DRN-4456239

The complaint

Mr H has complained that Shawbrook Bank Limited rejected his claim against it under Section 75 of the Consumer Credit Act 1974.

What happened

Mr H bought solar panels for his home in 2014. The purchase was funded by a loan from Shawbrook, and that business is therefore liable for the acts and omissions of the installer under the relevant legislation. In this case, that relates to the installer allegedly misleading Mr H into believing that the panels would be self-funding from the start, which he says they weren't.

Shawbrook rejected the claim but offered £200 due to how long it took to respond. One of our investigators looked into what happened and didn't recommend the complaint be upheld. They said Mr H's electricity bills had reduced significantly following the installation to the extent that the system was self-funding in the way he'd been told. So, there had been no misrepresentation and Shawbrook had done nothing wrong by rejecting Mr H's claim.

Mr H rejected this. He pointed out that he had problems with his electricity supplier prior to the solar panel installation in that his supplier thought he was using much more electricity that he actually was. Mr H's representative also pointed out that the apparent reduction in electricity usage significantly exceeded the generation capacity of the solar panels so could not be attributable to them.

Because our investigator did not resolve the complaint I've been asked to make a decision.

I issued a provisional decision explaining that I was planning to uphold this complaint based on a breach of contract and misrepresentation on the part of the supplier.

Mr H's representative replied to confirm he had nothing further to add.

Shawbrook replied providing some comments from the supplier, including that:

- The sales documents included the lower generation figure for the system of 3,532 kWh per year, so Mr H would've been aware of what he was purchasing.
- The system has not significantly under-generated relative to that figure.
- The quoted savings were based on what Mr H said was his electricity consumption at the time of sale – which is far less than his electricity bills suggest. So, if that savings estimate was wrong it was not the supplier's fault.
- According to our investigator the electricity bills show the savings realised by Mr H are much higher than the supplier quoted, and the system is self-funding.
- Mr H did not complain about the performance of the system despite its first-year performance being guaranteed by the supplier, suggesting he was satisfied with its performance.

Having thought about the supplier's additional comments, I have decided to uphold this complaint broadly in line with my provisional decision, although I have updated my findings

in light of the supplier's comments. As you will see, I have upheld the complaint on the basis of there being a misrepresentation only.

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. So, I don't consider it necessary to set all of that out in this decision.

Having carefully considered everything provided, I uphold this complaint. I am satisfied there was a misrepresentation because the quote used a figure of 3,673 kWh per year as the basis for working out the estimated benefits.

But the MCS certificate shows the system installed was only expected to generate 3,532 kWh per year. This figure was shown in some of the point-of-sale documents, but as mentioned above, the estimated benefits were based on the higher figure of 3,763 kWh.

The system has actually generated on average 3,283 kWh per year. While this is within the expected tolerance relative to the figure in the MCS certificate, it is significantly less than the figure used to calculate the estimated benefits. So, it appears that the system installed was incapable of generating the benefits Mr H was told to expect.

Because of this the estimated benefits shown in the quote are higher than could reasonably be expected – given they are based on the system generating significantly more electricity than the installed system was capable of generating.

The quote shows the system is just about self-funding in the first year. And it seems likely it will not actually have been given its lower capacity to generate electricity and therefore to generate income and savings. As such, I'm satisfied there was a misrepresentation, since Mr H purchased the system based on the estimated savings – which were not a reasonable estimate of the system's potential performance.

The supplier has suggested that Mr H's savings and overall benefits have significantly exceeded the estimated benefits shown in the quote. But I do not think this was the case. I agree with Mr H's representative when it says the supposed savings exceed the amount of electricity generated by the solar panels. So, it is not possible that those savings were as a result of the solar panels, but more likely due to the issues Mr H has mentioned with his electricity supplier.

As such, I do not think Mr H's pre-installation electricity bills can be used to calculate the savings he has made from the solar panel system. The usual reasonable assumptions about this must be made, of which Shawbrook is familiar, and which are based on the actual generation of Mr H's solar panel system and an assumed self-consumption rate.

I think Shawbrook reasonably ought to have upheld Mr H's claim and complaint. So, I think that Shawbrook didn't treat Mr H fairly.

Putting things right

The system was sold as being self-funding from the first year. So, I think that it would be fair and reasonable in all the circumstances of Mr H's complaint for Shawbrook to recalculate the original loan based on the known and assumed savings and income to Mr H from the solar

panels over a 15-year period, so he pays no more than that. Mr H will keep the solar panel system and any future benefits once the loan has ended.

In the event the calculation shows that Mr H is paying (or has paid) more than he should have, then Shawbrook needs to reimburse him accordingly. Should the calculation show that the misrepresentation has not caused a financial loss, then the calculation should be shared with Mr H by way of explanation.

If the calculation shows there is a loss, then where the loan is ongoing, I require Shawbrook to restructure Mr H's loan. It should recalculate the loan to put Mr H in a position where the solar panel system is cost neutral over a 15-year period.

The calculation of the benefit of the system should make reasonable assumptions about the savings Mr H has and will make (since his pre-installation bills are not helpful in calculating his actual savings). And should use the actual average annual electricity generation of the system, rather than the estimated generation shown in the quote or MCS certificate. Reasonable assumptions can be made about future FIT and electricity unit rates.

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 per year from the date of the overpayment to the date of settlement.

I think Mr H should 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 H, and he continues to make his current monthly payment resulting in his loan finishing early, or
> D. the overpayments are returned to Mr H, and he pays a new monthly payment until the end of the loan term.

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

If Mr H 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 per year for the time he is without that money.

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

> 1. Refund the extra Mr H paid each month with the Shawbrook loan.
> 2. Add simple interest from the date of each payment until Mr H receives his refund.
> 3. Refund the extra Mr H paid with the refinanced loan.
> 4. Add 8% simple interest per year from the date of each payment until Mr H receives his refund.
> 5. Pay Mr H 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 H first contacted Shawbrook that means the claim should have been upheld. I direct that Shawbrook should pay £200 compensation for the trouble and upset caused (this is in line with what it has already offered and is not an additional payment on top of that).

My final decision

For the reasons I've explained, I am upholding Mr H's complaint. I direct Shawbrook Bank Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 12 December 2023.

Phillip Lai-Fang
Ombudsman