DRN-3706282

The complaint

Mr and Mrs B have complained that Shawbrook Bank Limited ("Shawbrook") rejected their claim against it under Section 75 of the Consumer Credit Act 1974.

What happened

Mr and Mrs B bought a solar panel system ("the system") for their home in 2015. 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 this case, that relates to the installer misleading Mr and Mrs B into believing that the panels would be self-funding, which they weren't.

After the complaint was referred to our service, Shawbrook agreed to uphold Mr and Mrs B's claim and offered redress that it says is in line with our established approach to these types of cases. Essentially, Shawbrook offered to work out how much benefit (in Feed in Tariff (FIT) payments and savings on energy bills) Mr and Mrs B's system would generate over the 10-year term of the loan and charge them no more than that.

However, Mr and Mrs B felt Shawbrook's offer did not fully compensate them for their losses and refused to accept this. The redress offer made by Shawbrook, included an assumed FIT benefit Mr and Mrs B were not in receipt of. Shawbrook said it was the consumers responsibility to apply for the payments and Shawbrook would not compensate them for losses it had not caused. Mr and Mrs B had applied for the scheme, but their application was lost, and this didn't come to light until the deadline for the application had passed. Mr and Mrs B also felt they had done nothing wrong and without taking this into account, the redress was not fair as the system would still not be self-funding.

Mr and Mrs B's complaint was considered by one of our investigators. She felt that in order to fully compensate Mr and Mrs B, Shawbrook should recalculate its offer taking account of the fact that Mr and Mrs B didn't receive FIT payments. Alternatively, it could unwind the contract.

Shawbrook didn't agree – while it was happy to offer compensation, it did not feel it should have to recalculate the offer without assumed FIT payments. As an agreement couldn't be reached, the case was passed to an ombudsman.

What I've 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.

Shawbrook is familiar with all the rules, regulations and good industry practice we consider when looking at complaints of this type, and indeed our well-established approach. So, I don't consider it necessary to set all of that out in this decision.

Bearing in mind that both parties have accepted that the system was mis-represented to Mr and Mrs B, I don't need to consider that as part of this decision. It seems clear, the only matter left in dispute is how to put things right which I'll consider as part of this decision.

Determining fair compensation is not always an exact science and it is all the more difficult in a case like this where solar panels have been installed at a property. Usually, if I'm persuaded that a consumer wouldn't have purchased the system but for the misrepresentation, I'd have to consider whether Shawbrook should unwind the credit agreement. Shawbrook would have to remove the solar panels (at its expense), give Mr and Mrs B a refund of any payments they've made less *actual* benefit they've received. Shawbrook would also have to make good any damage to Mr and Mrs B's property caused by the installation and removal of the solar panels. This would be the position Mr and Mrs B would be in had the misrepresentation not taken place.

But the removal and disposal of a working system would be disproportionately costly for Shawbrook and may also lead to other problems such as damage to Mr and Mrs B's roof and internals leading to further costs for Shawbrook. And of course, this also leads to a perfectly working solar panel system being disposed of. This is why we have an established approach to redress in these types of cases. We ask financial businesses to work out what benefit (usually including savings and FIT payments) consumers are likely to achieve over a 10-year period and charge them no more than that for the system. The aim of our redress is to be fair to both parties. It minimizes costs for Shawbrook and minimizes disruption to consumers and puts them in a position where they suffer no financial loss. Mr and Mrs B have also indicated they would settle the case on that basis rather than insist on a full unwind.

But if Shawbrook includes an assumed FIT benefit in its calculation, that Mr and Mrs B are not actually receiving, they are not placed in a cost neutral position. So, the aim of the alternative redress is not achieved. While I do understand Shawbrook's position, and that it would normally include this benefit (because consumers would usually be in receipt of it), in this case, its offer does not ensure the customers suffer no financial loss – irrespective of who is to blame for Mr and Mrs B not being registered for FIT payments. So, I don't think its offer is in line with our established approach to these cases.

Shawbrook says Mr and Mrs B received a receipt from the supplier which they signed, and this informed them that they had to apply for the FIT scheme within 5 days of installation so this ought to have highlighted the urgent need to apply promptly.

However, I note the statement on the receipt is in small print and not highlighted and doesn't inform Mr and Mrs B of the said deadline. Given the incredibly short window of opportunity they had to sign up for the scheme, and FIT payments being one of the main financial benefits of having the system – I think this really ought to have been clearly brought to their attention.

In any event, I understand Mr and Mrs B completed an application for the FIT scheme in December 2015 in time. When Mr and Mrs B didn't receive payments from the FIT scheme as expected, they chased their provider, and they were informed that the application hadn't been received. Mr and Mrs B were also told the deadline to register the system had now passed. We have to bear in mind that Mr and Mrs B's installation and application was during the holiday period. Mr and Mrs B had a short window of opportunity to register for the scheme and they say they weren't told of the urgency of it, nor were they told that there was a deadline by which the system had to be registered. And, in any event, they say they did apply before the deadline.

As explained above, including assumed benefit amounts that consumers are not actually receiving does not place consumers in a cost neutral position and it does not ensure consumers suffer no financial loss – which is the main purpose of the alternative redress. So, in cases where customers haven't registered for FIT, we usually do not expect businesses to include assumed benefit amounts unless there are exceptional reasons why it may be fair to do so. I'm not satisfied that this is the case here. Mr and Mrs B have done what was asked of them in time, despite not being informed of the looming deadline. And the failings of either the postal service or their provider misplacing their application does not mean they've been negligent in any way.

So, I'm not satisfied that its fair for Shawbrook to depart from our usual approach to redress in these types of cases. It should, therefore, only include the actual benefit amounts Mr and Mrs B have (and will) achieve over a 10- year period and work out their compensation on that basis. This will put them in a position where they suffer no financial loss because of the misrepresentation. This is still more cost effective for Shawbrook than a full unwind and ensures that Mr and Mrs B suffer no financial loss. So, I think the redress I've ordered in this case is fair and reasonable considering all the circumstances of this case.

Putting things right

To clarify, I think that it would be fair and reasonable in all the circumstances of Mr and Mrs B's complaint for Shawbrook to put things right by recalculating the original loan based on the known and assumed future savings that Mr and Mrs B will get from the solar panels over a 10-year period so they pay no more than that, and they keep the solar panel system, and any future benefits once the loan has ended. To confirm, the recalculation would usually include a reduction for the FIT benefit Mr and Mrs B would have received from the solar panel system. But Mr and Mrs B's solar panels were not registered for the FIT scheme, and they have not received any payments from this scheme. So, for the reasons explained above, in these circumstances, I don't think it's fair that any assumed FIT payments are included in the recalculation.

In the event the calculation shows that Mr and Mrs B have paid more than they should have, then Shawbrook needs to reimburse them accordingly. Should the calculation show that the misrepresentation has not caused a financial loss, then the calculation should be shared with Mr and Mrs B by way of explanation.

I understand Mr and Mrs B have settled the loan, so Shawbrook should pay them the difference between what they paid in total and what the loan should have been under the restructure above, with 8% interest.

Shawbrook has offered £200 compensation for the time taken to respond to Mr and Mrs B's complaint which I think is fair. I direct that Shawbrook should pay £200 compensation for the trouble and upset caused.

My final decision

For the reasons I've explained, I'm upholding Mr and Mrs B's complaint. Shawbrook Bank Limited should put things right in the way I've set out above.
Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mrs B to accept or reject my decision before 27 October 2023.

Asma Begum
Ombudsman