

The complaint

Mr and Mrs W have complained that Shawbrook Bank Limited ("Shawbrook") rejected their claim against it under section 75 of the Consumer Credit Act 1974 in relation to their purchase of some solar panels.

Background

Mr W bought solar panels for his home in 2014. The purchase was funded by a loan from Shawbrook to both Mr and Mrs W. Shawbrook is therefore liable for the acts and omissions of the installer under the relevant legislation (section 75 in Mr W's case, since Mrs W was not a party to the sale, and section 56 in the case of both Mr and Mrs W). Their complaint is that the installer misled them into believing that the panels would be self-funding, which they weren't, and that Shawbrook rejected their claim for compensation. They also complain that the installer breached their contract by not proofing the solar panels from damage by pigeons or other birds. They had spent £750 on hiring a third party to put that right.

While Mr and Mrs W's complaint was being considered by one of our investigators, Shawbrook offered to settle the complaint by restructuring their loan to effectively make the panels self-funding. This restructure was based on evidence of the actual performance of the panels, and a number of assumptions on future performance. The investigator thought this was fair, because it appeared to be in line with what she would normally have recommended. She didn't think Mr W's contract with the installer had said anything about protecting the panels from pigeons, so she didn't uphold that complaint point.

Mr and Mrs W didn't accept that offer. They questioned Shawbrook's figures, and insisted that the installer had breached its contract by not pigeon-proofing the panels. So the case was referred for an ombudsman's decision.

My findings

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

Since Shawbrook accepts that this complaint should be upheld on the ground that the panels were misrepresented to be self-funding, when they were not, I do not need to reconsider that point here. It is not in dispute. So on that point I will confine myself to deciding what would be fair redress.

I do not uphold the other part of this complaint. There is nothing in the sales documentation to suggest that the installer undertook to proof the panels against damage by pigeons or other birds. Indeed, Mr and Mrs W wrote to the investigator: "no information was provided concerning the maintenance of the panels or that they should be pigeon proofed. We can confirm that neither a maintenance package or any information was offered by the supplier." Rather, their case appears to be that this was a breach of a statutory implied term that the installation of the panels should be carried out with reasonable skill and care. But while there is such an implied term, I do not agree that it means that an installer must do more than competently install the panels. And I don't think that this term was breached by the installer

not doing extra work to protect the panels from birds. In coming to that decision I have had regard to standard industry practice, and it is not standard practice to routinely add pigeon-proofing to solar panels when they are installed. Rather, I think that needed to be contracted for expressly.

Putting things right

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mr and Mrs W's complaint for Shawbrook to put things right by recalculating the original loan based on the known and assumed savings and income to Mr W from the solar panels over the ten year term of the loan so that he and his wife pay no more than that, and they keep the solar panel system, and any future benefits once the loan has ended. Since this calculation has already been carried out and it shows that Mr and Mrs W are paying more than they should have, Shawbrook need to reimburse them accordingly. So I require Shawbrook to restructure the loan so as to put Mr and Mrs W in a position where the solar panel system is cost-neutral over the ten year loan term.

I have read Shawbrook's offer, which includes a breakdown of how it worked out the compensation, and a summary of the assumptions it made for the purposes of the calculation. Shawbrook's methodology appears to be in line with what the Financial Ombudsman Service would expect it to use. The offer was made in November 2021, and so it will need to be updated to April 2022, but apart from that I do not require Shawbrook to do anything different.

In its offer (and again in line with our usual approach), Shawbrook added simple interest at 8% a year from the date of the overpayment to the date of settlement. So I think the fairest resolution would be to let Mr and Mrs W have the following options as to how they would like their overpayments to be used:

- a) the overpayments are used to reduce the outstanding balance of the loan and they continue to make their current monthly payment, resulting in the loan finishing early,
- b) the overpayments are used to reduce the outstanding balance of the loan and they pay a new, reduced monthly payment until the end of the original loan term,
- c) the overpayments are returned to Mr and Mrs W and they continue to make their current monthly payment, resulting in their loan finishing early, or
- d) the overpayments are returned to Mr and Mrs W and they pay a new, reduced monthly payment until the end of the original loan term.

If Mr and Mrs W accept my decision, they should indicate on the acceptance form which option they wish to accept.

If Mr and Mrs W have settled the loan, Shawbrook should pay them the difference between what they paid in total and what the loan should have been under the restructure above, with interest at 8% a year. And if Mr and Mrs W have settled the loan by refinancing, they should supply evidence of the refinance to Shawbrook, and then Shawbrook must:

1. Refund the extra Mr and Mrs W paid each month with the Shawbrook loan.
2. Add simple interest from the date of each payment until Mr and Mrs W receives their refund.
3. Refund the extra Mr and Mrs W paid with the refinanced loan.
4. Add simple interest from the date of each payment until Mr and Mrs W receives their refund.
5. Pay Mr and Mrs W the difference between the amount now owed and the amount they would have owed if the system had been self-funding.

My final decision

For the reasons I've explained, I'm upholding this complaint. Shawbrook Bank Limited must put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W and Mr W to accept or reject my decision before 2 May 2022.

Richard Wood
Ombudsman