

The complaint

Mr and Mrs S 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 and Mrs S bought solar panels for their home in August 2015. The purchase was funded by a loan from Shawbrook, and that business is therefore liable for the acts and omissions of the installer under the relevant legislation. In this case, that relates to the installer misleading Mr and Mrs S into believing that the panels would be self-funding, which they weren’t.

Mr and Mrs S’s complaint was considered by one of our adjudicators. She thought that the benefits of the panels were mis-represented to Mr and Mrs S, and that fair redress would be for the loan to be restructured to effectively make the panels self-funding. This restructure should be based on evidence of the actual performance of the panels, and a number of assumptions on future performance. She also said that Shawbrook should pay Mr and Mrs S £100 for their inconvenience.

Shawbrook didn’t respond, 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.

Shawbrook is familiar with all the rules, regulations and good industry practice we consider when looking at complaints of this type, and indeed our well-established approach. So I don’t consider it necessary to set all of that out in this decision.

Having carefully considered everything provided, for broadly the same reasons as those explained by the adjudicator, I uphold this case. In brief, that is mainly because the evidence supports the conclusion that a misrepresentation took place and Mr and Mrs S were not given clear information to demonstrate that the solar panels would *not* be self-funding and would equate to an additional cost for them. I have also found that the panels are performing at slightly less than 90% of their estimated performance.

So I think that Shawbrook didn’t treat Mr and Mrs S fairly and they lost out because of what Shawbrook did wrong. And this means that it should put things right.

Putting things right

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mr and Mrs S’s complaint for Shawbrook to put things right by recalculating the original loan based on the known and assumed savings and income to Mr and Mrs S from the solar panels over the ten year term of the loan so they pay no more than that, and they keep the solar panel system, and any future benefits once the loan has ended.

If the calculation shows that Mr and Mrs S are paying (or have paid) more than they should have, then Shawbrook need to reimburse them accordingly. (Should the calculation show that the misrepresentation has not caused a financial loss, then the calculation should be shared with them by way of explanation.)

If the calculation shows there is a loss, then where the loan is ongoing, I require Shawbrook to restructure the loan. They should recalculate the loan to put Mr and Mrs S in a position where the solar panel system is cost-neutral over the ten year loan term.

Normally, by recalculating the loan this way, Mr and Mrs S's monthly repayments would reduce, meaning that they would have paid more each month than they should have done, resulting in an overpayment balance. And as they would have been deprived of the monthly overpayment, I would expect a business to add 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 S 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 monthly payment until the end of the loan term,
- c) the overpayments are returned to Mr and Mrs S 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 S and they pay a new monthly payment until the end of the loan term.

If Mr and Mrs S accept my decision, they should indicate on the acceptance form which option they wish to accept by writing A, B, C or D on the form.

If Mr and Mrs S 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.

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

I'm satisfied that there was sufficient information available at the time that Mr and Mrs S first contacted Shawbrook that means the claim should have been upheld. I direct that Shawbrook must pay £100 compensation for the trouble and upset caused.

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 Mr S and Mrs S to accept or reject my decision before 9 May 2022.

Richard Wood
Ombudsman