

## **The complaint**

Miss E and Mr T complain about the decision of Shawbrook Bank Limited in relation to a claim they made under sections 56 and 75 of the Consumer Credit Act 1974. The claim was in relation to a number of measures provided as part of a Green Deal Plan.

## **What happened**

In 2015, Miss E and Mr T were sold a number of energy related measure that would be installed at their home. These measures included a solar panel system, a new replacement boiler, and LED lighting. The purchase price of these measures was just over £16,000. The purchase was to be funded by two loans; a fixed sum agreement financed by Shawbrook for just over £12,000 and a Green Deal loan for just over £4,000 financed by a company I'll call "S".

Since the sale, S stopped trading and has dissolved. I understand the Green Deal loan has been taken over by another company I'll call "G".

Green Deal loans were provided as part of Green Deal Plans, and there are specific rules that relate to such plans. Largely speaking, it is not necessary for me to go into the details of this in this decision. However, as part of the sale documents for the measures and the Green Deal loan, Miss E and Mr T were provided with details of what was being purchased. These show that the Green Deal loan was to finance £700 for the lighting, £550 for the boiler, and £2,700 for the solar panels. Fees and charges would be added to this, taking the loan to just over £4,000.

Documents provided by the supplier at the time of the sale show that purchase price of the "solar renewables" was just over £11,000. It isn't clear what the breakdown of the costs for the other measures was.

In 2020, Miss E and Mr T contacted Shawbrook to claim under s.56 and 75 of the Consumer Credit Act. They alleged that they were mis-sold the solar panel system due to a misrepresentation of the supplier. They said the supplier had told them the system would be self-funding. They say they agreed to purchase the system at a cash price of just over £16,000. They also said that neither the Shawbrook loan nor Green Deal loan were fully explained. They complained that the system was not self-funding and so there was a misrepresentation. And that on this basis they wanted to rescind both loans, have all payments they'd made refunded, and have the system removed from their property.

Shawbrook accepted that there may have been a misrepresentation of the benefits of the solar panels. However, it said that the Green Deal loan was only funding the boiler. So, it offered to amend its own loan so that the solar panels were self-funding under this finance agreement. Miss E and Mr T would keep the solar panels, but receive any amount they'd "overpaid" with interest. Shawbrook offered a number of options for how this would be achieved. Shawbrook also made this offer as a final response to a complaint.

Miss E and Mr T brought their complaint about this to our service. Ultimately, our Investigator thought the measures sold to Miss E and Mr T were sold as a package, including both the

solar panels and the other measures. And that Shawbrook was jointly and severally liable for any misrepresentations of the supplier in relation to the whole package. So, whilst she considered restructuring rather than rescinding the lending to be reasonable, she thought Shawbrook needed to restructure the full lending to ensure that loan repayments under both agreements are no greater than the benefits Miss E and Mr T would receive.

Shawbrook did not agree. As such, this 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.

The basic facts of this complaint are not in dispute. Shawbrook has accepted that there may have been a misrepresentation of the benefits Miss E and Mr T would receive as a result of the purchase they made. And so, has accepted they were induced into the arrangement.

As such, all that is necessary for me to consider is what the appropriate redress should be for this situation.

Miss E and Mr T had initially sought to have the solar panels removed from their property. They also said that the full lending should be rescinded. But the full lending involved the installation of not only the solar panels but also the boiler and lighting. To unwind the entire arrangement, would involve the removal of all of these measures. As I understand it, all of the measures are functioning properly – the issue is that the benefits they would achieve were likely exaggerated at the time of the sale. The removal of properly functioning, energy saving measures at a cost to Shawbrook and likely involving significant inconvenience to Miss E and Mr T does not seem to be appropriate in the circumstances.

So, whilst it is different to the redress a court might propose in the case of a misrepresentation, I consider a fair and reasonable outcome would be to, effectively, make the misrepresentation true. Miss E and Mr T were apparently told the measures would be self-funding. It is not possible to increase the performance of these measures. So, what is required is to appropriately rework the finance arrangements that pay for them.

Largely speaking, it does not seem that either party disagree with this in principle.

The key issue is whether this financial restructuring should be limited to Shawbrook's own loan, or should also take into account the lending through the Green Deal scheme.

I note Shawbrook has said it only funded the solar panels, rather than any of the other measures. And that the Green Deal loan was to solely fund the other measures not the solar panels. Shawbrook has not provided a copy of its loan agreement, so I don't know what it described as being funded. But I do note that the paperwork from the supplier refers to the loan of just over £12,000 as being through "*our solar funding package with Shawbrook*".

However, I am not persuaded Shawbrook's loan only funded the solar panels.

The paperwork provided by the supplier makes it clear that the purchase price of the solar panels was more than £760 less than the amount lent by Shawbrook. So, unless Shawbrook added fees of over £760 to this loan, which I do not find credible, it was clearly lending for something more than the solar panels. And the Green Deal loan paperwork make it clear that the lending initially provided by S included £2,700 toward the solar panels.

Taken together this means the Shawbrook loan was for around £8,500 of the cost of the

solar panels and around £3,500 toward the cost of the other measures. As such, both loans partly funded a number of the measures.

It is also clear that the sale was for a package of measures rather than individual items. The documents provided by the supplier show that Miss E and Mr T's objectives were to reduce their bills and carbon footprint, and to provide additional income. And the supplier recommended installation of a number of measures to achieve this. The Green Deal paperwork also demonstrates that a package of improvements was being installed.

This paperwork does indicate that the lending for the boiler would be repayable over 12 years, whereas the other measures were repayable under this loan over a 22 year term. This reflects the estimated longevity of the measures being introduced – a boiler may need replacing again after 12 years. My understanding is that the Shawbrook loan is likely repayable over a period of 15 years. However, whilst the Green Deal scheme requires that such repayment and longevity issues are taken into account, there is no requirement that Shawbrook lent only over a period which matched the expected lifetime of the product.

Taking everything into account, I consider the sale was of a package of measures, partly financed by a Green Deal loan and partly financed by the Shawbrook loan.

In a case such as this, the creditors of both loans and the supplier will all be jointly and severally liable for the entire transaction involved. Largely speaking, it is up to Miss E and Mr T to determine who they wish to pursue for a resolution. They've also said that they have not received any redress from G. As Miss E and Mr T have made their claim against Shawbrook, I consider it is Shawbrook's responsibility to resolve the entire situation. This means, I think Shawbrook should restructure its own loan in a manner that means the entire package of measures sold to Miss E and Mr T self-funding. It would then be for Shawbrook to seek any contribution from G if it wanted to.

### **Putting things right**

In this case, I think fair compensation should try to make sure that Miss E and Mr T don't suffer a financial loss, which in my view would mean that the package of measures should be cost neutral over the terms of the relevant loans.

In summary, my aim is to make sure that total outgoings (including the monthly loan repayments) are equal to any income that the solar panels generate, and any savings made by having the panels and other measures.

Unless Shawbrook seeks to purchase the Green Deal loan from G, it is only able to make changes to its own loan. But it should take into account the Green Deal loan, including the durations of repayment relevant to that loan and the payments due under that loan when doing so.

So, I think to put things right Shawbrook should recalculate its loan based on the known and assumed savings and income to Miss E and Mr T from the measures over the terms of the loans, so they pay no more than that, and they keep the measures. This will put Miss E and Mr T in a cost neutral position over the loan terms.

Normally, by recalculating the loan this way, Miss E and Mr T's monthly repayments would reduce, meaning that they will have paid more each month than they should have, resulting in an overpayment balance. And as they would have been deprived of the monthly overpayment, I would expect Shawbrook to add 8% simple interest per year to each repayment, from the date of that overpayment to the date of settlement.

And I think the fairest resolution would be to let Miss E and Mr T have the following options as to how they would like the overpayments to be used:

1. the overpayments are used to reduce the outstanding balance of the loans and Miss E and Mr T continue to make the current monthly payments resulting in the loans finishing early,
2. the overpayments are used to reduce the outstanding balance of the loan and Miss E and Mr T pay a new monthly payment until the end of the loan term/repayment of the loan,
3. the overpayments are returned to Miss E and Mr T and they continue to make their current monthly payment resulting in the loan finishing early, or
4. the overpayments are returned to Miss E and Mr T and they pay a new monthly payment until the end of the loan term/repayment of the loan.

### **My final decision**

My final decision that I uphold this complaint. Shawbrook Bank Limited should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss E and Mr T to accept or reject my decision before 28 April 2022.

Sam Thomas  
**Ombudsman**