Complaint

Mr A has complained that he was mis-sold a fixed sum loan by Wise Energy Solutions Ltd. The loan was provided under the Green Deal scheme to finance the installation of solar panels on Mr A's property.

Background

I should firstly say that at the time the loan in question was sold, Wise Energy Solutions Ltd was known as Green Deal Energy Services (UK) Ltd. For the sake of convenience however, I will just refer to this company as "Wise Energy" in this decision.

Additionally, prior to setting out the events of this particular case, I will provide some explanation of the Green Deal scheme and its particular workings.

The Green Deal

Put simply, the Green Deal scheme was a government backed initiative intended to remove the upfront cost to consumers of installing energy efficiency measures into their homes. It did this by allowing Green Deal Providers ("Provider") to enter finance agreements with consumers to pay for the measures, which were then repaid via the consumer's electricity bill. The finance agreement was part of what was known as the Green Deal Plan ("Plan").

The Green Deal Provider Guidance issued by the Department of Energy & Climate Change (now part of the Department for Business, Energy & Industrial Strategy) set out the general structure of a Green Deal arrangement and the duties and responsibilities of various parties. Typically, this worked as follows:

- If a consumer was interested in the Green Deal arrangement, an accredited Green Deal Assessor ("Assessor") would visit their home and assess possible improvements the consumer could introduce to make the home more energy efficient. This assessment should have taken place at least 24 hours after any initial introduction to the Green Deal scheme, unless the consumer opted to waive their right to this in writing.

- The Assessor produced an Energy Performance Certificate ("EPC") which showed the energy use of a typical household of the relevant type. And a Green Deal Advice Report ("GDAR"), which included an Occupancy Assessment certificate ("OA").

- The OA formed part of the qualifying assessment. And would have set out the actual use of energy by the customer's household at the time the assessment was carried out. It then detailed the potential measures which could improve energy efficiency for the property and what savings these measures would likely lead to.

- Once a GDAR was registered in a centralised register, it could be taken to any Provider, or several, to obtain quotes for a Plan. The Provider should have ensured that the quote covered all payments that were to be recovered from the consumer for supply and installation of the improvements and the provision of credit.

- It was the Provider who was ultimately responsible for designing the specification of works and the implementation of the Plan. This would include ensuring that the improvement measures were properly integrated into the overarching design of the package of improvements agreed upon.

- The Provider would arrange for a Green Deal Installer ("Installer") to install the measures under the plan. The Provider had to provide the Installer with a clear design and specification for all works to be carried out, including how the various products should be integrated into the overarching design for the package of improvements.

- Once the installation was complete, the Green Deal payments were collected by electricity suppliers alongside the collection of energy payments. In doing so, the supplier would be acting on behalf of the Provider.

- The Plan was a contract between the Provider and the consumer. It was a contract for energy efficiency improvements to be made to a property and for finance to pay for those improvements.

- The Provider had to establish the Plan in line with requirements set out in the Energy Act 2011, the Green Deal Framework (Disclosure, Acknowledgement, Redress etc.) Regulations 2012 ("the Framework") and the Green Deal Code of Practice.

The golden rule

A significant key principle of the Green Deal scheme was that the amount of finance that could be provided for the improvement measures was limited to the estimated financial benefit to the customer that was likely to be made by those measures. This limitation was partly constructed through a comparison of the estimated saving from having the benefits with the repayments made, in the first year of the agreement.

This principle is known as the "golden rule" and it forms part of the legislative provisions governing Plans. Regulation 30 of the Framework stated:

> "*The first year instalments must not exceed the estimated first year savings*"

As the Plan remained with the property, and so was not dependent on the usage of energy by the specific occupant at the time of the assessment, the total amount of finance that could be provided was based on the benefits that could be achieved for a typical property of the type the consumer had.

Before entering into a Plan, the al Provider had to estimate the overall savings which were likely to be made if the improvements were carried out. It was also the responsibility of the Provider to ensure that the "golden rule" was satisfied and that it was properly explained to the consumer.

The events in Mr A's case

Mr A has said that in 2015, at time he was recovering from an operation and his only income was from benefits, he was "cold-called" by a representative of Wise Energy. Mr A says he was told that if he agreed to have solar panels fitted to his property, he would have cheaper energy bills and he would also receive £250 per year in extra income from these panels. He's said he was told this would not cost him anything.

Wise Energy is a Provider, but has said that it sub-contracts the sales part of the process to Southern Energy Solutions (Property Services) Limited ("SES"). SES had authorisation to broker credit in relation to Plans. Wise Energy has said SES was also an accredited Installer.

It seems that SES established whether Mr A might be interested in having relevant measures installed in his property. And a customer information form was completed, which included details of his property, energy supplier, and household income. Mr A signed the form agreeing to a credit check. The form is headed with Wise Energy's logo and contact details, and it does not make any reference to SES.

Wise Energy has said that an assessment was then carried out by a domestic energy assessor ("DEA") and that a GDAR was produced from this. No copy of this report is apparently available. So we cannot be sure what was recommended to Mr A. It is also not clear who the DEA worked for.

A copy of the EPC produced at the time is available through the online EPC register though. This names the DEA, but not any affiliation he had. It also shows the assessment date, 7 July 2015, as being the date Mr A was introduced to the Green Deal scheme and signed the customer information form.

The EPC recommended a number of measures, including the introduction of 2.5 kWp solar panels, and estimated the typical savings for this as being just over £300 per year with an indicative cost of £5,000-8,000. The EPC stated:

> "*There is a limit to how much Green Deal Finance can be used, which is determined by how much energy the improvements are estimated to save for a 'typical household'.*"

A week after the initial contact Mr A was apparently visited again by an SES sales agent. He was provided with "Pre-Contract Information" and an "Explanation Of Credit Agreement" document. He also signed the "Installation Agreement" and the "Credit Agreement". All of these documents were again on Wise Energy headed paper and refer only to Wise Energy rather than any of the other businesses involved. Though signed by Mr A on 14 July, they had been apparently produced on 10 July 2015.

The Explanation of Credit Agreement set out that the Green Deal loan was different to a normal loan. It also said:

> "*In the first year, the repayments must not exceed the estimated typical savings for that type of improvement. However, this does not guarantee that the bills will not be any higher as your energy usage may not be typical*."

The Credit Agreement itself confirmed the improvement measures as being photovoltaics ("solar panels"). It also set out the amount of money being provided for the improvement measures as £4,350. And the interest and charges added to this as being £4,834.13. The total amount repayable, over the approximate 23 year period of the loan, was therefore £9,184.13.

As the repayment of the loan was to be made via Mr A's energy bill, the actual frequency and amount of each repayment wasn't stated on the agreement. However, it did set out that the instalments would be calculated using a daily rate of £1.11. This would result in an annual repayment of £405.15 (over 365 days).

The credit agreement also stated that:

> "*The total estimated first year savings on your energy bills are an assessment based on the Improvement(s) being made, the typical energy usage for the Property and the price of energy. They do not in any way represent guaranteed savings.*
>
> *Your total estimated first year savings are: £408.00*
>
> *Under the Green Deal the total estimated first year savings must be equal to, or greater than, your repayments in the first year of this Credit Agreement. This is called the "Golden Rule".*"

Wise Energy say that they then arranged for SES to install the measures on Mr A's property. The updated EPC shows that 3.5 kWp solar panels were installed. And following this, Mr A signed a form to confirm the installation works were completed. This was signed nine days after Mr A had first been contacted and signed Wise Energy headed paperwork.

It seems that Mr A also entered an agreement with ECH Property Solutions Limited ("ECH"). We do not have a copy of the agreement between Mr A and ECH, but I have seen a similar agreement entered with another customer. And I consider it reasonable to consider Mr A entered his agreement on similar terms. Regardless, it is accepted that the agreement he had with ECH resulted in the right to the FIT being assigned from Mr A to ECH.

The director of ECH was also the director of SES. And Wise Energy has said this director:

> "*came up with the idea of installing solar panels for customers who could not afford the upfront costs for the value of their Green Deal loan only… However, as compensation for doing this,* [ECH] *agreed with the customers that* [it] *would take 50% of the Feed in Tariffs.*"

Wise Energy has gone on to say that this enabled;

> "*many customers who would not otherwise have been able to afford to install solar panels, to have them installed so that they could make use of the savings to their energy bills as well as receive 50% of the Feed In Tariffs. It was a win/win deal and over 100 customers took advantage of it*."

I feel it is necessary here to clarify what feed-in-tariffs ("FIT") are. The installation of solar panels means consumers would be producing their own electricity. The amount of electricity would be dependent on daylight, weather, and so on. At times this production would not be as much electricity as the property was using, and electricity would still be taken from the consumer's supplier.

But at other times, they would be producing more electricity than was used. Customers were able to export and sell this surplus electricity to their supplier. If the property did not have smart meters to measure the actual electricity exported, it was assumed that 50% of the generated electricity is exported.

In Mr A's case, having installed the solar panels, he agreed with his electricity supplier that they would pay the FIT, but that the payments would be made to ECH. ECH would then forward to Mr A 50% of these payments. This arrangement was confirmed by the supplier in July 2016. It should be noted that there has been a further transfer of these FIT rights, but the details of this are not overly relevant to Mr A's complaint about the loan being mis-sold.

In October 2016, Mr A contacted this service to raise a complaint about the sale of the Plan. Wise Energy said that if the Plan was mis-sold, this was something SES would be responsible for as SES had its own authority. But that in any event Wise Energy didn't consider there to have been a mis-sale.

Wise Energy said that the documents were clear that any savings were an estimated projection. And that Wise Energy had followed its procedure for ensuring Mr A was aware of the nature of the loan.

Our investigator disagreed. She felt that Wise Energy had included Mr A's FIT payments when considering the savings that might be achieved. And because Mr A was assigning the right to part of the FIT, Wise Energy had over-estimated these savings. She also said that Wise Energy, as a Provider, should have had a full understanding of how the FIT worked.

Our investigator said that Wise Energy had a responsibility to know how Mr A was going to finance the full cost of the improvement measures and so should have known about the arrangement to transfer the rights to the FIT payments to ECH. And because this arrangement meant that the savings Mr A would receive from the improvement measures wouldn't cover the cost of the loan repayments for the first year, the Plan was in breach of the "golden rule" and that Mr A was misled about the agreement.

The investigator also didn't think Mr A was fully informed about the fact he was entering a loan agreement, and that he would not have taken this out had he been aware.

Overall, the investigator felt that Wise Energy, as the Provider, hadn't met its responsibility for ensuring the Plan met the relevant requirements and that Mr A was provided with clear information. As such, she recommended Mr A's complaint be upheld, and that Mr A should be put back in the position he would have been in had he not taken out the Plan, as well as being awarded a sum in compensation for the distress and inconvenience caused to him.

Mr A agreed with these findings, but Wise Energy did not. It maintained that the relevant documents were clear, that there were other reasons estimated savings might not be met, and that it was inappropriate to say that Wise Energy should have known about the transfer of the FIT rights. Wise Energy has also said that it was not informed that the cost of the actual installation exceeded the loan. It also maintained that the methodology for calculating the savings did not fully include the FIT and that the Plan did not breach the golden rule.

My findings

Relevant considerations

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. When considering what is fair and reasonable, I am required to take into account relevant law and regulations; regulator's rules, guidance and standards, and codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

The Financial Conduct Authority ("FCA") Handbook sets out a number of rules and guidance that I consider applicable. These include the FCA's high-level standards: the Principles for Businesses, the relevant systems and controls rules and the Conduct rules – Consumer Credit sourcebook ("CONC").

The Principles apply to all authorised firms of which Wise Energy is one. Of particular relevance to this complaint are:

Principle 6

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

Principle 7

"*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*"

Principle 9

"*A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment*".

In addition, the following CON) rules are of particular relevance to this complaint:

CONC 2.3.2R

"*A firm must 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 (adequate explanations)*."

CONC 4.2.5R

"*(1) Before making a regulated credit agreement the firm must:*

> *(a) provide the customer with an adequate explanation of the matters referred to in (2) in order to place the customer in a position to assess whether the agreement is adapted to the customer's needs and financial situation;...*

(2) The matters referred to in (1)(a) are:

> *(a) the features of the agreement which may make the credit to be provided under the agreement unsuitable for particular types of use;*
> *(b) how much the customer will have to pay periodically and, where the amount can be determined, in total under the agreement;*

> *(c) the features of the agreement which may operate in a manner which would have a significant adverse effect on the customer in a way which the customer is unlikely to foresee;...*"

As regards the Plan itself, as mentioned earlier, the Green Deal guidance issued by the Department of Energy & Climate Change states that the Provider must ensure that the Plan (which includes the credit agreement) is in line with requirements set out in:

(i) the Energy Act 2011,
(ii) the Framework, and
(iii) the Green Deal Code of Practice.

Amongst other things the Energy Act 2011 sets out that the Provider must meet any requirement specified in the Framework as to the relationship between the estimated total of the proposed instalments and the estimate they gave – on the basis specified in the Framework – of the savings likely to be made on the energy bills for the property, if the improvements are carried out (section 4(7)). And this is set out in regulation 30 of the Framework as previously noted (the 'golden rule').

The Code of Practice effectively incorporates the key provisions of the Act and the Framework and I consider the following in it are particularly relevant here:

Annex B Part 1

> "*18. Where an offer of a Green Deal Plan is made in respect of a domestic property, the Green Deal Provider must discuss with the improver and bill payer, in light of the household's actual energy use estimated in the Green Deal Advice Report, whether –*
>
> > *(a) instalments payable under the Green Deal Plan are likely to be fully offset by savings on energy bills for the property resulting from installation of the improvements;*
> >
> > *(b) the amount of instalments to be paid under a Green Deal Plan should be set at an amount which is lower than the cap on instalments, to ensure that the Green Deal Plan is affordable to the bill payer and meets their needs and financial situation*
>
> *23. A Green Deal Provider must ensure it uses realistic figures when discussing potential future energy price changes with improvers or bill payers. It must also make clear when doing so that projected prices are only a prediction, and that the actual price changes over time may be different.*
>
> *29. The Framework Regulations set out conditions restricting the amount of the instalments that can be charged under a Green Deal Plan (see in particular regulations 28 and 30 and regulation 33). These conditions must always be complied with by Green Deal Providers, and failure to do so will mean that an arrangement does not qualify as a Green Deal Plan.*"

Section 56 of the Consumer Credit Act 1974 deals with negotiations between Wise Energy, as creditor, and Mr A, as debtor, in relation to the making of the credit agreement. These negotiations shall be taken to begin when Wise Energy (or any party on its behalf) first communicated with Mr A (including any adverts) and include any representations made by Wise Energy to Mr A and any other dealings between them.

Is Wise Energy responsible?

Wise Energy has said that SES is an authorised firm and was allowed to broker the finance agreement Mr A entered. As such, Wise Energy considers that any alleged mis-sale should be considered against SES rather than Wise Energy.

However, whilst SES could potentially be held responsible for anything it did wrong, section 56 of the Consumer Credit Act 1974 says that the negotiations by SES are also deemed to have been conducted in the capacity of agent of Wise Energy. As such, Wise Energy is also responsible for any inappropriate action of SES during the sales process.

It is also clear that Wise Energy had an agreement with SES that SES would effectively sell Wise Energy Plans. Although a consumer was able to take their GDAR to any Provider, there is no indication that Mr A was told this. All of the paperwork SES seemingly gave Mr A referred only to Wise Energy, Mr A has said he understood the sales agent to be working on behalf of Wise Energy.

Additionally, as well as the impact of the Consumer Credit Act, the rules and guidelines for the Green Deal make it clear that it was the Provider who was responsible for ensuring that the Plan met the necessary requirements and that the consumer understood what was being entered. Wise Energy may have sub-contracted parts of the process to SES. But that doesn't mean all of the relevant responsibilities transferred to SES.

Ultimately, I consider that Mr A's complaint is one that should be considered against Wise Energy.

Did the Plan meet the necessary requirements?

As has been note above, one of the key elements to the Green Deal scheme is that the Plan met the golden rule. And it was the responsibility of Wise Energy, as Provider, to ensure that this was the case for Mr A's Plan.

It is clear that, in this case, the full cost of the installed measures were not paid for by the Plan. And that a separate agreement had to be entered in order to finance the measures.

Wise Energy has explained to us that SES came up; "*with the idea of installing solar panels for customers who could not afford the upfront costs for the value of their Green Deal loan only.*" And that this would involve the customer agreeing to pass on 50% of the FIT. Wise Energy has though also said that it was not aware that Mr A was entering an agreement with anyone to pass on these FIT rights.

I accept that, even if Wise Energy was aware that SES often used such an arrangement, it might not have known Mr A specifically was entering one. However, as the Provider, it should have known the full package of measures that were to be installed (i.e. the number of solar panels) and the cost of this, as well as the estimated savings.

As Provider, Wise Energy was responsible for ensuring that the whole package of instalments was taken into account when producing the Plan. The Green Deal Provider Guidance states:

> "*The Green Deal Provider has responsibility for designing the specification of works to be carried out for the property in question. In practice this means working with the customer to select products and ensuring that they are properly integrated into the overarching design of the package of improvements agreed upon. This is important in development of the quote stage because costing will depend on, amongst other things, the price of the products and any requirements for integration. It is the Green Deal Provider's responsibility to ensure that they take any necessary steps to satisfy themselves and their customers that the specification of works is comprehensive, ensures the proper integration of measures and meets all the necessary requirements.*"

And:

> "*The Green Deal Provider should ensure that the quote issued to the customer covers all payments that are to be recovered from the Improver and bill payer for supply and installation of the improvements and the provision of credit.*"

So, I think it reasonable that Wise Energy should have known that not all of the cost was being funded by the Plan. And, on that basis, I think it is reasonable that Wise Energy should have made sure it was acting in accordance with the FCA Principles when entering the Plan.

It was also key that the Plan met the 'golden rule'. As above, this required that the cost of the finance for the first year was not higher than any savings the customer would benefit from as a result of the measures.

The credit agreement that Wise Energy produced showed the estimated savings Mr A would benefit from in the first year as being £408, with an effective annual repayment of £405.15 for the finance. So, if Mr A had benefitted from the full savings, he would have been paying less for the finance than he would be benefitting as a result of the measures, and the golden rule would have been met.

However, the £408 estimated savings included the money Mr A would receive from the FIT. And as part of this was not going to be received by Mr A, the golden rule would not have been met.

Wise Energy has said that the relevant savings calculations do not include the FIT. And so even if Mr A was not going to receive the FIT, Wise Energy was entitled to rely on the calculation it received as the savings Mr A would benefit from. However, I disagree.

The methodology that is used in the calculations for the Green Deal scheme is based on the Standard Assessment Procedure ("SAP"). The methodology is published on behalf of the government by the Building Research Establishment ("BRE"). There have been different versions of SAP but the one applicable in Mr A's case is SAP 2012. Appendix M of SAP 2012 sets out part of the formula for calculating energy savings from solar panels.

I note that Wise Energy has referred to comments received from the BRE, in 2018, that references in the SAP to the export tariff does not relate to FIT export tariff. However, I think Wise Energy has misunderstood what this means.

BRE's email to Wise Energy in 2018 says:

> "*SAP has used the term 'export tariff' to attribute an assumed value to exported electricity… This has nothing to do with the 'export tariff' associated with FITs*."

This did not mean that the calculation for the estimated savings a customer would benefit from did not include the FIT payments they would receive. Rather it means the SAP calculation was based on assumed price a customer would receive for exporting electricity, rather than the actual price the customer would be paid by their particular supplier. As mentioned previously, the SAP made other assumptions as well – such as the amount of electricity used and exported. But such assumptions were determined as necessary to provide a usable calculation.

Regardless, what is clear to me is that the Green Deal calculations include the estimated benefits a customer will achieve from both the reduction in energy they would take from their supplier and also from receiving the FIT.

And, ultimately, as a Provider, I consider it reasonable that Wise Energy was aware that

- the benefits a customer would achieve from measures installed under a Plan included the benefit of receiving FIT payments, and
- the associated golden rule also took this into account.

As such, Wise Energy should also have been aware that any assignment of FIT payments to a third party would lower the overall savings that the customer would make as a result of the measures.

So, if a customer needed to assign part of the FIT payments to a third party in order to be able to afford to have the measures installed, the associated reduction in the overall savings would need to be taken into account when considering whether the Plan – including the whole package of agreed improvements – met the golden rule.

In Mr A's case, Wise Energy should have been aware that the overall savings estimated to be achieved under the Plan were partly based on measures that were not being financed by the loan it was providing. And I think Wise Energy should have made sure that this would not reduce the overall saving that would be achieved for Mr A.

As the assignment of part of the FIT rights did reduce this overall saving below the annual cost of the finance, I don't consider the Plan met the golden rule. I also consider Wise Energy should have thought about the arrangement in light of the Principles, and with this in mind I don't think this arrangement was in Mr A's best interests.

I also think that by indicating to Mr A that the measures being financed through the Plan would result in an estimated overall saving, Wise Energy provided Mr A with misleading information.

Had Mr A been made aware that the installation of the measures would come at a net cost to him, I don't think he would have agreed to the Plan. I don't think he would not have agreed to have the solar panels installed or have entered the finance agreement with Wise Energy.

Summary

As Provider, Wise Energy was responsible for ensuring the Plan met the relevant requirements. Taking into account the whole of the arrangement, I don't consider that the golden rule requirements of the Plan were satisfied. Mr A would not have benefitted from an overall saving once he had assigned the FIT rights. And I consider Wise Energy should have taken this into account.

Additionally, as the lender of this finance, Wise Energy was also responsible for any representations made by them or on their behalf to Mr A. And I consider that Mr A was provided with unclear and misleading information and was not provided with an adequate explanation so that he could assess whether the credit agreement would meet his particular needs and financial situation.

Based on this, I don't consider Mr A would have had the solar panels installed, or entered the finance agreement with Wise Energy. I also don't consider that Mr A would have experienced the distress and inconvenience he has as a result of the existence of this agreement.

So, to put things right, Wise Energy should;

1. cancel its credit agreement and write off any outstanding loan balance
2. remove any record of the finance from Mr A's credit file
3. refund repayments Mr A has made towards the loan, together with interest†
4. make arrangements to take responsibility for any contractual obligations under the agreement that transferred the FIT rights
5. remove the solar panels from Mr A's property at no cost to him, and
6. pay Mr A £300 to compensate him for the inconvenience he suffered as a result of its actions.

But Wise Energy can deduct from this compensation amount the FIT payments Mr A has received from the solar panels since they've been installed.

† This interest should be calculated at 8% simple per annum, from the date of each loan repayment until the date of settlement. If HM Revenue & Customs requires Wise Energy to take off tax from this interest, Wise Energy must give Mr A a certificate showing how much tax it's taken off if he asks for one.

My final decision

My final decision is that I uphold this complaint. Wise Energy Solutions Ltd should put things right in the manner I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 1 December 2019.

Sam Thomas
Ombudsman