

## **The complaint**

Mr E complains about Shawbrook Bank Limited's response to a claim he made under Section 75 of the Consumer Credit Act 1974 ("the Act").

## **What happened**

Mr E purchased a solar panel system ("the system") in 2016 using a fixed sum loan agreement with Shawbrook. In 2021, Mr E's representatives made a claim under Section 75 of the Act to Shawbrook. Mr E says the supplier misrepresented the system as being self-funding, in that its benefits would cover the monthly loan repayments, which they don't. Had he realised this, he wouldn't have bought the system.

Shawbrook responded to Mr E saying it was looking into the matter with the supplier, but that as this was taking so long he could contact the Financial Ombudsman Service to complain. Mr E did so.

Our investigator asked Shawbrook for its file on the claim, but it reiterated that it was looking into it with the supplier and didn't provide anything other than a copy of the credit agreement and the documents provided to it by Mr E's representatives. Shawbrook acknowledged that we would proceed based on the available evidence, which is what our investigator did. Our investigator recommended the complaint be upheld.

Shawbrook responded to say that it had forwarded our investigator's assessment onto the supplier and asked for its comments and sales documents, and was awaiting the supplier's response.

Since nothing further was provided by the deadline given by our investigator, 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.

Section 75 of the Act says that in certain circumstances the borrower under a credit agreement has an equal right to claim against the credit provider if there's either a breach of contract or misrepresentation by the supplier of goods or services.

I have the power to look at this complaint about whether Shawbrook's response to a Section 75 claim was fair and reasonable. In doing so, I can take into account the representations of the supplier during the sale, because Section 56 of the Act says that any negotiations between the borrower and the supplier are deemed to have been conducted by the supplier as an agent of the credit provider.

For the purpose of this decision, I've used the definition of a misrepresentation as an untrue statement of fact or law made by one party (or his agent) to a second party which induces that second party to enter the contract, thereby causing them loss.

In this case the available evidence is Mr E's recollection of events and the credit agreement. The sales contract and other sales documents are not available. Mr E has been unable to locate them. And Shawbrook has not provided copies, albeit I appreciate that this is due to the supplier not responding to its requests for information.

Nevertheless, the Financial Ombudsman Service was set up to resolve complaints quickly, and while that is not always possible, we are able to proceed with deciding a complaint based on the available evidence. I think it is appropriate to do so in this case, given the extensive amount of time Shawbrook has had to provide a substantial response to the Section 75 claim and to this complaint.

Considering the limited evidence available, I think a fair outcome is to conclude that there was a misrepresentation. The available evidence indicates that Mr E was told the system would be self-funding on a monthly basis – in that the benefits would cover the monthly loan repayments. They do not, and there is nothing to counter Mr E's recollection of what he was told, such as sales documents clearly showing the estimated benefits of the system were insufficient to cover the monthly loan repayments.

So, I do not think Shawbrook's response to the claim was fair and reasonable. It is aware of our approach to this type of complaint, and in the absence of evidence to show the system was not sold as self-funding in the way Mr E recalls, I think Shawbrook is aware that this complaint was likely to be upheld. Especially since it has provided no arguments as to why it should not be. As such, 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 a ten-year period, 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 a ten-year period.

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.

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.

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. I direct that Shawbrook should pay £100 compensation for the trouble and upset caused.

### **My final decision**

For the reasons I've explained, I'm upholding Mr E's 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 Mr E to accept or reject my decision before 7 November 2023.

Phillip Lai-Fang  
**Ombudsman**