

The complaint

Mr and Mrs P have complained that they were not happy with Shawbrook Bank Limited's offer of settlement for his claim against it under Section 75 of the Consumer Credit Act 1974.

What happened

Mr and Mrs P 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 P into believing that the panels would pay for themselves within 6 years.

The loan had a term of 10 years. No payment was due for the first 12 months, but the loan was interest free if repaid within that time. Mr and Mrs P say they always intended to repay the loan within that time and pay no interest, which is what they did. Mr and Mrs P say they understood that in doing so the solar panels would pay for themselves after 6 years. But that if they did not do this, and instead paid interest on the loan, that payback time would be longer.

Shawbrook offered Mr and Mrs P £2,000 in settlement of the claim. It said that its usual method of calculating settlement in a case like this would be to, in effect, make the solar panels self-funding within the term of the loan - 10 years in this case. And that its calculations (based on the expected annual generation shown in the MCS certificate) showed that Mr and Mrs P would not be due a payment, since the benefits over 10 years would exceed what they'd paid for the solar panels.

Mr and Mrs P referred the complaint to us. They argued that the solar panels should be made self-funding over one year, as they always intended to repay the loan within that time. Or at worst over 6 years, since this is how long they were told the solar panels would take to pay for themselves. They also said that the solar panels have actually generated much less electricity than expected – so any calculation should use the actual amounts generated so as not to over-estimate the benefits they have or will receive.

I issued a provisional decision explaining that I was upholding the complaint and how Shawbrook should put things right. Mr and Mrs said they would accept my provisional decision. Shawbrook did not respond within the given deadline. So this final decision is in line with what I said in provisional 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.

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. Shawbrook have accepted that the complaint should be upheld and made an offer of settlement. So, I don't need to decide whether there was a misrepresentation - only what must happen to put things right.

Looking at the documents from the time of sale it is clear that Mr and Mrs P were told the solar panels would pay for themselves within 6 years – this is shown clearly in the contract.

Given that they bought the solar panels intending to pay off the loan within the 12 month interest free period, I think their expectation was that if they did so, then after 6 years the cumulative benefits of the solar panels (through feed-in tariff payments, and savings on energy bills) would be equal to or more than the amount they paid for them.

In light of this, thinking holistically about the benefits Mr and Mrs P will receive from the solar panels over their lifetime (generally 25 years) and bearing in mind the specific circumstances in this case, as well as the need to be fair to both Mr and Mrs P and Shawbrook, I think it would be fair and reasonable for Shawbrook to calculate redress based on the benefits of the solar panels over 8 years. I think that using the benefits over fewer years than this would mean that the redress is unfairly advantageous to Mr and Mrs P – in that they would have paid significantly less than the sale price of the solar panels – and would be unfair on Shawbrook. I think that using the benefits over 8 years strikes the right balance in terms of fairness, to recognise and put right what went wrong in a way that is fair and reasonable in the specific circumstances of this case.

Because so long has passed since the solar panels were installed, we know how they have performed. Shawbrook should use the actual generation figures in its calculations (3,764 kWh per year), rather than the estimated figure shown on the MCS certificate. Given the solar panels have generated significantly less electricity than estimated at the time of sale, using the MCS estimate would give a false indication of the benefit – to the detriment of Mr and Mrs P.

By Shawbrook's own calculations, it appears this would result in a settlement in excess of the £2,000 it has so far offered. As such, I intend to uphold this complaint and tell Shawbrook to put things right as set out below.

Putting things right

I currently think that it would be fair and reasonable in all the circumstances of Mr and Mrs P's complaint for Shawbrook to put things right by restructuring the original loan based on the known and assumed savings and income to Mr and Mrs P from the solar panels over an 8-year period so they pay no more than that, and they keep the solar panel system and any future benefits. The benefit calculation should use the actual generation of 3,764 kWh per year rather than the estimate on the MCS certificate.

Because Mr and Mrs P have settled the loan, Shawbrook should pay them the difference between what they paid in total and what the loan would have been under the restructure above, with 8% interest per year for the time they were without the money.

My final decision

For the reasons I've explained, I uphold this complaint. Shawbrook Bank Limited should put things right as I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P and Mrs P to accept or reject my decision before 12 September 2022.

Phillip Lai-Fang
Ombudsman