DRN-5407997

The complaint

Mr E complains about the outcome of a claim he made to Shawbrook Bank Limited in relation to windows he purchased with a fixed sum loan agreement.

What happened

In March 2017, Mr E was visited by a representative of a company I'll call 'Z' and entered into a contract with them to purchase windows. The order form from Z that Mr E signed set out two options. The first was that Mr E would choose to pay for the purchase on 'cash terms'. This meant that the full order price for the windows of £9,268 would be payable. The second option set out what was referred to as a 'Lifestyle Account'. This would give Mr E a 'Lifestyle Subsidy' of £1,417 which reduced the order price by that amount. Mr E chose this latter option.

The Lifestyle Subsidy was available only for purchasers who accepted credit, arranged by Z, to purchase products. In Mr E's case it was one of six so-called "subsidies" applied by Z's salesman by way of discounts to a headline price for the windows of £14,170, which was described as the "2-year fixed cost".

Mr E consequently entered into a fixed sum loan agreement with Shawbrook Bank Limited ("Shawbrook") for this purchase. The £7,851 balance of the purchase price was financed by the loan. The total amount payable under the agreement was £17,157.60 and Mr E was required to pay 120 monthly payments of £142.98.

Mr E complained to Shawbrook in 2020 saying the following:

- Shawbrook failed in their duty of care to customers by not disclosing the criminal record of one of the directors under the umbrella of companies which included 'Z'.
- Shawbrook should have disclosed the nature of the relationship between themselves and Z.
- There was a court ruling against Z from June 2017 where it was found they had been guilty of offences of price inflation and poor sales tactics under consumer protection legislation.
- The sale resulted from 'cold canvassing'.
- He was offered an unfair incentive to enter into the fixed sum loan agreement.
- He can no longer benefit from the 10-year warranty attached to the goods as Z has ceased to trade.

Shawbrook didn't uphold Mr E's complaint. They said:

- They were unable to locate the details of the court ruling that Mr E referenced but noted there had been a media article about this which set out there had been ten

instances of wrongdoing in 2013 and 2014 by Z's salesmen. These cases involved quoting inflated prices to customers to give them an impression of achieving a bargain, and falsely telling customers that the products were only available for a short period of time.

- The sample size of ten cases wasn't sufficient to assume similar wrongdoing in all sales from that period.

- Mr E purchased the goods in 2017 so this sale didn't occur during the period referred to in the media article.

- The court ruling referenced by Mr E couldn't therefore be used to justify his allegations around mis-selling.

- Shawbrook wasn't responsible for the regulation of suppliers such as Z and so didn't fail in any duty of care towards Mr E.

- The nature of the relationship between Z and Shawbrook was a confidential commercial trading one, and they weren't under any obligation to disclose the terms of that relationship to Mr E.

- Z received a commission for introducing Mr E to Shawbrook to enter into the fixed sum loan agreement and there was legitimate justification for Z to reduce the price of the windows via the Lifestyle Subsidy.

- Mr E benefitted from Z's "subsidies" by entering into the loan agreement which in turn allowed him to control the projected total amount payable by making overpayments if he wished which would reduce the term of the loan and the interest payable. He therefore had a chance to save money by purchasing the windows using credit.

- Shawbrook would itself honour the terms of Z's 10-year warranty.

- There was nothing inherently wrong in Mr E being cold-called. He could have asked Z questions to help him understand what he was buying and how he was paying for this.

- Mr E was given a cooling off period during which he could decide not to go ahead with the purchase but didn't exercise this option.

Mr E then referred his complaint to our service. He said that Z misrepresented themselves, their products, and the fixed sum loan agreement to him by telling him that:

- They'd been installing products for over 30 years when they'd only been trading since 2008.

- The discounts applicable to the transaction were only available on the day otherwise he'd lose them.

Mr E said that Z breached the Consumer Protection from Unfair Trading Regulations 2008 by giving false information and promises and showing him information that coerced him into the order. He said he placed the order under duress following a severe amount of oppressive, high pressure and aggressive behaviour from Z's salesman, who was in his home for over three hours. He was shown information that outlined that the price of the windows would be reduced by almost 50% if he signed the order on the day and if he

committed to finance this with Shawbrook. Mr E says he was told he would lose these discounts if he didn't sign.

Mr E also said that he wouldn't have placed the order or entered into finance with Shawbrook had he been made aware of the true facts. He wishes to be placed in the position he would have enjoyed if he had never purchased the windows.

Our investigator upheld the complaint and explained his reasoning for this over two separate views. In his first view, he said that Mr E would have had to pay substantially more by way of interest and charges under the finance agreement if it ran to term, than the amount he saved under the Lifestyle Subsidy; and he hadn't been told this and should have. Our investigator also said there was no warning that Mr E would have to settle the finance agreement within a particular period to benefit from the subsidy.

He also said that the contract should have clearly and prominently explained the incentive for entering into the finance agreement in context of the total charge for credit. Z's failure to do this meant the key features of the agreement weren't explained clearly to Mr E to enable him to make an informed choice. And he felt Z did not communicate appropriately to Mr E the benefits of entering into the finance agreement as set against its risks. He said both these actions contravened the FCA's Principles of Business ("PRIN").

In summarising this view, our investigator thought that a court would likely consider that an unfair relationship existed between Mr E and Shawbrook in view of Z's mishandling of the antecedent negotiations in respect of the sale, for which Shawbrook bore responsibility under Section 56 of the Consumer Credit Act 1974. He didn't, though, uphold the other points that had been made by Mr E; and he noted that Mr E had received the windows and the benefits that this brought to his home. He also noted that there had been no allegation that the windows weren't of satisfactory quality or hadn't been installed correctly.

Our investigator recommended that Shawbrook should ensure that Mr E only ever pays a total of £9,658 to them under the finance agreement, which represented the original £7,851 cost price of the windows, the £1,417 discount he received for signing up to the Lifestyle Account and £390 in recognition of the remaining warranty protection he had. Our investigator also said Shawbrook should ensure that no adverse information had been recorded on Mr E's credit file for this account and that they should honour the 10-year warranty.

Mr E's representative at the time agreed with the investigator's view and his recommendations. Shawbrook said though that Mr E hadn't suffered any financial detriment.

Our investigator's second view then said that Mr E hadn't incurred a financial loss as he'd settled the finance agreement for less than the amount he would have paid had he originally bought the goods in cash.
Mr E then contacted us to say that his representative at the time hadn't made him aware that he was entitled to refer his complaint for an ombudsman's decision, were he to disagree with our investigator's view. He said he should be allowed this opportunity and said he disagreed with our investigator because his second view had only focused on whether he'd incurred a financial loss and meant he had retracted what he had said in his first view about the loan being mis-sold to him. And Mr E said Shawbrook should be subject to a penalty by paying him compensation because they acted against consumer law and contrary to FCA rules.

Mr E's complaint has been passed to me for a decision.

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've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. In considering the complaint I've had regard to the relevant law and regulations, any regulator's rules, guidance and standards and codes of practice. This includes, but is not limited to, the following:

The Consumer Credit Act 1974 (CCA)

Under section 56 of the CCA, statements made by a supplier in relation to a transaction financed or proposed to be financed under pre-existing arrangements between a credit provider and the supplier are deemed to be made as an agent for the creditor.

Under section 75 of the CCA, Shawbrook Bank are (subject to certain criteria) jointly and severally liable with a supplier for a breach of contract or misrepresentation made by the supplier of goods purchased using the fixed sum loan.

Section 140A of the CCA sets out provisions in regard to determining if a relationship between a creditor and debtor is unfair, and section 140B sets out the powers of the court in relation to an unfair relationship.

The Financial Conduct Authority (FCA)

The FCA Principles for Businesses (PRIN) also applied to Z's acts as credit broker and are of relevance to this complaint.

PRIN 6 says "*A firm must pay due regard to the interests of its customers and treat them fairly."*

PRIN 7 says *"A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading."*

The FCA Consumer Credit Sourcebook (CONC) also applies and is of relevance to this complaint. In particular,

"CONC 1.2.2 R

A firm must:

> *(1) ensure that its employees and agents comply with CONC; and*
> *(2) take reasonable steps to ensure that other persons acting on its behalf comply with CONC."*

CONC 2.5.3 R concerning credit brokers states a firm must:

> *(1) "where it has responsibility for doing so, explain the key features of a regulated credit agreement to enable the customer to make an informed choice as required by CONC 4.2.5 R;*
>
> *(2) take reasonable steps to satisfy itself that a product it wishes to recommend to a customer is not unsuitable for the customer's needs and circumstances;*

(3) advise a customer to read, and allow the customer sufficient opportunity to consider, the terms and conditions of a credit agreement or consumer hire agreement before entering into it.".

CONC 3.3.1 states that financial promotions have to be "clear, fair and not misleading". In particular, they need to be balanced and not place emphasis on the benefits without giving a fair and prominent indication of any relevant risks, as appears from CONC 3.3.1(1A) and (1B):

"(1A) A firm must ensure that each communication and each financial promotion:

(a) is clearly identifiable as such;
(b) is accurate;
(c) is balanced and, in particular, does not emphasise any potential benefits of a product or service without also giving a fair and prominent indication of any relevant risks;
(d) is sufficient for, and presented in a way that is likely to be understood by, the average member of the group to which it is directed, or by which it is likely to be received; and
(e) does not disguise, omit, diminish or obscure important information, statements or warnings.

(1B) A firm must ensure that, where a communication or financial promotion contains a comparison or contrast, the comparison or contrast is presented in a fair and balanced way and is meaningful".

CONC 3.3.5 gives guidance which says:

"A firm should ensure that each communication and each financial promotion:

(1) is accurate and, in particular, should not emphasise any potential benefits of a product or service without also giving a fair and prominent indication of any relevant risks;
(2) is sufficient for, and presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received;
(3) does not disguise, diminish, or obscure important information, statements, or warnings; and
(4) is clearly identifiable as such."

CONC 3.3.7G says:

"When communicating information, a firm should consider whether omission of any relevant fact will result in information given to the customer being insufficient, unclear, unfair or misleading."

And CONC 3.3.10G says:

"Examples of practices that are likely to contravene the clear, fair and not misleading rule in CONC 3.3.1R include:

… (9) suggesting that a customer's repayments will be lower under a proposed agreement without also mentioning (where applicable) that the duration of the agreement will be longer or that the total amount payable will be higher."

<u>The sale of the windows</u>

I've firstly considered the documentation that Mr E was given by Z. I've seen a document called 'Portfolio Agreement & Subsidy Analysis' which set out the various discounts Mr E would get if he agreed to buy the goods. This set out the initial price of the goods and the price after various discounts had been applied. There are a few reductions to the price of the goods including one that is specific to signing up to a finance agreement.

The document shows that the price of the goods started at £14,170 and then after various discounts was reduced to £7,851 on condition, it seems, that Mr E agreed to take out the Lifestyle Account. The document names the discounts:

A. Priority Survey Subsidy 3% maximum.
B. Priority Installation Subsidy 7% maximum.
C. Promotional Subsidy.
D. Lifestyle Subsidy (only applicable for Portfolio Customers using the Lifestyle Account).
E. Additional Subsidy including Quantity Subsidy where applicable (Only available on orders over £2000).
F. A further subsidy (maximum £90) to offset the first year's CARE payment.

The 'cash order' price is set out as £10,056 and with the discounts I've set out above applied, the 'Portfolio Price' using the finance is put as £8,639.91. The salesman then appears to have reduced this further by writing the price of £7,851 on this document.

I've also seen a document called the 'Customer Purchase Order'. This shows that the 'Cash Terms' were for a total price of £9,268 and the price with the Lifestyle Subsidy (also called 'Lifestyle Price') was £7,851.

As I've set out above, Shawbrook and Z owed certain responsibilities under CONC and PRIN as to the manner in which the loan was marketed and presented to Mr E. And I have taken these into account in my decision.

The finance agreement that Mr E signed set out that this was a 10-year agreement with 120 payments of £142.98. The total charge for credit over the full term was £9,306.60 with the total amount payable being £17,157.60.

A prominent incentive for Mr E to enter into the finance agreement with Shawbrook was for him to receive the 'Lifestyle Subsidy' of £1,417. However, the APR of 19.9% meant that the total charge for credit is £9,306.60. This means that if the loan ran to term, Mr E would have paid more than six times the Lifestyle Subsidy by taking out the finance agreement. Or, to put it another way, instead of paying £9,268 up front, he would pay £17,157.60 (being the full repayments under the loan) over ten years.

I think that this is something that should have been clearly explained to Mr E, so he understood both the financial benefits and the financial costs and risks that were associated with the proposed arrangement, to enable him to make an informed decision. However, I can't see any documentation that shows Mr E was told that, if the finance agreement ran to term, any saving given by the subsidy, would be substantially outweighed by the interest and charges on the loan running to term. And I also haven't seen any warning in the documentation that Mr E would need to settle the finance agreement within a certain period of time to get any net benefit from the subsidy.

As I've set out above, CONC 3.3.1 states that financial promotions must be "*clear, fair and not misleading*". And they need to be balanced and not place emphasis on the benefits without giving a fair and prominent indication of any relevant risks. I find though that the information about the Lifestyle Subsidy lacks balance as the discount is presented as a

financial benefit where it should have been explained prominently that it came at the cost of entering into a finance agreement where interest charges over the term outweigh the subsidy.

I also find that the information given by Z to Mr E was insufficient and presented in such a way that it would likely be misunderstood by the average member of the group to which it is described or likely to be received. That is contrary to CONC 3.3.1(1A)(d).

And I find that the information about the Lifestyle Subsidy was unclear and unfair in the presentation of benefits that might not manifest, and disguised the costs upon which said subsidy was conditional, which is contrary to CONC 3.3.1(1A)(e).

The marketing material and contract should have clearly and prominently explained the incentive for entering into the finance in context of the total charge for credit – and how any savings could be realised in a particular timeframe only. I find that this though wasn't done and as a result, CONC 2.5.3 was contravened, as Z didn't clearly explain the key features of the regulated agreement to Mr E to enable him to make an informed choice. I find this also contravenes the requirement under PRIN 6 to '*pay due regard to the interests of its customers and treat them fairly*' as I don't think the marketing of the finance was done with due regard to Mr E's interests or that this treated him fairly. I think the presentation from Z about the Lifestyle Account and the Lifestyle Subsidy unfairly suggested that Mr E would be receiving an overall saving and unfairly obscured the true comparison between costs and benefits which should have been a central feature of Z's presentation of the loan to him.

For the same reason, I find also that the marketing of the finance and the benefits of entering it set against the overall risks and costs were not communicated to Mr E in a way that was clear, fair and not misleading contrary to PRIN 7.

I accept that the finance agreement states what the overall cost of credit is. However, there was a lack of corresponding and balanced information about how any potential savings from the subsidy could be realised in a particular timeframe only by early repayment of the loan. I think it more likely than not that the discussion around the sale led by Z's salesman was based on the savings and incentives Mr E would get and there wasn't a fair presentation of how the benefit of the discounts that were being offered would be impacted through the overall cost of credit.

Because of the nature of the failings that I have set out above, I've thought about whether an unfair relationship has arisen as a result. This ties in with our requirements under DISP 3.6.4R which sets out our obligation to consider relevant law (as well as other considerations, such as a firm's regulatory obligations) when considering what is fair and reasonable in all the circumstances of the case.

So, I've also considered the relevant law relating to Mr E's complaint and in particular, the relevance of the unfair relationship provisions in Section 140A, Section 140B, and Section 140C of the Consumer Credit Act 1974 and whether this is a further reason why Shawbrook may not have acted fairly and reasonably towards Mr E.

Section 140A of the Consumer Credit Act 1974 states:

"(1) The court may make an order under section 140B in connection with a credit agreement if it determines that the relationship between the creditor and the debtor arising out of the agreement (or the agreement taken with any related agreement) is unfair to the debtor because of one or more of the following:

(a) any of the terms of the agreement or of any related agreement;

(b) the way in which the creditor has exercised or enforced any of his rights under the agreement or any related agreement;
(c) any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement).

(2) In deciding whether to make a determination under this section the court shall have regard to all matters it thinks relevant (including matters relating to the creditor and matters relating to the debtor).”

Section 140B sets out the powers of a court in respect of an unfair relationship and Section 140C sets out how both preceding sections should be interpreted.

The application of s.140A is fact specific, while s.140A(1)(c) allows for anything done or not done by, or on behalf of the creditor either before or after the making of the credit agreement, or any related agreement (such as, in this case, the agreement to purchase the windows), to be considered by a court when determining whether there was an unfair relationship between the parties.

In the leading case of Plevin v Paragon Personal Finance, the Supreme Court considered the nature of the jurisdiction under s.140A, pointing out that it is deliberately framed in wide terms but making some general points about its application (see paragraph 10 of Lord Sumption’s judgment). These include the fact that an unfair relationship *“will often be because the relationship is so one-sided as substantially to limit the debtor’s ability to choose*”. But, on the other hand, that the intrinsic difference in financial knowledge and expertise that normally exists between a commercial lender and a private borrower is not, of itself, a reason to reopen the transaction.

Lord Sumption also went onto consider (at paragraph 17) the relevance, under s.140A, of compliance with regulatory rules. Deciding that this may give some evidence as to “*the standard of commercial conduct reasonably to be expected of the creditor*”, but pointed out that the court’s task is a different, and wider one than deciding whether a regulatory rule has been breached. The regulatory rules in issue in the case were the FCA’s ICOB rules about the disclosure of commission. Lord Sumption stated:

> *“….the question whether the debtor creditor relationship is fair cannot be the same as the question whether the creditor has complied with the ICOB rules, and the facts which may be relevant to answer it are manifestly different. An altogether wider range of considerations may be relevant to the fairness of the relationship, most of which would not be relevant to the application of the rules. They include the characteristics of the borrower, her sophistication or vulnerability, the facts which she could reasonably be expected to know or assume, the range of choices available to her, and the degree to which the creditor was or should have been aware of these matters”.*

And, it is on that basis that Lord Sumption addressed the question of whether Mrs Plevin’s relationship with Paragon was made unfair by the fact that Paragon (without breaching the ICOB rules) had not disclosed the amount of its commission for arranging the relevant insurance (PPI). He stated (at paragraph 18):

> *“Mrs Plevin’s evidence, as recorded by the recorder, was that if she had known that 71.8% of the premium would be paid out in commissions, she would have certainly questioned this. I do not find that evidence surprising. The information was of critical relevance. Of course, had she shopped around, she would not necessarily have got better terms. As the Competition Commissions report suggests, this was not a competitive market. But Mrs Plevin did not have to take PPI at all. Any reasonable*

person in her position who was told that more than two thirds of the premium was going to intermediaries, would be bound to question whether the insurance represented value for money, and whether it was a sensible transaction to enter into. The fact that she was left in ignorance in my opinion made the relationship unfair".

Subsequently, in Kerrigan v Elevate Credit International, the High Court decided claims under s.140A brought by claimants whose unaffordable loans had been made by lenders in breach of CONC. The Judge pointed out that s.140A doesn't impose a requirement of causation in the sense that the debtor must show that a breach caused a loss (paragraph 13), stating *"the focus is on the unfairness of the relationship, and the court's approach to the granting of relief is informed by that, rather than by a demonstration that a particular act caused a particular loss".*

And, more recently still, in R (on the application of Shawbrook Bank) v Financial Ombudsman Service, the court reviewed two ombudsmen's decisions which applied s.56 and s.140A to the sales of two timeshares, which had been financed with connected lending. The decisions found there to have been unfair debtor creditor relationships in both cases, caused by the manner in which the timeshare agreements had been sold to the consumers. The Judge held (at paragraph 152):

"The ombudsmen…..in my view, correctly concluded on the authorities as they stand that the gateway to the functions conferred by sections 140A and 140B was properly to be regarded as unlocked by s.56, and that it was open to them to proceed to make an assessment as to whether the relationship between the banks and the consumers was made unfair because of the acts or omissions of the timeshare companies in the antecedent negotiations".

Was there an unfair debtor creditor relationship in this case?

Under s.56 CCA, Z was the agent for Shawbrook in arranging the finance agreement and sale of the windows and carried out antecedent negotiations on their behalf. The fact that such an agent may have committed regulatory breaches isn't decisive as to whether an unfair relationship came into existence, although it can be a relevant factor. In this case, though, I do find it relevant in that unfairness was created as follows:

- Taking the finance was capable of adding hugely to the total costs of the transaction and Z should (if it had complied with its obligations under CONC) have spelled this out clearly to Mr E but failed to do so.

- The purpose of that duty is consumer protection, namely to ensure that consumers have the balanced information, clearly presented, to help make an informed contractual decision.

- A reasonable person in the position of Mr E, if presented with a fair and clear comparison between the costs and benefits of the Lifestyle Account, would have been bound to question whether it represented value for money and was a sensible transaction to enter into. That would have raised the option of either not contracting at all, or not borrowing.

- Z's conduct deprived Mr E of the opportunity to perform this comparison and this had a fundamental effect on the fairness of the whole transaction, because he was led into it on a distorted basis.

- The fact that Mr E was doubtless aware that the loan would incur interest, and could have discovered the total cost of credit from other documents isn't sufficient to negate this unfairness. From all the evidence, it seems that the key commercial presentation by Z to Mr E emphasized the "subsidies", including the Lifetime Subsidy, rather than the standard-form disclosures contained in the loan documentation, and portrayed the deal as a bargain for him.

- The fact that Mr E could limit his exposure to interest charges by pre-paying the loan which he ultimately did, is insufficient to have negated the unfairness (although it has reduced the damage he has suffered as a result).

Taking all the circumstances into account, I find that because of the nature of Z's mishandling of the antecedent negotiations, which I have set out in my decision above, a court is likely to conclude that an unfair relationship existed between Mr E and Shawbrook from the inception of the loan up until the point in May 2017 that the debt was repaid and the credit relationship ended.

Even if I am wrong in considering that a court would find there to be an unfair relationship under s.140A, exercising my function of deciding what I consider to be fair and reasonable in all the circumstances, I consider that Z (acting as agent on Shawbrook's behalf) caused Mr E to enter into this purchase and loan, and to incur the associated liabilities unfairly.

For the reasons I've set out above, I am upholding Mr E's complaint. I realise that Mr E has made a number of other complaint points about pressure sales tactics, the regulatory status of Z and a prior court case involving Z that he thinks is of relevance. As I am upholding the complaint for other reasons, and those reasons are ones that I see are pivotal to determining the outcome of this complaint, I find it unnecessary to reach a decision on those other arguments put forward by Mr E. Similarly, I don't consider that his allegations under s.75 about alleged misrepresentations made by Z to him during the sale would, if made out, make a difference to whether Shawbrook needs to do anything to put things right.
So, I don't find it necessary to decide those allegations.

Although I am upholding Mr E's complaint, the fact remains that he received the goods and their benefits and has enjoyed these now since the windows were installed in 2017. And there hasn't been any specific allegation that these are defective or weren't installed correctly or in a reasonable time. So, I don't think it would be reasonable to return all the money Mr E paid to Shawbrook as he originally requested, as this will mean he would receive goods for free which wouldn't in my view be proportionate.

Another benefit gained by Mr E as a result of acquiring the windows with finance from Shawbrook (albeit only a contingent one) is that he gained a potential right to claim against Shawbrook under Section 75 for breaches of contract. I note, though, that Mr E doesn't appear to have made a such a claim in eight years since the windows were purchased. And I doubt Mr E will benefit from a claim for breach of contract at this stage, bearing in mind there has been no specific allegation that the windows weren't of satisfactory quality.

However, I accept that the failure of Z to clearly explain the nature of the financial arrangement heavily influenced Mr E's decision to enter into the Lifestyle Account finance product given by Shawbrook.

Mr E says he wouldn't have signed up for the Lifestyle Account had he been aware of the true position about this, and I think that is most likely to have been the case. So, he would either have chosen not to buy the goods, and so would have kept his money but not have had the benefit of the windows, or he would have still bought the goods but paid with cash. It's not possible to say with any certainty which of these he would have done and nor do I

consider it necessary to decide that question in order to resolve this dispute fairly and reasonably.

I say this because Mr E paid less than the cash price of the windows; in other words, he hasn't paid anything more as a result of entering into the finance agreement had he paid for the goods in cash. It's fair to take into account that Mr E wouldn't have received the subsidy and so would have paid more for the goods if he hadn't entered into finance with Shawbrook. And the sales documents list a separate price for paying cash and another for using finance. I have no reason to believe that the cash price of £9,268 exceeded the market value of the windows, as protected by a 10-year warranty. So, in receiving the windows and warranty, I believe Mr E obtained a financial benefit in that amount, provided the warranty is maintained by them for the period remaining under it.

I realise that Mr E feels that he is entitled to compensation for what happened. But, bearing in mind what I've said above about the benefit he received as a result of this arrangement (albeit one that wasn't conducted correctly), I don't find that an award of compensation is warranted here. I'd add also that we don't have the power to impose a financial penalty on Shawbrook. Our consideration is what is appropriate in the specific circumstances of Mr E's complaint taking into account any negative financial impact he may have suffered or experienced.
So, having carefully considered the matter, I uphold the merits of Mr E's complaint about the claim he made to Shawbrook. Shawbrook should honour the 10-year warranty as offered and agreed by them. And they should ensure that no adverse information has been added to Mr E's credit file in respect of this agreement. But I won't be awarding compensation.

My final decision

My decision is that I uphold this complaint. I direct Shawbrook Bank Limited to:

- Ensure that there is no adverse information added to Mr E's credit file in respect of the fixed-sum loan agreement.

- Honour the 10-year warranty as offered and agreed by them.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 18 April 2025.

Daniel Picken
Ombudsman