DRN-3930087

Complaint

Mr M complains that Shawbrook Bank Limited ("Shawbrook"), has rejected the claim he made under section 75 of the Consumer Credit Act 1974 ("the Act") in relation to a solar panel system he says was misrepresented to him by the supplier.

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

Background

In August 2016, Mr M was 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 M decided to purchase the system and finance it through a 10-year fixed sum loan agreement with Shawbrook. The system was subsequently installed.

In November 2021, the CMC made a claim on Mr M's behalf under section 75 of the Act to Shawbrook. The CMC said that 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 M to enter into the contract with P. The CMC said the following misrepresentations had been made:

- The system would be self-funding.
- The feed in tariff (FIT) and savings on energy bills would provide enough income to cover the finance agreement repayments costs.
- The CMC also added that Mr M's roof and guttering had been damaged during the installation causing an internal leak and requiring significant repair work.
- Mr M also pointed out that his inverter had to be replaced soon after the installation of the system. He has since added that P never paid him compensation for lost generation.

Shawbrook didn't agree the system had been misrepresented to Mr M or that there were any other reasons for the claim to be upheld. But it offered £100 compensation for not fully investigating and responding to Mr M's complaint.

One of our investigators looked into what had happened. Having considered all the information and evidence provided, our investigator didn't think that P had misrepresented the system to Mr M. She also thought that Mr M hadn't demonstrated that the damage to the roof and internal leak had been caused by the poor installation of the system. But she did think Shawbrook should refund the cost of the gutter repair.

The CMC and Mr M didn't agree. Mr M could not provide evidence as to the cause of the damage to the roof because the company that carried out the repair work was now in liquidation. It pointed out that he didn't notice the damage until several years after the installation because the damage occurred slowly over time, and its only when the ceiling collapsed that Mr M became aware there was a problem. Mr M hadn't contacted Shawbrook about this issue earlier because he'd received poor service from P in the past and needed the issues resolved quickly.

Shawbrook didn't agree explaining that it was not responsible for gutter maintenance and some of the repair work quoted was for general maintenance. It didn't feel Mr M had demonstrated that the other issues caused was due to a faulty installation.

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

In my provisional decision of 6 January 2023, I set out why I minded to upholding the complaint in part. I invited both parties to provide any further submissions they may wish to make before I reached a final decision. Shawbrook replied saying it accepted the findings set out in the provisional decision. The CMC replied that it didn't feel it was fair that Mr M's complaint wasn't upheld in full because the repair company had gone into liquidation and couldn't provide evidence as to the cause of the roof damage. It felt the Shawbrook had also provided no evidence to support its claims.

My findings

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

In my provisional decision I explained the following:

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 section 56 and section 75 of the Act. Section 75 provides protection for consumers for goods or services bought using credit.

As Mr M paid for the system with a fixed sum loan agreement, Shawbrook agrees that section 75 applies to this transaction. This means that Mr M 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 M and P, as the supplier, are deemed to have been conducted by P as an agent of Shawbrook.

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 them loss.

What happened?

If there is a dispute about what happened, I must decide on the balance of probabilities - what I think most likely happened, given the evidence that is available and the wider surrounding circumstances.

Mr M says that during a sales meeting he was told that the system would be entirely self-financing and come at no additional cost.

There are several documents that have been provided by both the CMC and Shawbrook. These include the credit agreement and a quote. The quote sets out sets out key information about the system, the expected performance, financial benefits and technical information. It has been signed by Mr M several times. I've considered these documents, along with the consumers testimony and recollection of the sales meeting, to decide on balance what is most likely to have happened.

Cost of the system

The loan agreement clearly sets out the cash price of the goods.

I'm satisfied that Mr M was told that the cost of the system was £4,699.99 in both the credit agreement and the quote. The total amount of credit is £4,599.99 (after deducting a deposit of £100) and goes on to show that the total amount payable would be £7,242.40.

The quote also set out that the expected monthly loan repayment was £56. But I note Mr M's monthly payment is marginally different at £59.52 in the credit agreement – but I don't think this difference makes the quote mis-leading.

Having considered all the evidence, including the consumer's recollections, I'm satisfied that he was told that there would be a monthly loan repayment due. I'm also satisfied that the two documents, the quote and the credit agreement, made it clear that although the cost of the system was £4,699.99, it would cost Mr M more than this as he had decided to pay for it with an interest bearing loan.

Financial benefits

Mr M has said that he was told his monthly loan repayments would be covered, or 'self-funded' by the FIT payments and savings on energy bills. I've considered the quote that was provided by P as well as the consumer's recollections of their meeting with P's representative to decide what is most likely to have been said.

The quote sets out the estimated income Mr M could expect to receive by way of FIT payments from the system and savings on energy bills.

Your Total Annual return:			£314
The break down:			
Feed-in Tariff income	£0.0425	per kWh	£98
Export Tariff income	£0.0491	per kWh	£57
Electricity Bills Savings	£0.1386		£160
Your Return On Investment (ROI)			6.7%

I think it's clear that Mr M could expect to receive a total FIT income of £155 (Fit income of £98 and export income of £57) annually. This results in an average monthly income of £12.91. The quote also went on to look at the electricity savings Mr M could expect from the system. The expected annual electricity savings is £160 and the combined income and savings annually is shown as £314.

As outlined above, I'm satisfied that the quote set out that there would be a monthly loan repayment due of £56 (which is £672 annually). As a result, I'm not able to conclude that the

consumer was told that the monthly loan repayments would be covered by the FIT payments and savings on energy bills.

There's a section headed 'Your Estimated Monthly Breakdown', which has a table setting out Mr M's monthly payments against the estimated monthly income for the 20-year lifetime of the system. For each year, it shows an average monthly estimate for income and savings for that year. It then subtracts the monthly loan repayment of £56, to give an average difference between the monthly return from the system and the monthly loan repayment in each year. The monthly payments are only included for 10 years as that was the term of Mr M's loan.

Your Estimated Monthly Breakdown

SolarLoan length (years): 10

Based on your Home Solar Evaluation:

Year	Monthly Earnings & Savings	Monthly Payment	Profit
1	£26	£56	£-30
2	£27	£56	£-29
3	£28	£56	£-28
4	£29	£56	£-27
5	£31	£56	£-26
6	£32	£56	£-25
7	£33	£56	£-23
8	£34	£56	£-22
9	£36	£56	£-21
10	£37	£56	£-19
11	£38	£0	£38
12	£40	£0	£40
13	£41	£0	£41
14	£43	£0	£43
15	£45	£0	£45
16	£46	£0	£46
17	£48	£0	£48
18	£50	£0	£50
19	£52	£0	£52
20	£54	£0	£54

I think the table does clearly set out that the overall income he could expect to receive by way of FIT income and any additional savings, would not be immediately sufficient to cover the monthly loan repayments during the full term of the loan. This supports my finding above that the consumer wasn't told that the FIT payments and savings would cover the loan repayment.

While I've carefully considered Mr M's testimony, I find the documents from the time of sale to be more persuasive in terms of what information he was likely given at the time of sale. So, I don't think I can reasonably find that he was told that the monthly loan repayments would be covered by the FIT income and additional savings. On balance, I think the evidence suggests that it is unlikely there was a misrepresentation that would enable me to uphold this complaint on that basis.

Damage to roof and internal leak

Mr M has said that he has had to pay significant sums to a roofing company to repair damage to his roof which he feels was caused by the installation of the solar panels system. He also had to pay to rectify damage to his ceiling for an internal leak. He has submitted evidence of payments made and invoices with a breakdown of the repair work that was carried out. He says this damage was caused by the installation of the panels which have since been removed and disposed of. Mr M cannot provide any reports as to the cause of the damage as the roofing repair company has since gone into liquidation.

I have thought carefully about Mr M's claims and understand he has paid out significant sums to have repair works carried out. I don't underestimate the effect the outcome of this complaint will have on him.

However, the invoices, payments and works carried out were all conducted around February 2021, some 5 years after the installation in Autumn 2016.

I can also see that this wasn't raised with Shawbrook until after the damage had already been repaired when he submitted a claim (through his representative) in November 2021.

If the installation had caused damage to the roof and the internal leak, I would generally have expected this to come to light sooner. Five years is a very long time and where that time has passed, I would need persuasive evidence that the damage was indeed caused by the poor installation of the system. I haven't seen sufficient evidence linking the loss he has suffered to the installation carried out by P. Normally we would expect there to be experts reports to demonstrate this.

I understand Mr M has also contacted Shawbrook in the past (when his inverter stopped working), and while I appreciate he found working with P frustrating, he did send a letter to Shawbrook customer services department to say how pleased he was with its service. Had Mr M contacted Shawbrook prior to the repair works being carried, it could have sent out its own experts to assess this. By not doing this, Mr M has prejudiced Shawbrook's position.

So while I appreciate the difficulties Mr M has experienced and sympathise that the roofing company is now unable to provide any further documentary evidence, I'm afraid he hasnt provided sufficient evidence to demonstrate that the loss was caused by a breach of contract on the part of P.

Based on everything I've seen, I'm not satisfied that the damage to the roof in 2021 and the internal leak, was caused by the installation of the solar panel system. And I don't intend to ask Shawbrook to reimburse Mr M for the payments he has made.

Broken inverter and lost generation

I understand Mr M raised a complaint about a broken inverter in December 2016 and the inverter was replaced in early 2017. Shawbrook sent Mr M a letter in April 2017 setting out that the inverter has since been repaired by P and that P would be paying compensation for the loss of generation for the period the inverter was not working. I can see this letter was wrongly addressed, and Mr M has said he never received any further correspondence from Shawbrook after having raised his concerns with it. So, it doesn't appear Mr M received this letter.

Mr M has now told us that he was never paid compensation for lost generation for the period the inverter had been broken. Mr M never received Shawbrook's letter from April 2017, so he couldn't have chased this payment up at that time.

Given this has been offered to Mr M but wasn't paid, I think Shawbrook should now compensate Mr M for the lost generation as offered by P.

I can see that Mr M completed a dissatisfaction form which set out he first noticed a problem with the inverter on 30 December 2016. And Shawbrook wrote to him on 18 April 2017 (to his old address) saying the inverter had been repaired.

So, I think Shawbrook should work out what Mr M's system would have generated between 30 December 2016 to the 18 April 2017 and pay that to him with 8% interest*.

Gutter repair

Mr M also raised concerns that P had damaged his guttering in December 2016 and said P had agreed to come out and repair it. This is set out in his dissatisfaction form.

He has also submitted an invoice showing he paid £150 for gutter cleaning services (with a handwritten note saying it's for solar panel repair).

Gutter cleaning is part or normal maintenance for properties and usually I wouldn't agree that the need for cleaning had been caused by the solar panel installation. However, the dissatisfaction note says that the installer had agreed to "repair" the guttering rather than clean it. Additionally, while the invoice has ticked the box for gutter cleaning, they've also written solar panels repair.

So, to me it looks like this payment was not for general maintenance gutter cleaning, but a repair to the gutter caused by the solar panels. This was also raised soon after installation, and Mr M says he was told by P that it would go out to repair it (so P appears to have accepted it caused the damage).

Overall, I'm satisfied that Mr M had a gutter repair (rather than a normal clean) which was caused by P, and for which it seems to have agreed to repair it. So overall, I think Shawbrook should pay Mr M £150 with interest at 8% to reimburse him for the costs he has incurred for P failing to repair the gutter as offered.

I can also see Shawbrook has offered £100 compensation for trouble and upset caused for not fully investigating and responding to his complaint sooner. I think that's a fair offer in this case, so I don't intend to ask Shawbrook to pay any more.

Putting this right

Shawbrook should pay to Mr M:

1. £150 for the gutter repair plus 8% interest*. 8% simple interest should be paid from the date Mr M made the payment to the date of settlement

2. Loss of generation from 30 December 2016 until the 18 April 2017 – with 8% interest*. 8% simple interest should be paid from 18 April 2017 to the date of settlement.

3. £100 compensation for the trouble and upset caused as explained above.

*If Shawbrook considers that it is required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr M how much it's taken off. It should also give him a certificate showing this, if he asks for one, so he can claim the tax from HM Revenue & Customs.

Further submissions

The CMC has reiterated that Mr M is unable to provide any experts report setting out the cause of the damage to the roof since the repair company has gone into liquidation. They have resubmitted an invoice for the works carried out showing that Mr M paid £13,500 in total for the repair works. It details the works carried out including reducing the height of the chimney and removing the chimney. There is a handwritten note saying *leak from solar panels*.

However, there is no further detail on this invoice to satisfy me that this work was needed to remedy a breach of contract on the part of P. For example, when did this leak start, was it caused by poor installation or did the leak in the roof around the solar panels develop later? Was all this work necessary to rectify a leak? Roofs deteriorate over time and require maintenance and sometimes replacement, sometimes they're damaged by stormy weather etc. There are many reasons why the roof may have started leaking and I'd need expert's opinion and persuasive evidence to satisfy me, that P had caused this damage during the installation and therefore was responsible for its repair. These are all issues that would normally be set out in an expert's report.

Mr M has made a claim for £13,500 for breach of contract several years after the installation – so the onus is on him to provide evidence to prove that claim. Bearing in mind the significant nature of the works carried out, and the sums claimed, as I've already set out in my provisional decision (and set out above), while I sympathise with his position, I'm afraid there simply isn't sufficient evidence to enable me to uphold this aspect of the complaint.

Summary

Whilst I've thought carefully about this complaint again, I see no reason to depart from my findings as set out earlier in my provisional decision. So for the reasons explained above, I think the evidence suggests that it is unlikely there was a misrepresentation that would enable me to uphold this complaint on the basis that the system was sold as self-funding.

Mr M has not provided sufficient evidence that the damage to his roof and internal leak was caused by a breach of contract on the part of P so I don't think Shawbrook needs to reimburse him for the costs he has incurred in relation to these issues.

However, for the reasons set out above, (and as Shawbrook now appears to have accepted) Shawbrook needs to pay for the gutter repair, and the lost generation caused by the broken inverter and I reiterate below what it must do to put things right.

Putting this right

(If Shawbrook hasn't already done so) Shawbrook should pay to Mr M:

1. £150 for the gutter repair plus 8% interest*. 8% simple interest should be paid from the date Mr M made the payment to the date of settlement

2. Loss of generation from 30 December 2016 until the 18 April 2017 – with 8% interest*. 8% simple interest should be paid from 18 April 2017 to the date of settlement.

3. £100 compensation for the trouble and upset caused as explained above.

*If Shawbrook considers that it is required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr M how much it's taken off. It should also give him a certificate showing this, if he asks for one, so he can claim the tax from HM Revenue & Customs.

My final decision

For the reasons explained, I uphold this complaint in part. 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 M to accept or reject my decision before 24 February 2023.

Asma Begum
Ombudsman