

Complaint

Mr and Mrs A have complained that Shawbrook Bank Limited (“Shawbrook”) rejected their claim against it under Section 75 of the Consumer Credit Act 1974.

Background

Mr and Mrs A bought solar panels for their home in 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 A into believing that the panels would be self-funding, which they weren’t.

Shawbrook made an offer to settle the complaint. Mr and Mrs A’s complaint was considered by one of our adjudicators. She thought 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. And she thought the offer made by Shawbrook was in line with our established approach to these types of cases.

Mr and Mrs A didn’t agree. They wanted to unwind the credit agreement and return the panels. They also felt they were overcharged for the panels they received. Finally, they challenged the calculation given by Shawbrook for not including payments they’d made.

As an agreement couldn’t be reached, the case was passed to me for review.

In my provisional decision of 19 August 2022, I set out why I thought that, although the complaint should be upheld, I felt the offer made by Shawbrook to resolve the complaint was fair. I invited both parties to provide any further submissions they may wish to make before I reached a final decision. Mr and Mrs A replied accepting my provisional findings and like Shawbrook, did not make any further comments.

My findings

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

In my provisional decision I explained the following:

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.

As Shawbrook has already agreed to uphold the complaint, I don’t need to consider whether the solar panel system was mis-sold. The only matter left for me to decide is how to put things right, and whether the offer made by Shawbrook is reasonable.

Cost of the panels

I understand Mr and Mrs A feel they were charged more for the panels than they should have been, and a similar alternative could be found elsewhere for much less. However, I can see the cost of the panels was made clear to Mr and Mrs A – the cash price was on the credit agreement they signed, and they were happy to purchase the panels at that price.

While I can see they have since found out they could have purchased the solar panels for less, I cannot uphold a complaint on that basis. It is for consumers to shop around and find the best deals for them. The installer made clear how much they were selling the panels for, and it was up to Mr and Mrs A to either accept that offer or decline it and seek to purchase them elsewhere at a price that suited them. While I understand their disappointment, I don't think there's been an error here that would enable me to uphold their complaint on this basis.

Unwind the credit agreement

Determining fair compensation is not always an exact science and it is all the more difficult in a case like this where solar panels have been installed at a property.

I understand Mr and Mrs A want to unwind the credit agreement and return the panels - so they can purchase more suitable panels. I've considered whether it's fair to unwind the credit agreement, remove the solar panels and give Mr and Mrs A, a refund of all the payments they made (less any financial benefit gained from the installation of the solar panels). But I don't think this is fair. My understanding is that the installer is no longer trading so Shawbrook would have to arrange to have this done at their expense. This may be disproportionate when there is an alternative that will put Mr and Mrs A in a fair position.

I think that Mr and Mrs A purchased the panels on the basis that they wouldn't cost them anything – because they were led to believe the financial benefits received would cover the cost of the panels.

As explained by our adjudicator, we have an established approach to redress in these types of cases and we think fair redress would be for the loan to be restructured to effectively make the panels self-funding. The purpose of our redress methodology is to make sure the cost of the solar panels is cost neutral over a 10-year term. So, Mr and Mrs A pay no more for the panels than what they would likely receive from the panels over the 10-year term.

I think our approach is a fair and reasonable approach to putting things right and I while I've thought carefully about Mr and Mrs A's request to unwind the contract, I don't think that's a fair solution in this case.

Redress calculation

I appreciate Mr and Mrs A have challenged the figures offered by Shawbrook – however, as the loan is ongoing, and payments are being made, often the calculation has to be updated to take account of further payments that have been made. But it does look like Shawbrook is carrying out the calculation in line with our approach. If Mr and Mrs A accept the offer, the loss can be crystallised, the loan will be restructured, and the calculation can be finalised based on all the actual payments they made up to that point. I'd like to re-assure Mr and Mrs A that, if the offer is accepted, Shawbrook would be obligated to carry out the calculation as agreed.

In the absence of any new points for me to consider, I find no reason to depart from my original findings as set out in my provisional decision. With this in mind, I uphold this complaint and Shawbrook should put things right as I've set out below.

Fair compensation – what Shawbrook needs to do to put things right for Mr and Mrs A

Shawbrook should put things right by recalculating the original loan based on the known and assumed savings and income to Mr and Mrs A from the solar panels over the 10 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.

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

If the calculation shows there is a loss, then where the loan is ongoing, I require Shawbrook to restructure Mr and Mrs A's loan. It should recalculate the loan to put Mr and Mrs A in a position where the solar panel system is cost neutral over the 10-year loan term.

Normally, by recalculating the loan this way, Mr and Mrs A's monthly repayments would reduce, meaning that they would've paid more each month than they should've done resulting in an overpayment balance. And as a consumer would have been deprived of the monthly overpayment, I would expect a business to add 8% simple interest from the date of the overpayment to the date of settlement. So, I think the fairest resolution would be to let Mr and Mrs A 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 A 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 A and they pay a new monthly payment until the end of the loan term.

If Mr and Mrs A wish to accept this, they should indicate which option they wish to Accept.

If Mr and Mrs A have since settled the loan, Shawbrook should pay Mr and Mrs A the difference between what they paid in total and what the loan should have been under the restructure above, with 8% interest.

I can see Shawbrook has offered £200 compensation to Mr and Mrs A for the trouble and upset caused, and I think that's a fair offer. I direct that Shawbrook should pay £200 compensation for the trouble and upset caused.

My final decision

For the reasons explained, I uphold this complaint. Shawbrook Bank Limited should 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 A and Mr A to accept or reject my decision before 13 October 2022.

Asma Begum
Ombudsman