

The complaint

Mr E has complained that Shawbrook Bank Limited rejected his claim against it under Section 75 of the Consumer Credit Act 1974 ("the Act").

What happened

Mr E bought solar panels for his home in 2017. 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 allegedly misleading Mr E into believing that the panels would be self-funding because the benefit received through income and savings would cover the monthly loan repayments.

Shawbrook rejected Mr E's section 75 claim, so he complained about this to the Financial Ombudsman Service.

Mr E's complaint was considered by one of our investigators. They thought that the benefits of the panels were mis-represented to Mr E, and recommended the complaint be upheld. Our investigator said that fair redress would be for the loan to be restructured to make the panels cost no more than the benefit they would provide over the loan term. This restructure should be based on evidence of the actual performance of the panels, and a number of assumptions on future performance.

Shawbrook responded with some comments from the supplier's legal representatives, which did not accept our investigator's assessment and made a number of points including:

- The presentation shown to Mr E during the sale was standard for all sales and included a spreadsheet showing the annual benefits of the system over 25 years.
- Only certain parts of the spreadsheet were editable by the salesperson (an example of the spreadsheet was provided to us).
- Mr E wouldn't have been told the system was self-funding in the way alleged.

From this it appears that Shawbrook did not accept our investigator's recommendation.

Mr E confirmed to our investigator that during the sales presentation he was not shown a spreadsheet like the example provided to us. But he was assured the loan repayments would be fully covered by the benefits of the system.

Because our investigator was unable to resolve the complaint I've been asked to make a 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.

I have the power to look at this complaint about Shawbrook's response to a claim under section 75. Based on the evidence available, I have decided that Shawbrook's response to the claim was not fair and reasonable. So, I uphold this complaint.

Mr E's allegation is that he was told the system would pay for itself because the benefits through income and savings would cover the monthly loan repayments. And that he purchased the system based on this.

Mr E says he was not left with sales documents showing the benefits of the system and based his decision on what he was told by the salesperson. The supplier in this case has confirmed that the benefits of the system ought to have been shown to Mr E on the salesperson's laptop during the sales presentation. And that this would've made clear the system was not self-funding in the way Mr E claims to have been told.

However, I do not find the supplier's explanation to be sufficient for me to be satisfied that Mr E's recollection is not plausible or persuasive. The salesperson would've been in control of the presentation. And even if the spreadsheet was shown to Mr E (which he says it wasn't), there appears to be no record of what was shown on that spreadsheet. So, I don't know that it showed the correct information or that it clearly contradicted what Mr E recalls being told.

The information on the spreadsheet would've depended on the salesperson inputting the correct information about the system being sold to Mr E. So, without seeing the actual spreadsheet and something confirming he saw it (for example if it had been included in the sales contract which Mr E signed or provided to him in a document which he could keep), it is difficult for me to dismiss Mr E's recollection of what he was told.

I have noted that the sales contract does show a figure described as follows – "First Year FIT £147.21 Guaranteed". I've included below how this was presented on the contract:

| I WISH TO ORDER THE FOLLOWING RENEWABLE ENERGY SYSTEM(S) | | | | |
|--|--------|--------------|--------------|--|
| Solar PV System | | | Installation | |
| Panels | Size | System | 9th March | |
| 12 | x 335 | = 4.02 KW | | |
| SAP | Output | 1st Year FIT | Goods | |
| 891 | 3581 | £147.21 | PV Battery | |
| | | Guaranteed | VO | |
| Other | | | Total | |
| | | | £9,500 | |

I know that FIT stands for Feed-In Tariff and the amount was presumably what Mr E could expect to receive in Feed-In Tariff payments in the first year after installation. But I have the benefit of having decided many complaints relating to solar panels, so these things are now obvious to me.

I think it is doubtful that Mr E would've understood this from looking through the contract before signing it. There is no clear context provided here, so without knowledge of solar panel systems and what these figures mean (which Mr E didn't have), I think it is unlikely that Mr E would've seen this and realised it contradicted what he says he was told during the sales presentation.

Overall, having considered all the evidence provided in this case, I am of the opinion that it is most likely that Mr E was told the system would be self-funding in the way he has alleged.

It seems that the system is not self-funding in that way and was never likely to be based on its ability to generate electricity and the benefits it could provide at the time of sale. So, I think the supplier most likely misrepresented the system to Mr E and that induced him to enter into the contract.

Because of this, I think that Shawbrook's rejection of Mr E's claim was not fair and reasonable. So, I uphold this complaint.

Putting things right

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

In the event the calculation shows that Mr E 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 Mr E by way of explanation.

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

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 per year from the date of the overpayment to the date of settlement.

So, I think the fairest resolution would be to let Mr E 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 E and he continues to make his current monthly payment resulting in his loan finishing early, or
- D. the overpayments are returned to Mr E and he pays a new monthly payment until the end of the loan term.

If Mr E accepts my decision, he should indicate on the acceptance form which option he wishes to accept.

If Mr E 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 8% interest per year for the time he was without that money.

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

1. Refund the extra Mr E paid each month with the Shawbrook loan.

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

I'm satisfied that there was sufficient information available at the time that Mr E first contacted Shawbrook that means the claim should have been upheld. So, I direct that Shawbrook should pay £100 compensation for the trouble and upset caused.

My final decision

For the reasons I've explained, I uphold Mr E's complaint. I direct 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 E to accept or reject my decision before 13 December 2023.

Phillip Lai-Fang
Ombudsman