DRN-3745276

The complaint

Mr A and Mr R complain that Shawbrook Bank Limited declined their claim under section 75 of the Consumer Credit Act 1974 ("the Act") relating to their purchase of solar panels.

Mr A and Mr R are represented in this case by a claims management company ("the CMC").

Background

In or around November 2017, Mr A and Mr R were contacted by a representative of a company I'll call "P" to talk about purchasing a solar panel system ("the system") to be installed at his home. After being visited by a representative of P, Mr A and Mr R decided to purchase the system and finance it through a 15 year fixed sum loan agreement with Shawbrook. The system was subsequently installed.

In November 2019 the CMC made a claim to Shawbrook on Mr A and Mr R's behalf under section 75 of the Act. The CMC said that, following a cold call, P had made a number of representations about the system that had turned out not to be true, and it was these misrepresentations that had induced Mr A and Mr R to enter into the contract with P. The CMC said the following misrepresentations had been made:

- the system would generate free electricity which he could sell to the national grid;
- the system would be self-funding after eight years;
- the feed in tariff (FIT) and savings on his electricity bills would provide enough income to cover the monthly loan payments; and
- the system would not require maintenance (but in fact the inverter would have to be replaced during the system's 25-year lifespan, at a cost of £1,000).

Mr A and Mr R also complained about the system's performance, as they say it has been generating less energy than the installer told them it would at the point of sale. And they complained that the roof had been damaged during installation, resulting in damp.

Shawbrook issued a final response and explained that it didn't agree the system had been misrepresented to Mr A and Mr R or that there were any other reasons for the claim to be upheld.

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 A and Mr R. But he did think that the system was not performing as it should, and so on that basis he upheld this complaint.

Shawbrook didn't accept the adjudicator's view. It consulted P, which suggested that it should inspect the system to identify the problem and see if it can be remedied.

As an agreement couldn't be reached, the case has been passed to me for review.

(Shawbrook also asked for up to date FIT statements. The adjudicator has requested these from the CMC, but I don't think I need to wait for them, as these can still be provided after I have issued this decision. I will address this later on in my decision.)

My findings

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

Having done so, I uphold this complaint. I will explain why.

Relevant considerations

When considering what's fair and reasonable, I'm required to take into account relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice, and, where appropriate, what I consider to have been good industry practice at the relevant time. In this case the relevant law includes sections 56, 75 and 140A of the Act.

Section 75 provides protection for consumers for goods or services bought using credit. As Mr A and Mr R paid for the system with a fixed sum loan agreement, Shawbrook agrees that section 75 applies to this transaction. This means that Mr A and Mr R could claim against Shawbrook (the creditor) for any misrepresentation or breach of contract by P in the same way he could have claimed against P (the supplier). So I've taken section 75 into account when deciding what is fair in the circumstances of this case.

Section 56 is also relevant. This is because it says that any negotiations between Mr A and Mr R and P, as the supplier, are deemed to have been conducted by P as an agent of Shawbrook.

Section 140A is about unequal relationships between the parties to a credit agreement. In this case, the CMC relies on the alleged misrepresentation of the system.

For the purpose of this decision I've used the definition of a misrepresentation as an untrue statement of fact or law made by one party (or his agent) to a second party which induces that second party to enter the contract, thereby causing him loss.

The quote

Shawbrook has provided the quote it says the installer provided to Mr A and Mr R at the time of the sale which is entitled "Your Personal Solar Quotation".

I'm satisfied that this quote was a central part of the sales presentation. I think this document is also relevant when considering if there have been any untrue statements of fact and is particularly helpful when considering Mr A and Mr R's recollections of the sales process.

Damp

I have seen no evidence that the damp or the damage to the roof were caused by the installation not being carried out correctly, or that this issue was raised with P or Shawbrook within six months of the installation. Under section 19 of the Consumer Rights Act 2015, it is for the consumer to prove that any fault or damage arising after more than six months was the fault of the installer. So I do not think that Shawbrook was wrong to decline that part of the section 75 claim; that was a decision it was entitled to make.

Benefits and performance of the system

Having read the quote, I think that Mr A and Mr R were told that the system would pay for its cash price over an eight year period, not that it would be self-funding from the start.

Therefore, I cannot agree that the installer misrepresented the panels as being self-funding from the start.

The quote has a table setting out the system's estimated performance over 25 years. Based on this, I'm satisfied that the installer told Mr A and Mr R that the system would pay for itself by year 13, as the accumulated grand total of income and savings would by that time have exceeded the total cost of the system (including the finance costs). If that turns out not to be true and if I'm satisfied that this induced Mr A and Mr R into entering the contract and they suffered a loss, then that could amount to a misrepresentation.

Mr A and Mr R have provided their meter reading for 3 October 2022. This shows the system has generated 12,477 kWh since it was installed on 26 November 2017. This works out as an average of 2,570 kWh a year.

In a number of places in the quote the installer has estimated that the system would generate 2,992 kWh of electricity a year. The MCS certificate says 2,959 kWh. So it can be seen from the FIT statements that the system has significantly underperformed compared to the installer's estimates from the point of sale – only 86 or 87% of what was estimated. (It was already underperforming within six months of installation, according to the FIT statements – 75% in March 2018 – so I'm satisfied that the problem was present at the point of sale.)

I'm satisfied that the estimated generation and the subsequent FIT payment and electricity savings would have induced Mr A and Mr R into entering the contract. The generation and therefore income are significantly lower than they were promised so they have suffered a loss.

Mr A and Mr R raised underperformance in their claim to Shawbrook in 2019. Shawbrook failed to address this point in their investigation. They've had time to take action and look into this but have not, and I do not propose to delay the resolution of this complaint any longer for that to happen now. Instead, I need to establish a reasonable way forward for this case without the benefit of that evidence.

Putting things right

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mr A and Mr R's complaint for Shawbrook to put things right by making sure that Mr A and Mr R doesn't suffer a financial loss. In my view that would mean that the solar panel system should generate roughly what was promised in the quote.

So Mr A and Mr R should provide their most recent FIT and electricity statements to Shawbrook via the CMC, and then Shawbrook must:

a) calculate the difference between what the panels have generated as income (through the FIT and savings) for Mr A and Mr R and what the sales paperwork set out as being the annual "total income savings", and

b) add simple interest to that amount at the rate of 8% a year (from 26 November 2017 to the date of settlement), and pay the total to Mr A and Mr R (either directly or via the CMC).

To ensure that Mr A and Mr R don't lose out going forward, Shawbrook must then:

c) calculate the average annual underperformance percentage so far, and assume that the panels will continue to underperform at that rate through to the conclusion of the

finance agreement,

d) recalculate the “total income savings” for each year going forward until the conclusion of the finance agreement, having applied the percentage reduction identified in paragraph c) above,

e) pay Mr A and Mr R the difference between the revised amounts calculated in paragraph d) above and the “total income savings” set out in the sales paperwork.

I also direct Shawbrook to pay £100 compensation for the inconvenience caused.

My final decision

For the reasons I’ve explained, I’m upholding this complaint. I order Shawbrook Bank Limited to 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 A and Mr R to accept or reject my decision before 30 November 2022.

Richard Wood
Ombudsman