DRN-3928005

The complaint

Mr L has complained that Shawbrook Bank Limited ("Shawbrook") rejected his claim against it under section 75 of the Consumer Credit Act 1974 ("the Act") in relation to his purchase of some solar panels.

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

Background

Mr L bought solar panels for his home in autumn 2014. The purchase was funded by a loan from Shawbrook, and so that business is liable under the Act for the acts and omissions of the installer. Mr L says the installer misled him into believing that the panels would be self-funding, which they weren't. He also says that the failure of the panels to produce as much money as estimated amounts to a breach of contract.

One of our adjudicators looked into what had happened. Having considered all the information and evidence provided, our adjudicator didn't think that the installer had misrepresented the system to Mr L and found no reason to uphold the complaint. The CMC did not agree, and so the case was referred 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.

Having carefully considered everything provided, I am minded to uphold this complaint. I will explain why.

There are two contracts: the original, dated 29 September 2014, is for 16 panels, and a new contract, dated 16 October 2014, is for 13 panels. I will consider both of them. Each document is one page long. Each has been signed by Mr L, so I am satisfied that he read them when they were given to him.

The original contract gives the cash price of the panels as £6,785. Next to that it gives a breakdown of the income the panels will generate and the estimated savings on Mr L's electricity bills, and then gives the total benefit as £894.86. This is described as "Total Returns Year 1".

The interest on the loan does not appear on this document, and so I think that Mr L could be forgiven for overlooking it while just looking at the contract and comparing the price with the expected benefits. So for now I will focus on just the cash price as it appears on the contract (but I will refer to the interest later on).

Mr L took out a 15-year loan to pay for the panels. I wouldn't expect him to be able to divide the amount borrowed, £6,785, by 15 in his head while reading the contract. But even divided

by only ten, that still comes to £678.50 a year, which is obviously less than the estimated benefit in the first year (which as I've said was £894.86), and that would have been easy for him to work out. (In fact, the cash price divided by 15 years is £452.33.) So this contract gave the impression that the income and savings from the panels would be more than enough to cover the loan payments.

The second contract gives the cash price as £5,989 and the estimated first year benefit as £727.07. Again, this also shows that the estimated benefits each year would exceed one fifteenth of the cash price (£399.27).

I think that both documents were capable of misleading Mr L into thinking the panels would pay for themselves, as while they allowed comparison of the benefits with the cash price, they did not show the interest on the loan or the total amount repayable under the loan.

The interest and the total amount repayable did of course appear in the loan agreement, along with the amount Mr L would have to repay each month. These figures are set out clearly. The total to repay over 15 years was £13,404.50, at £74.47 a month. That comes to £893.64 a year, which is almost exactly the same as the benefit figure in the first year as shown in the original contract (£894.86). The loan agreement was signed on the same date as the original contract, so Mr L had sight of both of them at the same time. So even if he did compare the contract with the loan agreement, he would still have seen that the panels were expected to make enough money to cover his loan payments (at least when averaged out over the year, if not necessarily in each of the winter months).

So I am satisfied that Mr L was told at the point of sale, on 29 September 2014, that the panels would be self-funding, even when taking the loan interest into account.

That turned out not to be the case. The MCS certificate, dated 16 October 2014 (which is of course for 13 panels rather than 16), says that the 13 panels were expected to generate 2,862 kWh a year. But by March 2021 they had generated 11,863 kWh, which works out as only 1,845 kWh a year, or 64% of the estimate. So there is obviously a problem with the panels. They are not performing as they should.

That in itself is not necessarily a misrepresentation. I propose to treat it as a breach of contract, in that the panels are not fit for purpose and are not of a satisfactory condition, or were not installed with reasonable care and skill. Shawbrook is liable for that.[1]

Before I deal with the remedy for that breach, I will turn to the variation of the contract a couple of weeks later, in October.

If Mr L had compared the loan agreement with the new contract, he would have seen that while 16 panels would pay for themselves, 13 panels would not. But I don't think he should have been expected to go back and look again at a loan agreement which he had (perhaps) already inspected when he signed it, to compare it again with the new contract as varied and then realise that the panels would no longer be self-funding after all. I think that the new cost and benefit figures should have been set out for him again, before the new contract was executed. That wasn't done. So I don't think he would necessarily have realised that the panels actually installed would not be self-funding. I therefore think that they were mis-sold.

I can't say that this was definitely a misrepresentation, because the installer's representative attending in October probably didn't say that the 13 panels would still pay for themselves.

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[1] I may however change my mind and decide that there was a misrepresentation after all if it turns out that the panels actually have nothing wrong with them and are working properly, because that would indicate that their performance was exaggerated.

But I am satisfied that when Mr L agreed to the variation, he was still relying on what he had been told in September; he was induced into entering the contract by the promise that the 16 panels would be self-funding; and he would probably not have proceeded with the purchase if he had realised that the 13 panels would not be self-funding in that they would not cover the loan payments. So I propose to take all of this into account when deciding what is fair redress for the breach of contract (rather than as a separate head of damages for misrepresentation).

For the above reasons, I am currently minded to uphold this complaint and to require Shawbrook to put things right for Mr L in the following manner.

Putting things right

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mr L's complaint for Shawbrook to put things right by making sure that Mr L 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 *original* contract, dated 29 September 2014, which estimated the system's annual performance at 3,523.52 kWh. (The system is generating 52% of that.)

So Shawbrook must:

a) calculate the difference between what the panels have generated as income (through the FIT and savings) for Mr L and what the *original* 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, and pay the total to Mr L (either directly or via the CMC).

To ensure that Mr L doesn't lose out going forward, Shawbrook must then:

c) calculate the average annual underperformance percentage so far based on a generation figure of 3,523.52 kWh a year, 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 L the difference between the revised amounts calculated in paragraph d) above and the "total income savings" set out in the September 2014 sales paperwork.

I'm satisfied that there was sufficient information available at the time that Mr L first contacted Shawbrook that means the claim should have been upheld. I will direct that Shawbrook must pay £100 compensation for the inconvenience caused.

Responses to my provisional findings

Mr L accepted my provisional decision. Shawbrook did not respond. So there is no reason for me to depart from my provisional findings, and I confirm them here.

I will add that Shawbrook must show its working once it has carried out the calculation described above.

My final decision

My decision is that I uphold this complaint. I order Shawbrook Bank Limited to put things right in the way I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 24 March 2023.

Richard Wood
Ombudsman