my provisional decision. After consulting with the supplier, it made the following points:

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<sup>4</sup> <https://insulationadvisor.co.uk/how-to-remove-spray-foam-insulation/>

- The supplier had not been permitted to work on the roof, but if they had, then they could have installed further installation if that was required;
- The supplier would have carried out any necessary repairs under warranty – including replacing the roof if it had rotted;
- Since the supplier had not been given a chance to put things right under warranty, it would not be fair to make Duologi pay any of Mr Y's costs;
- The independent report may not actually be truly independent, as the supplier is of the view that the surveyor and the roofer were actually part of the same company, so a new roof may not really have been required at all;
- The author of that report may have misled Mr Y in order to get business (especially considering that Mr Y did not consider his options under the supplier's warranty).

In his response to my provisional decision, Mr Y said:

- Duologi should have to be transparent about the risks that foam insulation can pose to a mortgage application, and to do otherwise is unfair and unscrupulous;
- The need to repair the roof was a huge consequential loss, and Mr Y's decision to replace it had been based on essential advice from the mortgage lender (as well as from the independent report);
- This had been a distressing and expensive experience, and Mr Y would not have done it if it hadn't been absolutely necessary – it wasn't a question of just trying to get a free roof;
- During the foam installation, the supplier's workers had spoken unprofessionally to each other (Mr Y provided another video to show this), which had made him think at the time that they had not been happy with how the installation was going, as well as suggesting that they probably did not carry out the work with reasonable skill;
- There had not been any aftercare or any subsequent visit to check that the installation had been carried out to a good standard (although the supplier had come back to do some additional work);
- Online reviews show that other customers have complained about the same supplier;
- Mr Y asked that I reconsider awarding him compensation for the whole cost of replacing the roof, or alternatively a proportion of the cost, and also compensation for his distress and inconvenience.

Duologi's comments were shared with Mr Y so that he could comment on them. In response to Duologi's comments, Mr Y said:

- Mr Y had asked the supplier to inspect the insulation in 2023, before it was removed;
- The supplier had inspected it, but it had told him that there was nothing wrong;
- As that was contrary to the advice he had been given by other parties (not just the surveyor, but also the lender), it had been reasonable for Mr Y to instruct a third party to carry out the necessary work;
- He disputed that the surveyor and the roofer were connected.

## **My findings**

I have reconsidered this case in the light of the submissions from both parties (which were more detailed than the summaries I have set out above).

Having done so, I have not materially changed my provisional views. I will explain why. I will begin with Duologi's arguments.

As I said on page 1, the supplier did attend Mr Y's home and inspected the foam insulation, and the supplier had said that it was dry. The supplier then told Duologi that Mr Y had been misadvised. So although it's true that this happened only after Mr Y had already got someone else to begin to do the roofing work, nevertheless, if he had asked the supplier

first, the supplier would apparently not have agreed that anything was wrong or that any remedial work was necessary (notwithstanding its modified stance today).

I have already said why I believe that remedial work was necessary, based on the original video evidence showing the state of the insulation. So although Mr Y did not give the supplier a chance to fix the problem – which was its legal right – I cannot agree that this really affected the outcome. On the balance of probabilities, if he had approached the supplier first, then it is likely that he would still have needed to get someone else to remove the waterlogged foam.

For that reason, I remain of the view that it is still fair to hold Duologi responsible for the installation of the foam insulation. (Since that conclusion does not depend on the surveyor's report, I don't need to comment about the impartiality, or otherwise, of the surveyor.)

Turning to Mr Y's points, foam insulation is not inherently risky, when it is done properly. And I wouldn't have expected Duologi to point out that an installation can come with risks or shortcomings if it is botched, because I think that goes without saying. But since I have already found that Duologi is liable for it, I don't need to say anything else about that, or about the new video evidence.

I have looked again at the mortgage valuation, and under the heading "Essential Repairs" it says: "Sealant / Sprayfoam has been applied to the internal roof surfaces. The roof covering should be renewed in accordance with building regulations, including any necessary strengthening to the roof."

That doesn't go as far as to say "replace all the tiles." I also remain of the view that the timbers did not need to be replaced, although I accept that this would not have been obvious at the time of the mortgage valuation, because the timbers had not yet been uncovered. But once the insulation was removed and the timbers were exposed, it would then have become apparent that they had not yet rotted, as I explained in my provisional findings. So I am satisfied that the only consequential loss is the cost of removing the insulation.

I do agree however that Mr Y was inconvenienced, and that I should have awarded him something for that; I think £200 is fair.

### **My final decision**

So my decision is that I uphold this complaint. I order Specialist Lending Limited (trading as Duologi) to:

- cancel Mr Y's loan agreement with nothing further to pay,
- refund Mr Y's deposit and all of his payments;
- pay Mr Y interest on those refunds at 8% a year from the dates of payment to the date of settlement,
- pay Mr Y £3,500 (the estimated cost of removing the foam insulation),
- pay Mr Y £200 for his inconvenience, and
- remove any adverse information from Mr Y's credit file.

If Duologi considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it must tell Mr Y how much it's taken off. It should also give Mr Y a tax deduction certificate if he asks for one, so he can reclaim the tax from HMRC (if he is entitled to). Mr Y should refer back to Duologi if he is unsure of the approach it has taken, and both parties should contact HMRC if they want to know more about the tax treatment of this portion of the compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Y to accept or reject my decision before 1 May 2024.

Richard Wood  
**Ombudsman**