

The complaint

Mr R complains that Shawbrook Bank Limited rejected his claim under Section 75 of the Consumer Credit Act ("the Act").

What happened

In 2015, Mr R purchased a solar panel system ("the system") from a supplier, which I'll call "P", which was installed at his shared ownership property.

Later, the housing association, which owned the freehold of the property and the other share of the leasehold, requested the system be removed and threatened to get an injunction to enforce removal at Mr R's expense. It said that under the terms of the lease Mr R should've gained consent to the installation from the housing association and that if he had, such consent would have been refused.

Mr R initially complained to P about this, but P rejected his complaint. P said that Mr R signed documents at the time of sale and installation indicating he was the owner of the property.

With the help of a claims management company ("the CMC") Mr R then made a claim to Shawbrook under Section 75 of the Act for breach of contract. The CMC said that P had breached the Renewable Energy Consumer Code ("RECC") of which it was a member at the time of sale. And that if it had not done so, P would not have sold the system to Mr R.

Shawbrook responded to say that on the loan application Mr R had indicated he was the "owner occupier" of the property.

Our investigator considered the matter and said the complaint should be upheld. He said the loan agreement should be unwound and that Shawbrook should remove the system from Mr R's property.

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.

Section 75 of the Act provides protection for consumers for goods or services they've purchased on finance. This means that Shawbrook as finance provider is liable for any misrepresentations or breach of contract by P.

Under the terms and conditions of the contract it said that P would carry out works in accordance with the RECC.

At the time of sale, the RECC stated under section 5.5 Permissions, approvals and grants that:

- Code members will advise the consumer that they should tell any leaseholders, freeholders, mortgagors and insurers of the property about the planned work and of the need to obtain the relevant consent.

I'm satisfied that, in order to fulfil this obligation under RECC, P should've discussed the ownership situation with Mr R and advised him to obtain consent from the housing association, then ensure that consent was obtained before the sale or installation went ahead. Had P done this, consent would've been refused, and the sale would not have gone ahead. By not doing so P has breached the RECC, and the terms of the contract.

Mr R says he told P about the property being shared ownership on several occasions and even offered the lease for P's representative to inspect. But that he was told this wasn't a problem because he owned some of the property.

I note from the information provided by Shawbrook that shared ownership was not an option on the loan agreement where it asked about occupancy status of the property. Shawbrook suggests the options of "council tenant" (which was not the case) or "other" would've been the appropriate response. But Mr R says that P's salesperson filled in the application on his behalf and had been given the correct information about occupancy. So, while Mr R signed the application, I think he was reassured by P that the information on it was correct based on what he had told P.

Overall, I'm satisfied that there was also a breach of contract by P in that it did not carry out the works in accordance with the RECC. Had it done so the system would not have been sold to Mr R. As a result, Mr R faces a loss because he will have to pay for removal of the system while still being liable for repaying the loan to Shawbrook. So, I've decided to uphold this complaint.

Putting things right

To put things right, Shawbrook should:

- Arrange the full unwind of the loan agreement.
- Pay for the system to be removed and Mr R's property to be reinstated/made good.
- Refund all payments made by Mr R toward the loan agreement, plus interest at 8% simple per year from the date he paid them until they're refunded – less any financial benefit gained from the installation of the solar panel system (based on actual information where available and reasonable assumptions where it is not).
- Remove entries relating to the loan from credit reference agency reports.
- Pay Mr R £300 in recognition of the distress and inconvenience caused.

My final decision

For the reasons I've explained, I uphold this complaint. Shawbrook Bank Limited should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 31 January 2023.

Phillip Lai-Fang

Ombudsman