

The complaint

Mr and Ms M complain that Shawbrook Bank Limited ("Shawbrook") has rejected a claim they made under section 75 of the Consumer Credit Act 1974 ("the Act") concerning a solar panel system they say was misrepresented to them by the supplier.

What happened

In or around March 2019 Mr and Ms M were contacted by a company I'll call "P" to talk about buying a solar panel system ("the system") to be installed at their home. After a visit from a representative of P, Mr and Ms M decided to buy the system, and to finance it through a 10-year fixed sum loan from Shawbrook. The system was subsequently installed.

In May 2020 Mr and Ms M made a claim to Shawbrook under section 75 of the Act. They said that P had made a number of representations about the system which had turned out not to be true. And they said it was these misrepresentations that had induced them to enter into the contract with P. They've made the following points:

- they were told that the system and battery would provide a monthly saving of £80 on their energy bills, but their bills have actually increased and they can't afford the payments;
- P sent them a copy of the contract, but they found it very confusing, so they spoke to the sales representative, who assured them they'd save money in line with what he discussed with them;
- once they realised, shortly after installation, that the system wasn't providing the savings they were promised, they contacted P who told them this was due to the battery not yet being fitted;
- the battery was fitted after five months, but they still weren't receiving the savings they'd been led to expect;
- P sent engineers to check the system to try to improve the performance but nothing they did increased the savings; and
- P later told them that the contract showed a yearly deficit of £600, contrary to what the sales representative told them.

When Mr and Ms M brought their complaint to us, Shawbrook hadn't provided its final response to their complaint. When we contacted it, it told us it didn't agree the system had been misrepresented to Mr and Ms M or that there was any other reason for the claim to be upheld. But it's offered to pay Mr and Ms M £200 by way of apology for its delay in dealing with their complaint.

One of our investigators looked into what had happened. Having considered all the information and evidence provided, they thought that P had misrepresented the system to Mr and Ms M. So they thought that Shawbrook should compensate Mr and Ms M for their financial loss.

Shawbrook didn't respond to the investigator's view or provide any further comments. As the time for doing so has now expired, the case has been passed to me.

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.

Relevant considerations

When considering what's fair and reasonable, I'm required to take into account relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice and, where appropriate, what I consider to have been good industry practice at the relevant time.

In this case the relevant law includes sections 56 and 75 of the Act. Section 75 provides protection for consumers for goods or services bought using credit.

As Mr and Ms M paid for the system with a fixed-sum loan, Shawbrook agrees that section 75 applies to this transaction. This allows Mr and Ms M to claim against Shawbrook, the creditor, for any misrepresentation or breach of contract by P in the same way they could have claimed against P, the supplier. So I've taken section 75 into account when deciding what is fair in the circumstances of this case.

Section 56 is also relevant. This is because it says that any negotiations between Mr and Ms M and P, as the supplier, are deemed to have been conducted by P as an agent of Shawbrook.

For the purpose of this decision I've used the definition of a misrepresentation as an untrue statement of fact or law made by one party (or their agent) to a second party, which induces that second party to enter the contract, thereby causing them loss.

Key documents

Mr and Ms M have provided several documents from the time of sale. These include a pre-contract credit information document and solar quote, titled 'Your Personal Solar Quotation'. I've looked at these in detail, and have considered whether they support the alleged representations made by P.

The quote is a detailed document which sets out key information about the system, the expected performance, financial benefits and technical information.

Mr and Ms M have also provided a handwritten form completed by the sales representative, containing information about the benefits of the system.

I haven't been provided with a copy of the credit agreement. But I've seen a copy of the pre-contract credit information that was given to Mr and Mrs M, and I'm satisfied, on balance, that the details on that match those in the credit agreement. It sets out the amount being borrowed, the interest rate to be charged, the total amount payable, the term of the loan and the contractual monthly repayments.

Point of sale documentation

Mr and Ms M have given us a detailed account of what happened during the sale. They've explained that P's sales representative told them that they'd achieve savings of around £80 a month on their bills. They say they received the quote after the initial sales meeting and were confused by the contents, as it was different from what the sales representative had told them. So they asked the sales representative to send them the handwritten form which their previous conversation had centred around. A copy of the form is below.

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Current Energy Spend		Savings Per Year
Total Energy Spend Year 1	1	£ 1236
Estimated Cost Of Electricity Over 30 Yrs		£ 78626 -
Energy Saving Solution		
Product		Est. Savings Year 1
Energy Switch		£
Volt Dr		£
Boiler Minder		£
Owl Heating		£
Total		£
Recommended Solar - Energy Solution		
Solar Panel Manufacturer		Evo
Solar System Output		4215 kWh -
Panel Build Warranty		99 years
Inverter Warranty		99 years
Inverter Manufacturer		Growatt
Feed In Tariff Income		6954.27 (20yrs)
Energy Savings From Solar		£ 27810 (25yrs)
+ Battery		£ 8326.77 (15yrs)
+ Volt Dr		£ 3931.31
+ Boiler Minder		£
+ Owl Heating		£
+ Hot Water Doctor		£
Total Income & Savings		£
Total Income & Savings (30 Yrs) 25yrs		£ 47,023.22

The savings shown on the handwritten form are significantly higher than on the quote. I'm satisfied, on balance, that the handwritten note reflects what Mr and Ms M say they were told by the sales representative. It didn't include any information that would have allowed them to compare the stated expected benefits of the system with the monthly cost of their loan repayments. So I think they'd have relied heavily on what the sales representative told them. And I'm satisfied, on balance, that it was the sales representative's verbal representations to Mr and Ms M that induced them to enter into the contract with P.

The quote shows an estimated year one benefit (made up of income and savings to Mr and Ms M) of £798.04.

Mr and Ms M have provided their meter reading, which shows that the system has generated as predicted in the quote. So I think Mr and Ms M are likely to have received benefits broadly in line with the £798.04 shown in the quote.

Mr and Ms M's annual loan repayments total £1,625.40. That's clearly very much higher than the benefit they've been receiving from the system. As I've explained above, I'm satisfied, on balance, that P's sales representative led Mr and Ms M to believe that the benefits from the system would be significantly higher than those shown in the quote. I'm satisfied that that amounted to a misrepresentation by P, and that Mr and Ms M have been financially disadvantaged by it.

Our role is to resolve individual disputes between consumers and businesses fairly, reasonably, quickly and informally. Determining fair compensation isn't always an exact science - and it's more difficult in a case like this, where solar panels have been installed at the property.

I've thought about whether it would be fair to unwind the credit agreement, remove the solar panels and give Mr and Ms M a refund of all the payments made (less any financial benefit gained from the installation of the solar panels). But I think it may be disproportionate to do this, given that the panels are working and generating green energy. And I think there's an alternative that would put Mr and Ms M in a fair position.

I think that the fairest solution is to ensure that Mr and Ms M don't suffer a financial loss as a result of having had the system installed. This means that the solar panel system needs to be cost-neutral over the 10-year loan term. In other words, Mr and Ms M's total outgoings (including the monthly loan repayments) should be equal to any income and savings that the panels generate.

I'm aware that Mr and Ms M have raised concerns about the performance of the battery that was installed to work with the panels. But I'm satisfied that the compensation below will ensure that they don't lose out financially as a result of having had the system installed.

Putting things right

To put things right Shawbrook should recalculate the loan so that Mr and Ms M pay no more than the known and assumed savings and income to Mr and Ms M from the solar panels over the 10-year term of the loan. And Mr and Ms M should be allowed to keep the solar panel system. This will put Mr and Ms M in a cost-neutral position over the loan term, meaning that they're not disadvantaged by the misrepresentation.

If the recalculated loan shows that Mr and Ms M would have paid less each month than they have actually paid, Shawbrook should give Mr and Ms M a choice between the following options as to how they would like the overpayments they've made 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 Ms M and they continue to make their current monthly payment resulting in the loan finishing early, or
- (d) the overpayments are returned to Mr and Ms M and they pay a new monthly payment until the end of the loan term.

Shawbrook should pay Mr and Ms M simple interest at 8% per year on the amount of each overpayment from the date of the overpayment to the date of settlement.

Finally, Shawbrook should pay Mr and Ms M the £200 compensation it offered them for its delay in responding to their complaint, if it hasn't already done so.

My final decision

My decision is that I uphold this complaint. I require Shawbrook Bank Limited to put things right by doing as I've set out above.

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

Juliet Collins
Ombudsman