

The complaint

Mr O has complained that Shawbrook Bank Limited (“Shawbrook”) rejected his claim against it under section 75 of the Consumer Credit Act 1974 in relation to his purchase of some solar panels.

Background

Mr O bought solar panels for his home in September 2016. 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 O into believing that the panels would be self-funding, which they weren’t.

Mr O’s complaint was considered by one of our adjudicators. She thought that the benefits of the panels were mis-represented to Mr O, 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.

Shawbrook didn’t agree. After consulting with the installer, it explained that as well as the sales documentation referred to by the adjudicator (the contract and the loan agreement), there had also been a “FIT sheet” which had clearly showed the payback period (I take this to mean the time it would take for the income and savings generated by the panels to equal the cash price of the panels).

As no agreement had been reached, 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 the same reasons as those explained by the adjudicator, I uphold this case. In brief, that is because the evidence supports the conclusion that a misrepresentation took place and Mr O was not given clear information to demonstrate that the solar panels would *not* be self-funding and would equate to an additional cost for him.

The contract and quotation, which is one document, does not show the estimated financial returns from the panels. Neither party has provided me with the FIT sheet, and apparently this is no longer available. That prevents me from seeing for myself what Mr O would have seen, but I have taken into account the installer’s description of what it would have said. However, I don’t think that it assists Shawbrook’s case, for the following reasons.

Firstly, the installer has not said (and presumably is no longer in a position to say) how long the payback period was, so I can't tell whether this would have shown that the panels would pay for themselves within the loan period, or whether they would make enough to pay for the loan payments as they fell due. Since there is no evidence to contradict what Mr O has told us, on the balance of probabilities I accept as accurate his recollection that he was told they would pay for themselves.

Secondly, the installer has said that the FIT sheet did not take into account the loan interest, so it would only have shown the payback time for the panels' cash price. So if the payback period was less than the loan term, that could have misled Mr O into thinking that the panels would be self-funding even if they would not in fact pay for the total amount repayable under the loan within the loan term.

So on balance, I do not think that the evidence on which the installer seeks to rely is clear enough for me to agree that Shawbrook need not have upheld Mr O's claim under section 75.

Putting things right

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mr O's complaint for Shawbrook to put things right by recalculating the original loan based on the known and assumed savings and income to Mr O from the solar panels over the 15 year term of the loan so he pays no more than that, and he keeps the solar panel system, and any future benefits once the loan has ended.

If the calculation shows that Mr O is paying (or has paid) more than he should have, then Shawbrook needs to reimburse him accordingly. Should the calculation show that the misrepresentation has not caused a financial loss, then the calculation should be shared with him 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. It should recalculate the loan to put Mr O in a position where the solar panel system is cost-neutral over the 15 year loan term.

Normally, by recalculating the loan this way, Mr O's monthly repayments would reduce, meaning that he would have paid more each month than he should have done, resulting in an overpayment balance. And as he 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 O have the following options as to how he would like his overpayments to be used:

- a) the overpayments are used to reduce the outstanding balance of the loan and he continues to make his current monthly payment resulting in the loan finishing early,
- b) the overpayments are used to reduce the outstanding balance of the loan and he pays a new monthly payment until the end of the loan term,
- c) the overpayments are returned to Mr O and he continues to make his current monthly payment resulting in his loan finishing early, or
- d) the overpayments are returned to Mr O and he pays a new monthly payment until the end of the loan term.

If Mr O accepts my decision, he should indicate on the acceptance form which option he wishes to accept – A, B, C or D.

If Mr O has settled the loan, Shawbrook should pay him the difference between what he paid in total and what the loan should have been under the restructure above, with interest at 8% a year.

If Mr O has settled the loan by refinancing, he should supply evidence of the refinance to Shawbrook, and then Shawbrook must:

1. Refund the extra Mr O paid each month with the Shawbrook loan.
2. Add simple interest from the date of each payment until Mr O receives his refund.
3. Refund the extra Mr O paid with the refinanced loan.
4. Add simple interest from the date of each payment until Mr O receives his refund.
5. Pay Mr O the difference between the amount now owed and the amount he would have owed if the system had been self-funding.

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

My final decision

My decision is that I uphold this complaint. I order Shawbrook Bank Limited to 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 O to accept or reject my decision before 27 February 2023.

Richard Wood
Ombudsman