

Complaint

Mrs B has complained that Sainsbury's Bank Plc rejected her claim against it under Section 75 of the Consumer Credit Act 1974.

Background

Mrs B bought solar panels for her home in 2012. The purchase was funded in part by a credit card with Sainsbury's, and that business is therefore liable for the acts and omissions of the installer under the relevant legislation. Mrs B funded the remaining part of her purchase using a loan from a third-party provider – but her complaint is against Sainsbury's.

In this case, Mrs B says the installer led her into believing that the panels (including the finance charges) would cost her no more than £60 a month due to the income and savings she would receive from the solar panel system. However, the total benefit she's received has been less than estimated which has meant that Mrs B has had to contribute more than £60 a month towards her monthly repayments.

Mrs B's complaint was considered by one of our investigators. They thought that the benefits of the panels were mis-represented to Mrs B, and that fair redress would be for Mrs B to be charged no more for the solar panels than the benefit she has received over an 8-year period plus a monthly payment of £60 during the term of the 8-year loan. The redress should be based on evidence of the actual performance of the panels, and a number of assumptions where needed.

Sainsbury's didn't agree. It felt that there was no documentary evidence of the misrepresentation that's Mrs B has alleged. It added that Mrs B couldn't remember exactly what she was told during the sale which is confirmed by her requesting copies of the sales quote from the installer a year after the sale. It didn't agree that the complaint could be upheld based solely on Mrs B's testimony.

As no agreement could be reached, the case was passed to an ombudsman.

My findings

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

Sainsbury's 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.

I understand that there is limited documentary evidence available in this case. But Ms R has said she was not left a quote or the readings the sales representative set out during the sales meeting. She's also requested a copy of the quote from the installer a year after the sale, but it did not provide her with a copy. Consumers cannot provide evidence that they do not have. But where there is limited information about a sale, I have to make a decision based on the available evidence and that includes Mrs B's testimony.

Mrs B has repeatedly explained she was assured that she'd have to contribute no more than £60 towards the cost of these solar panels. Her testimony has been consistent and clear throughout. I don't think Mrs B seeking a copy of the quote is evidence that she doesn't remember the representation that induced her into the contract. It's not unusual for consumers to seek copies of sales documents and check annual generation figures, or 20 years estimates post sale, and we don't expect consumers to remember the exact figures and breakdowns discussed and given during a detailed and lengthy sales meeting.

However, I don't think it's unusual that Mrs B remembers the figure that she was prepared to or financially able to contribute towards the cost of the system – I think that's likely to have been of paramount importance and easily remembered. And as I've said above, Mrs B's testimony that the installer made the misrepresentation that the financial returns from the system would result in no more than a monthly contribution of £60 from her being needed, has been consistent and clear throughout this complaint.

I would add that I've thought about Sainsbury's comments regarding Mrs B being concerned with sustainability and accepting she'd researched the technical aspects of solar power generation. However, she's also explained that she'd done no research into how that translated into financial returns and was reliant on the installer to set out the costs and benefits for her. So, given that the gap in her knowledge was about costings, I think it's more likely she'd remember the figure she was told she might have to pay towards this system.

Overall, I think her testimony is reliable evidence of what she was likely told during the sale.

Having carefully considered everything provided, for the same reasons as those explained by the investigator, I uphold this case. In brief, that is because the evidence supports the conclusion that a misrepresentation took place and Mrs B was not given clear information to demonstrate that the solar panels could equate to an additional cost for her above the £60 a month she was prepared to pay.

So, I think that Sainsbury's didn't treat Mrs B fairly and she lost out because of what Sainsbury's did wrong. And this means that it should put things right.

Fair compensation – what Sainsbury's needs to do to put things right for Mrs B

Having thought about everything, as set out by our investigator, I think that it would be fair and reasonable in all the circumstances of Mrs B's complaint for Sainsbury's to put things right by recalculating the original cost of the system (including any finance charges) based on the known and assumed savings and income to Mrs B from the solar panels over an 8-year period, plus a monthly payment of £60 during the loan term, so she pays no more than that, and she keeps the solar panel system, and any future benefits now that the loan has ended.

In the event the calculation shows that Mrs B has paid more than she should have, then Sainsbury's needs to reimburse her accordingly. Should the calculation show that the misrepresentation has not caused a financial loss, then the calculation should be shared with Mrs B by way of explanation.

If the calculation shows there is a loss, Sainsbury's should recalculate the cost of Mrs B's solar panel system, to put Mrs B in a position now where the solar panel system costs Mrs B, only £60 a month plus the income and saving she's received over the 8 year loan term.

Normally, by recalculating the loan this way, a consumer'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.

This means Sainsbury's should:

1. Allow Mrs B to keep the system;
2. Calculate the actual and predicted benefits of the system over the 96-month loan term. Where possible Mrs Bs' electricity bills and FIT statements should be used to do this;
3. Calculate the benefits that Mrs B was told she would receive from the system over the same period;
4. Subtract figure 2. from figure 3. and pay Mrs B the difference;
5. Add 8% simple interest a year to each overpayment she's made on her loan with a third-party provider, from the date of each payment to the date of settlement. Sainsbury's should deduct tax from this and provide Mrs B with a tax deduction certificate so she can claim a refund, if appropriate.

Mrs B should send all relevant information to Sainsbury's to allow it to calculate the figures as accurately as possible.

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

My final decision

For the reasons I've explained, I'm upholding Mrs B's complaint. Sainsbury's Bank Plc 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 B to accept or reject my decision before 11 November 2022.

Asma Begum
Ombudsman