

The complaint

Mr K and Mrs K have complained about the way Shawbrook Bank Limited (“Shawbrook”) has dealt with a claim they made under section 75 of the Consumer Credit Act 1974 (“s.75”).

Background

In June 2016 Mr K and Mrs K entered into an agreement for the supply and installation of a solar panel system from a company called Project Solar.

The cost of the system was £8,999 and payment was made by way of a fixed sum loan agreement which Project Solar arranged with Shawbrook. The monthly payments were set at £96.15 per month over a 15-year loan term – making the total amount payable £17,307 with fees and interest.

Mr K and Mrs K say that Project Solar told them the financial benefits generated by the solar panels system would cover the cost of the loan payments and it would be ‘self-funding’. Those benefits would generally come in the form of energy cost savings and receiving Feed-in Tariff (“FiT”) payments from selling excess energy back to the grid.

The system hasn’t generated the financial benefits Mr K and Mrs K were expecting, and they are in considerable arrears with the loan payments. They are in financial difficulty and have explained that they consider the loan was mis-sold by Project Solar.

Under s.75 a finance company can be held responsible for misrepresentations or breaches of contract to the same extent as the supplier of goods or services. As Mr K and Mrs K were unable to resolve their concerns with Project Solar, they made a claim to Shawbrook through their MP in 2017.

The complaint made to Shawbrook essentially said that Project Solar had misrepresented the system and had failed to register it to receive FiT payments. Mr K and Mrs K didn’t receive the final response letter sent by Shawbrook, so referred their complaint to this Service as matters weren’t resolved.

One of our investigators started looking into the complaint and Mr K and Mrs K provided further information explaining:

- Shawbrook never alerted them to the fact that a County Court Judgment (“CCJ”) and subsequent charging order had been obtained against them.
- Shawbrook continued to collect direct debit payments after they said that they wouldn’t.
- They were told the system was being purchased using a ‘Government Grant’ rather than a loan – and there was no mention of Shawbrook.
- They believed the documents they were signing related to the FiT and not the loan.

- Mrs K was unduly pressured at the time of sale and was manipulated by the salesman – who was in her house for two hours.

The investigator reviewed everything in full and concluded that it wouldn't be fair and reasonable to uphold the complaint. In summary she said that she wasn't persuaded that Project Solar made any untrue statements, nor that it was responsible for failing to register for FiT payments.

Although not recommending the complaint be upheld, the investigator did suggest that Mr K and Mrs K contact Shawbrook about the difficult financial situation in which they find themselves. She highlighted that Shawbrook should treat them positively and sympathetically in determining an affordable repayment plan.

Mrs K disagreed with the investigator's conclusions. In summary, she explained that she felt her concerns about pressure selling hadn't been dealt with. She said the investigator's assessment favoured Shawbrook and Project Solar.

As no agreement could be reached the complaint has now been passed to me to review everything afresh and decide.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having considered everything, I've reached much the same conclusion as the investigator – and I'll explain why.

I should start by explaining that I understand this has been a difficult and frustrating time for Mr K and Mrs K. The solar panel system hasn't produced anything like the benefits they were hoping for and they've been left with considerable debt.

Shawbrook didn't sell the solar panels to Mr K and Mrs K – but as the finance provider it does have obligations under the Consumer Credit Act 1974 ("CCA"). I'm required to consider relevant law and regulations; regulator rules, guidance and standards, and codes of practices; and, where appropriate, what I consider having been good industry practice at the time.

Section 56 of the CCA explains that finance providers are liable for what they say and for what is said by a credit broker or a supplier (where there's a debtor-creditor-supplier agreement as there is here) before the consumer takes out the credit agreement. So here Shawbrook are responsible for what was said, or wasn't said that should have been, by Project Solar when it established the loan with Mr K and Mrs K.

An appropriate debtor-creditor-supplier relationship must also exist for there to be a valid claim under s.75. I'm satisfied that exists here, and as Shawbrook has accepted the claim I won't expand further. The key issue for me to decide is whether the Shawbrook has acted fairly and reasonably in dealing with the s.75 claim made by Mr K and Mrs K.

I understand there are several elements to the complaint raised by Mr K and Mrs K – and I'll address them in turn below.

Failure to register for FiT scheme payments

Mr K and Mrs K have said that Project Solar told them that it would apply to register their system for the FiT scheme on their behalf. Unfortunately, the system was never registered and so Mr K and Mrs K have never received any payments from exporting surplus energy back to the grid. The scheme is also now closed for new registrations and so that possibility of receiving any FiT income has been lost.

Mr K and Mrs K initially raised concerns directly with Project Solar in late 2016 about the fact they weren't receiving FiT payments. Email correspondence exists showing that Project Solar had agreed to help register for the FiT scheme. In acceptance of its failure, Project Solar offered Mr K and Mrs K a payment of £78.03 to make up for the lost FiT income to that date. It also again agreed to register for the FiT scheme, but said it would need information (including IDs, utility bills and meter readings) from Mr K and Mrs K to do so.

Mr K and Mrs K didn't accept the offer of compensation from Project Solar and didn't provide the documentation required. So, in the circumstances I can't reasonably say that Project Solar should have done anymore – as it advised it would only be able to register for FiT if certain information was provided. Therefore, I also can't now hold Shawbrook responsible for Project Solar failing to register the system for FiT payments.

Misrepresentation/Mis-sale of system

I consider the central issue to this complaint to be whether the system was misrepresented to Mr K and Mrs K – and I've reviewed this point particularly.

Mr K and Mrs K have explained they were told by Project Solar that the system would be self-funded by the financial benefits it would generate – and they thought they were applying for a government grant rather than a loan.

A 'personal solar quotation' was provided to Mr K and Mrs K by Project Solar. I consider this contemporaneous pack of documents to be helpful in determining how the system was described and sold – alongside Mr K and Mrs K's recollections. Based upon similar complaints seen by our Service I'm satisfied that the quotation pack would have been provided to Mr K and Mrs K, and that's also supported by the fact that they've signed a copy.

Having reviewed the quote, I do appreciate that not all the information provided is entirely clear, but I'm not persuaded it misrepresented the financial benefits of the system. Generally, the key benefit of solar panels is that they reduce energy bills and generate income from excess energy generated – so I think a big focus would have been made on that by Project Solar. However, I can't reasonably say that I've seen anything which suggests the system would be entirely self-funding.

The quotation set out the cost of the system and how long the loan period would be – and so what the monthly cost would be. It also set out in a table, the estimated financial benefits the system would generate. The investigator provided copies of these in her assessment and so I won't include them here again.

Based upon the table it's clear that there would be a deficit between the system benefits and the cost of servicing the loan payments each month over the earlier years. But in later years it was estimated that the system would start paying for itself each month. Overall, the projections suggest that the system would have paid for itself in total over 17 years – allowing for the FiT income that was expected at the time. Based upon what I've seen, I can't reasonably say that was an untrue or unrealistic statement – and so I can't say it was misrepresented by Project Solar.

Loan or government grant

I appreciate that Mr K and Mrs K have said that they didn't realise they were taking out a loan, but instead thought they were signing up for a government grant to pay for the system.

I've seen a copy of the agreement Mr K and Mrs K signed and dated 26 June 2016. The investigator included a relevant extract in her assessment to the parties. It is clear the agreement is for a loan and not a government grant. In large bold text at the top of the document it states:

"FIXED SUM LOAN AGREEMENT REGULATED BY THE CONSUMER CREDIT ACT"

I'm satisfied that the document makes it clear Mr K and Mrs K were signing up to a loan – and there is no reference to it being a grant or backed by the government in any way.

I appreciate Mr K and Mrs K recollect that they were told the agreement was a government grant by the salesman. But as the contemporaneous documents contradict that, I can't reasonably agree that's what they were told – or I at least believe the documents they signed ought to have corrected their understanding if there was any confusion.

It may be that the expectation of FiT payments was described in a way that Mr K and Mrs K believed they were some form of grant – effectively explaining they would contribute towards the loan payments. But that is different to not having a loan at all.

I also note Shawbrook carried out affordability checks Shawbrook before approving the loan. It undertook a review of the borrowing Mr K and Mrs K had in addition to their mortgage and noted that they had other credit facilities in the form of credit cards and a hire purchase agreement. The outstanding balances were nominal. I think these steps were reasonable, and so overall I can't say the loan wasn't explained or was misrepresented – nor have I seen anything to suggest it was unaffordable. I appreciate Mr K and Mrs K's personal circumstances have since changed, but I'm considering what happened at the time of sale.

Pressured sales tactics

Mrs K says she was pressured into purchasing the solar panel system. She has explained the salesman turned up at her home unannounced and spent a long time going through the sales presentation and system benefits. Mrs K says she felt vulnerable being a woman at home on her own. Eventually she agreed to make the purchase to get him out of her home.

I appreciate that Mrs K feels she was culturally manipulated by the salesman and note that he visited her home on a couple of occasions. I've given considerable thought to this point.

Our Service has received a number of complaints which relate to solar panel systems sold by Project Solar. Generally, a salesperson would only get in touch with a potential customer in response to a request made through social media or online promotion. Whilst I appreciate how Mrs K felt about the situation, it is not unusual for a salesperson to take a couple of hours to run through a sales presentation and quotation.

I do understand Mrs K may have felt uncomfortable. However, I note that although Mrs K says she felt pressured, she also says she believed the system would pay for itself and was funded by government grant. So, she would have expected the system to have been a benefit, which supports her wanting the purchase.

Also, I haven't seen any evidence that Mr K and Mrs K tried to cancel the purchase or agreement. If Mrs K was pressured and then discussed it with Mr K and hadn't wanted to proceed with the installation, I would expect to have seen some attempt to cancel.

Direct debit collection and court enforcement action

I understand Mr K and Mrs K's circumstances have changed in recent years and this has resulted in them getting into financial difficulty. They have complained that Shawbrook escalated formal debt collection proceedings and obtained a CCJ for the outstanding loan balance. It has also sought a charging order over Mr K and Mrs K's house to enforce payment.

As explained by our investigator previously, our Service cannot consider those proceedings as part of this complaint as it's something which has already been considered and decided by the Courts. As an alternative dispute resolution ("ADR") service, our rules don't allow us to investigate something already dealt with by the Courts.

Irrespective of the Court proceedings, I'm aware that Shawbrook did collect some direct debit payments which it has already agreed to suspend. I consider this point dealt with as Shawbrook accepted its error and offered £200 for the inconvenience – which was accepted by Mrs K.

Lack of communication from Shawbrook

When Mr K and Mrs K complained to Shawbrook, it was required to acknowledge their complaint and respond within eight weeks. They are unhappy and say no final response letter ("FRL") was issued to them.

Whilst I acknowledge Mr K and Mrs K's frustration, we have been provided a copy of an FRL issued by Shawbrook dated 18 December 2017. The letter was correctly addressed, and I have no reason to believe it wasn't sent – and so it was most likely lost in the post. Although Mr K and Mrs K never received the letter at the time, I can't say that Shawbrook was at fault for this.

Summary

The solar panels have not performed as Mr K and Mrs K were hoping and expecting, and since installation, their circumstances have changed. The lack of revenue generated from the system is, in part, because of the system not being signed up for the FiT scheme – but I'm unable to say that's Shawbrook's fault.

My conclusions are broadly the same as the investigator who assessed the complaint before me – and I understand Mrs K expressed concerns that the investigator was biased in her findings. I have every empathy with Mr K and Mrs K's position, and I realise they are likely to be disappointed that I haven't upheld their complaint. But I must assure them that I've considered everything impartially, afresh and in full.

My final decision

My final decision is that I don't uphold Mr K and Mrs K's complaint against Shawbrook Bank Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K and Mrs K to accept or reject my decision before 4 April 2022.

Ross Hammond
Ombudsman

