

The complaint

Mr M has complained that Shawbrook Bank Limited ("Shawbrook") failed to respond to his claim against it under sections 56, 75 and 140A of the Consumer Credit Act 1974 ("the Act") in relation to his purchase of some solar panels.

Mr M is represented by a claims management company ("the CMC").

Background

Mr M bought solar panels for his home in May 2016. The purchase was funded by a loan from Shawbrook, and that business is therefore liable for the acts and omissions of the installer under the relevant legislation.

In March 2022 Mr M asked Shawbrook for compensation under the relevant provisions of the Act. He said the installer had misled him into believing that the panels would be self-funding, which they weren't. He also asked to be refunded for some repairs that had been carried out by a third party which had identified some shortcomings with the installation of the panels.

Shawbrook acknowledged the claim, but after eight weeks it had not provided a substantive response. So Mr M brought this complaint to our service.

One of our adjudicators looked into what had happened. Having considered all the information and evidence provided, our adjudicator didn't think that P had misrepresented the system to Mr M. But she told Shawbrook to contact the CMC directly with its response to Mr M's claim for the cost of the repairs.

The CMC did not agree. It said:

- the adjudicator had given too much weight to the installer's sales documents;
- where a person is unaware that a representation is false, the fact that they could have found out it was false by taking reasonable care is not a defence in law, yet the adjudicator appeared to have put the onus on Mr M to discover that the system would not be self-funding by reading the sales documentation;
- it was not credible to suggest that Mr M would have agreed to buy the system unless he had been told that it would pay for itself;
- as Mr M was an eye-witness to what happened at the sales meeting, and the salesman's direct testimony had not been obtained by Shawbrook, Mr M's evidence ought to be preferred.

Shawbrook told the adjudicator that it was still entitled to eight weeks to investigate Mr M's complaint (in addition to the time it had already had to consider his claim under section 75).

The adjudicator did not agree with the submissions made by either party. So the case was referred to me for an ombudsman's decision. I wrote a provisional decision which read as follows.

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.

Jurisdiction

Under rules made by the FCA, Shawbrook is entitled to eight weeks to consider Mr M's complaint that it did not uphold his claim under section 75. This is in addition to the time which elapsed between Mr M bringing his claim to Shawbrook and referring this complaint to our service.

However, I think that Shawbrook has had its eight weeks. Our service told Shawbrook about this complaint on 6 July 2022, and eight weeks later was 31 August. As I write this provisional decision, it is 20 September. So I am satisfied that I have the power to consider this complaint.

Repairs

Mr M has provided receipts for repairs carried out by a third party. These receipts itemise the work done, and set out a summary of the problems with the installation of the panels. The total cost of the repairs was £1,073.41.

Under section 75 of the Act, Shawbrook is liable for a breach of contract by the installer. Under the Consumer Rights Act 2015, Mr M's contract with the installer included implied terms that the panels would be fit for purpose and the installation would be carried out with reasonable care and skill. So, having regard to all of that, I am minded to say that Shawbrook must reimburse Mr M for this work, with interest at eight per cent a year from 2 November 2020 to the date of settlement.

Misrepresentation

I agree with the CMC's analysis of the law, which I have summarised above. If the salesman did mislead Mr M about the system, then it would not be a defence for either the installer or Shawbrook to say that Mr M could have discovered any misrepresentations simply by reading the quote in his own time to find out the true position. Rather, the relevance of the quote is that I do not think it is likely, on the balance of probabilities, that the salesman made oral representations which he knew were contradicted by the quote at a meeting in which the quote played a central part.

Therefore, although I have not heard directly from the salesman, I do not accept the CMC's submission that Mr M's own evidence is the only evidence about what was said at the meeting. The quote is also evidence about that.

Having carefully considered everything provided, I do not uphold the complaint about misrepresentation. That is because the sales documentation sets out the cost and the estimated benefit of the panels very clearly, and the benefits did not begin to approach the cost.

I have seen a one-page document called "Performance & Earnings Forecast." This says in bold capital letters "Year 1 Benefit (£)" and next to that is the figure £795.75 (I have rounded this to the nearest full penny). I think this figure is conspicuous; it is not buried in some small print. Just below that it says that the cost of installing the solar panels (subject to survey) will be £8,500. In fact, the cost turned out to be £8,000. Mr M agreed to pay for this with a ten-

year loan, so it would have been quite clear that he would have to pay £800 a year, plus interest. That is obviously more than the estimated benefit in the first year.

For these reasons, I am not persuaded that the installer misled Mr M about the benefits and cost of the panels. It was clear that the panels would not be self-funding during the term of the loan.

My provisional decision

My provisional decision is that I am minded to uphold this complaint in part.

Subject to any further representations I receive from the parties by the deadline below, I intend to order Shawbrook Bank Limited to pay Mr M £1,073.41, plus simple interest on that sum at the rate of 8% a year from 2 November 2020 to the date of settlement.

Responses to my provisional decision

Mr M accepted my provisional findings. Shawbrook did not object to them in principle, but had some questions. It wanted to know if Mr M had approached the installer of the panels about the repairs, and why he had not contacted Shawbrook at the time. It also asked if there was better evidence of the work which had been carried out.

The answers were that the installer had referred Mr M to its sub-contractor, which had carried out the repairs. The evidence already provided was the only evidence of what had been done. Mr M had not known he had the right to pursue Shawbrook under the Act at the time. I passed on this information to Shawbrook, which has not contested it.

I accept those answers, and I am satisfied by the evidence I have seen that the repairs described in the receipts were completed and that Mr M paid for them. So there is no reason for me to depart from my provisional findings, and I confirm them here.

My final decision

My decision is that I uphold this complaint in part. I order Shawbrook Bank Limited to pay Mr M £1,073.41, plus simple interest on that sum at the rate of 8% a year from 2 November 2020 to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 22 November 2022.

Richard Wood
Ombudsman