

The complaint

Mr R complains that a finance agreement he had with Shawbrook Bank Limited (“Shawbrook”) was misrepresented to him.

What happened

The details of this complaint are well known to both parties, so I won’t repeat them again here. Instead I’ll focus on giving my reasons for my 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 know it will disappoint Shawbrook, but I agree with the investigator’s opinion. Please let me explain why.

Where the information I’ve got is incomplete, unclear or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I’ve read and considered the whole file, but I’ll concentrate my comments on what I think is relevant. If I don’t comment on any specific point it’s not because I’ve failed to take it on board and think about it but because I don’t think I need to comment on it in order to reach what I think is the right outcome.

The relevant legislation says that the finance agreement should not have been misrepresented to Mr R. If it was, and if that misrepresentation led him to enter an agreement he wouldn’t otherwise have entered into, then I’d ask Shawbrook to take some action. The relevant legislation also says that that, in certain circumstances, the finance provider is responsible for what is said by the credit broker before the consumer takes out the credit agreement. I’m satisfied that those circumstances apply here as Mr R is complaining about the boiler company not telling him about the option fee.

I understand that the agreement did list the option fee on the front page of the agreement, but I’m persuaded that it’s most likely it wasn’t adequately drawn to Mr R’s attention because:

- Mr R has provided evidence that he had the money available to pay for the boiler outright. Whilst I understand he may have wished to retain this cash, the fact he had the money supports his argument that he could and would have paid had he known the agreement would cost more than was being proposed;
- Mr R complained as soon as he found out about the option fee. I think that suggests it was a surprise to him;
- I’m persuaded Mr R signed the finance deal whilst on the phone to Shawbrook and therefore had a matter of minutes to review the agreement. I don’t think Shawbrook brought his attention to the option fee during this call;

- Shawbrook have not supplied a signed copy of the partner checklist to demonstrate the option fee was explained to Mr R by the boiler company;

So, I think it's most likely this finance agreement was misrepresented to Mr R and I think, given the fact he had the finance available, it's likely if he had known about the option fee he would not have proceeded with the agreement.

Putting things right

In those circumstances Shawbrook should put Mr R back in the position he would have been in if the misrepresentation hadn't taken place. It's clear it would make no sense to remove the boiler, but I don't think that's necessary. I think it's likely Mr R would have proceeded to have the boiler fitted anyway but would most probably have paid for the work in cash.

So, that leaves the option fee to be refunded to Mr R in settlement of this complaint and, as he's been deprived of that money, Shawbrook should add 8% simple interest to that refund.

My final decision

For the reasons I've given above I uphold this complaint and tell Shawbrook Bank Limited to:

- refund Mr R's £70 option fee and add 8% simple interest per year to that refund from the date of payment to the date this complaint is settled.
- record the agreement as settled on the date Mr R made the £2,400 payment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 2 December 2020.

Phillip McMahon
Ombudsman