DRN-5287417

The complaint

Mrs B has complained about the way Aldermore Bank PLC responded to claims she'd made under section 56 ("s.56") and in relation to an alleged unfair relationship taking into account section 140A ("s.140A") of the Consumer Credit Act 1974 (the "CCA").

Mrs B has been represented in bringing her complaint but, to keep things simple, I'll refer to Mrs B throughout.

What happened

Mrs B, who runs a business, acquired two solar panel systems ("the systems") from a supplier I'll call "S" in December 2017 under a hire purchase agreement with Aldermore. I understand one system was for Mrs B's residential home, and one system was for her business premises. The cash price was around £17,000 and Mrs B paid a deposit of around £3,000. The total amount payable was around £22,000 and it was due to be paid back with 83 instalments of around £220. The agreement was brokered by a separate company I'll call "H".

In July 2023 Mrs B contacted Aldermore to put in a claim. She also contacted S to do the same. In summary, she said the systems hadn't performed in the way S promised or provided the expected benefits. She said S breached the Renewable Energy Consumer Code ("RECC") code of practice and had she been told the truth about the benefits she could expect from the system, she wouldn't have entered into the acquisition.

Mrs B said the installation wasn't fit for purpose or of satisfactory quality. She said Aldermore could be held liable for the misleading actions of S and H. She said the system was misrepresented and believed the statements and several other actions at the time of the sale created an unfair relationship between herself and Aldermore. She requested a refund of all sums paid with interest; rescission of the agreement; a refund of any commission paid; and a reimbursement of missed energy bill savings and feed in tariff (FIT) income as a result of the defective installation.

Aldermore sent a final response letter in September 2023 to say it wasn't responsible for assessing if the system was suitable. It also said no commission was paid, and that it recommended Mrs B contact H or S.

Mrs B wasn't happy with the response and so referred her complaint to the Financial Ombudsman.

One of our investigators looked into things and ultimately didn't think the documentation from S was clear enough to enable Mrs B to compare the cost of the system to the estimated benefits. He thought it was plausible S misled Mrs B and that the untrue statements induced her into the agreement. He also thought Mrs B had supplied evidence the installation hadn't been carried out with reasonable care and skill. He noted Mrs B had supplied an independent report that set out certain standards had not been met. He thought Aldermore should cover the cost of the report and any remedial works required. He thought Aldermore should restructure the agreement so that Mrs B pays no more for it than she is likely to benefit for the agreement term. He also recommended Aldermore pay £100 compensation for not looking into the claim or complaint fully.

I issued a provisional decision that said:

Where Aldermore exercised its rights and duties as a creditor under a credit agreement it's carrying out a regulated activity within the scope of our compulsory jurisdiction to consider. Mrs B has complained Aldermore unfairly declined her claims and that it participated in an alleged unfair relationship. Mrs B acquired the system using a hire purchase agreement. I'm satisfied we can consider complaints such as Mrs B's relating to these sorts of regulated consumer credit agreements.

Mrs B has referred to the alleged unfair relationship when setting out her complaint. And she's alleged breach of contract and misrepresentation. Aldermore is the supplier of the goods and services under the agreement so is responsible for dealing with a complaint about their quality or standard.

Moreover, when considering whether representations and contractual promises by S can be considered under s.140A I've looked at the court's approach to s.140A.

In Scotland & Reast v British Credit Trust [2014] EWCA Civ 790 the Court of Appeal said a court must consider the whole relationship between the creditor and the debtor arising out of the credit agreement and whether it is unfair, including having regard to anything done (or not done) by or on behalf of the creditor before the making of the agreement. A misrepresentation by the creditor or a false or misleading presentation are relevant and important aspects of a transaction.

S.56 of the CCA has the effect of deeming H to be the agent of Aldermore in any antecedent negotiations. But the problem I can see is Mrs B has complained that the negotiations she said were misleading were carried out by S. I don't think I can therefore fairly hold Aldermore responsible for the alleged misleading actions by the third party – S. This is because S is not the credit broker for the purposes of s.56(1)(b) of the CCA. I think Mrs B would have to pursue S direct if she thinks it misled her.

<u>Breach of contract</u>

Mrs B has supplied an independent report that broadly sets out there were issues with the installation. I'm very sorry to hear there was a fire which the inspector said was as a result of the installation not being carried out with reasonable skill and care. In summary, the report said:

- *The inverters need to be mounted on an appropriate mounting board.*
- *The cables need to be jointed using certain connectors.*
- *A roof inspection is required to determine where the fault is with one of the four strings. The conductors in the isolators require colour coding identification and crimping.*
- *End caps need fitting, and the cable needs trunking or conduit installing to protect it.*
- *Warning labels, diagrams and switch labels need adding.*

It's not clear whether Mrs B was acting wholly or mainly for business purposes when she acquired the system given the panels are on her business as well as her residential property. So it's not clear whether she'd be classified as a consumer. But I'm conscious both the Consumer Rights Act 2015 and the Supply of Goods and Services Act 1982 set out that services need to be carried out with reasonable care and skill. Given I need to resolve complaints quickly and with minimum formality I don't think I need to undertake a detailed analysis of which law is most relevant. I think Mrs B has supplied evidence the installation wasn't carried out with reasonable skill and care which would be a breach of contract.

I note Mrs B has said her claim is not "that the system is not generating as much as stated in the paperwork". So I don't think I need to direct Aldermore to take any action in relation to a problem with the generation of the system that might have been down to the way it was installed or the quality of goods supplied.

It seems as though the most pragmatic remedy here will be for Aldermore to cover the cost of remedial work to bring the contract to conformity. And it should also cover the cost of the independent report if Mrs B can evidence it's been paid. It would be helpful if Mrs B could supply that evidence in response to this provisional decision.

If Aldermore wishes to arrange its own tradesperson to carry out the repairs it should let me know in response to this provisional decision. Otherwise, I'm intending to direct Aldermore to cover the cost of repair. Mrs B should arrange up to three quotes by VAT registered tradespersons so that Aldermore can choose. And it should either pay the tradesperson direct or reimburse Mrs B upon evidence the sum has been paid. Given the specialist nature of the tradespersons required I'd suggest Mrs B is given up to six months to source them. Aldermore can decide if it's happy with the first one or two quotes sourced if required.

Finally, I don't think Aldermore got to grips with what Mrs B was unhappy about or what it could fairly answer for her. I find Aldermore's refusal to consider the claim fully has also caused Mrs B some further inconvenience. And I think the £100 compensation recommended by our investigator is broadly a fair way to recognise that.

Aldermore said it accepted the provisional decision and asked for Mrs B to supply three quotes from a VAT registered tradesperson for the repairs needed. Mrs B said, in summary:

- She was content with the original assessment from our investigator and questioned why I'd departed from that view when it was confirmed neither party made any additional submissions.
- She said she couldn't see where she'd said that her claim wasn't that the system isn't generating as much as stated in the paperwork. She said her complaint is that the system isn't generating as much as she was verbally told it would.
- She questioned why the claim against S hadn't been addressed within the provisional decision.
- She said there was no reference of compensation for the time the system was broken and not generating.

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.

I'd like to thank the parties for their responses. It seems as tough neither party has any objections to the findings regarding repairs, so I won't go over that again.

With regards to the reason for departing from the conclusions the investigator reached I've explained in my provisional decision why I can't fairly hold Aldermore responsible for the alleged misleading actions by S because S wasn't Aldermore's agent in antecedent negotiations. I don't agree with the investigator's view and couldn't proceed on that basis. Similarly, S is a separate entity to Aldermore. This decision concerns what Aldermore can be held responsible for, not S. I'm unable to bind S to take any action through this decision.

I've thought about the system performance. I understand each system was due to generate around 3,400kWh annually. S gave calculations to show that the systems were slightly overperforming. Mrs B supplied several 2020 FIT statements for the house and business premises. Having run some basic calculations and checked those statements, I think the systems were broadly generating as expected up to that point, if not slightly overperforming. The systems were installed in January 2018 and the house system generated 8,239kWh to 4 June 2020 and the business premises system generated 10,332kWh to 9 October 2020.

I've reached my decision based on the evidence Mrs B has supplied. Bearing in mind I need to resolve the dispute quickly and with minimum formality, even though there were issues with the installation, I couldn't see that there were grounds or sufficient supporting evidence to direct Aldermore to reimburse Mrs B a financial loss as a result of the breach of contract because it seems as though the system generated broadly what was set out when Mrs B acquired it, despite the issues. If there are issues that've occurred after this claim and complaint was submitted with regards to the generation, Mrs B could raise that separately if she wishes. It may be something our service can consider if she's unhappy with Aldermore's response.

All things considered, I'm not going to depart from the conclusions I reached in my provisional decision.

Aldermore should pay £100 compensation. It should cover the cost of repair and independent report upon receipt of evidence. Mrs B should arrange up to three quotes by VAT registered tradespersons so that Aldermore can choose. If it wishes, it can pay the tradesperson direct or reimburse Mrs B upon evidence the sum has been paid. Given the specialist nature of the tradespersons required Mrs B should be given up to six months to source the quotes from the date she accepts this final decision, if she wishes to do so. Aldermore can decide if it's happy with the first one or two quotes sourced if required. I should also point out Mrs B doesn't have to accept this decision, she's free to pursue the complaint by more formal means such as through the courts.

My final decision

My final decision is that I uphold the complaint for the reasons given above and direct Aldermore Bank PLC to cover the cost of repairs and the independent report, upon receipt of evidence. It should also pay Mrs B £100 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 24 February 2025.
Simon Wingfield
Ombudsman