DRN-4400244

The complaint

Mr B has complained that Shawbrook Bank Limited rejected his claim against it under sections 75 and 140 of the Consumer Credit Act 1974 ("the Act").

What happened

Mr B bought a solar panel system ("the system") for his home from a supplier in 2013. The purchase was funded by a loan from Shawbrook which was covered by the Act.

In 2021, a claims management company ("CMC") made a claim under section 75 and 140 of the Act to Shawbrook on Mr B's behalf alleging that the system was misrepresented to him by the supplier as self-funding through the income and savings it generated. And that this, amongst other things, made Mr B's relationship with Shawbrook unfair on him.

Shawbrook said the claim had been made too late under the provisions of the Limitation Act 1980. The CMC complained about Shawbrook's response, including to the Financial Ombudsman Service.

Mr B's complaint was considered by one of our investigators. They thought that the section 140 claim had been made in time, which Shawbrook has not disputed. Our investigator recommended the complaint be upheld and that to put things right the loan should be restructured so that Mr B does not pay more for the system than the benefit he is likely to receive within the loan term.

Shawbrook did not respond to this other than to say it had asked for the supplier's comments and had not heard back from it. Since Shawbrook has had a reasonable time to respond I have been asked to make a decision to resolve the complaint.

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.

I've looked at this complaint in light of section 140 of the act, which gives the courts power to determine whether the relationship between a creditor and a debtor was unfair to the debtor. The court doesn't just take account of the terms of the credit agreement. What it looks at includes the way the creditor has acted in relation to its rights under the credit agreement. The court also takes account of any linked agreement – for example, a contract to purchase a solar panel system that was paid for using the credit. And it can look at things done (or not done) by or on behalf of the creditor before or after the making of the credit or linked agreement, as per section 56 of the Act. Which, in this case, includes any representations made about the system by the supplier during the sale.

Having looked at the evidence in this case, I've decided to uphold this complaint. The quote provided by the supplier at the time of sale makes clear that the total benefit of the system, through income and savings, would exceed what Mr B had agreed to pay for the system, including the deposit and loan repayments, within the loan term. Mr B says the system is not self-funding in this way. Shawbrook has done nothing to dispute this (such as calculate the past and assumed future benefits of the system to show the system will be self-funding by the end of the loan term, which would meant the supplier's representations about this were true).

In light of this, assuming the system is not self-funding within the loan term, I think a court is likely to find the relationship between Mr B and Shawbrook was unfair because what he was told induced him into the purchase.

I do not think that Shawbrook acted in a fair and reasonable way when it declined Mr B's claim. As such, it should put things right as I've set out below.

Mr B and Shawbrook will note that this will only involve a payment to Mr B (other than £100 compensation which is payable anyway) if the calculation shows that the system will not be self-funding in the loan term (and thus Mr B was misled by the supplier meaning his relationship with Shawbrook was most likely unfair on him).

Putting things right

Shawbrook should put things right by recalculating the original loan based on the known and assumed savings and income to Mr B from the solar panels over a ten-year period, so he pays no more than that, and he keeps the solar panel system and any future benefits once the loan has ended.

In the event the calculation shows that Mr B is paying (or has paid) more than he should have, then Shawbrook needs to reimburse him accordingly. Should the calculation show that the system is self-funding in the loan term then there will be no financial loss, so the calculation should be shared with Mr B by way of explanation.

If the calculation shows there is a loss, then where the loan is ongoing, I require Shawbrook to restructure Mr B's loan. It should recalculate the loan to put Mr B in a position where the solar panel system is cost neutral over a ten-year period.

Normally, by recalculating the loan this way, a consumer's monthly repayments would reduce, meaning that they would've paid more each month than they should've done resulting in an overpayment balance. And as a consumer would have been deprived of the monthly overpayment, I would expect a business to add 8% simple interest from the date of the overpayment to the date of settlement.

So, I think the fairest resolution would be to let Mr B have the following options as to how he would like his overpayments to be used:

A. the overpayments are used to reduce the outstanding balance of the loan and he continues to make his current monthly payment resulting in the loan finishing early,
B. the overpayments are used to reduce the outstanding balance of the loan and he pays a new monthly payment until the end of the loan term,
C. the overpayments are returned to Mr B, and he continues to make his current monthly payment resulting in his loan finishing early, or
D. the overpayments are returned to Mr B, and he pays a new monthly payment until the end of the loan term.

If Mr B accepts my decision, he should indicate on the acceptance form which option he wishes to accept.

If Mr B has settled the loan, Shawbrook should pay him the difference between what he paid in total and what the loan should have been under the restructure above, with 8% interest.

If Mr B has settled the loan by refinancing, he should supply evidence of the refinance to Shawbrook, and Shawbrook should:

1. Refund the extra Mr B paid each month with the Shawbrook loan.
2. Add simple interest from the date of each payment until Mr B receives his refund.
3. Refund the extra Mr B paid with the refinanced loan.
4. Add simple interest from the date of each payment until Mr B receives his refund.
5. Pay Mr B the difference between the amount now owed and the amount he would've owed if the system had been self-funding.

I'm satisfied that there was sufficient information available at the time that Mr B first contacted Shawbrook that means it should've responded fully to the section 140 claim. So, I direct Shawbrook to pay Mr B £100 compensation for the trouble and upset this caused.

My final decision

For the reasons I've explained, I uphold Mr 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 to accept or reject my decision before 8 December 2023.

Phillip Lai-Fang
Ombudsman