

The complaint

Mr and Mrs N have complained about the way Shawbrook Bank Limited (“Shawbrook”) has dealt with a claim they made under section 75 of the Consumer Credit Act 1974 (“s.75”).

What happened

Around February 2013, Mr and Mrs N entered into a contract to purchase a solar panel system (“the system”) from a supplier. They paid for the system using a 15-year fixed sum loan agreement with Shawbrook. My understanding is that the loan was repaid early, on 18 May 2013.

Mr and Mrs N wrote to Shawbrook in July 2022 to make a claim under s.75. The purpose of s.75 is to provide protection for consumers who pay for goods or services using credit. The creditor (Shawbrook) is jointly and severally liable with the supplier for any breach of contract or misrepresentation by the supplier – subject to certain considerations being met.

Mr and Mrs N’s claim explained that the system had been misrepresented to them. They say they had been told that the Feed-In Tariff (“FIT”) payments they’d receive for electricity generated and exported to the grid would cover the monthly loan payments and this has not happened.

Shawbrook didn’t accept Mr and Mrs N’s claim – Mr and Mrs N say they didn’t receive a response at all. Unhappy with this, Mr and Mrs N raised a complaint and referred the matter to this Service to look into.

One of our investigators reviewed things but didn’t think we could uphold their complaint. In summary, our investigator said that Mr and Mrs N’s claim against the supplier of the system was made outside of the timescales set out in the Limitation Act. As Shawbrook (as the credit provider) is liable to the same extent as the supplier, our investigator felt it hadn’t acted unreasonably as the ‘like claim’ against it was made too late.

Mr and Mrs N disagreed. They re-iterated their earlier complaint points and felt they were deliberately mis-led with false information and the merits should be examined due to ethical issues, despite the time limits in the Limitation Act. Mr and Mrs N also referred to complaints mentioned on this service’s website where an ombudsman had upheld complaints in favour of consumers in cases similar to their own.

Since our investigator could not 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.

In this complaint I’m considering whether Shawbrook has treated Mr and Mrs N fairly in its response to her s.75 claim. There are a number of things I’ve taken account of when reaching my decision, including the law, rules and regulations, good practice and the facts of

Mr and Mrs N's complaint. In this decision I'll refer to those that I consider to be most central to my conclusions.

Mr and Mrs N's complaint is about a claim under s.75 and so naturally the appropriate parts of the Consumer Credit Act 1974 are relevant here. As I've explained above, s.75 sets out why a claim can be made against Shawbrook, and it can be held responsible for a purchase Mr and Mrs N made using their fixed sum loan agreement. I'm satisfied in this instance that the debtor-creditor-supplier chain hadn't been broken and there's an appropriate relationship between the parties for Shawbrook to consider a s.75 claim.

Our investigator didn't uphold their complaint because he felt that Mr and Mrs N's s.75 claim was made outside of the relevant time limits, so the Limitation Act 1980 is of particular relevance. The Limitation Act is the law which sets out the time limits which apply to different causes of action that a party can pursue.

s.2 of the Limitation Act states, "An action founded on tort shall not be brought after the expiration of six years from the date on which the cause of action accrued".

Did Mr and Mrs N bring a claim within six years?

For me to determine whether a claim was brought within six years, I have to decide when the cause of action, or damage, took place. The damage is the financial loss arising as a result of the misrepresentation.

Mr and Mrs N's s.75 claim is largely that the benefits associated with the system were misrepresented and so they entered a contract which wasn't the value for money that they expected. Mr and Mrs N say that, were it not for the misrepresentation about the potential benefits covering the monthly loan repayments, then they wouldn't have entered the contract to purchase the system at all.

So, Mr and Mrs N's financial loss occurred when they contracted to pay for the system using a fixed sum loan agreement. This was in 2013 and they had six years from that date to make their claim, which is 2019.

Mr and Mrs N raised their claim with Shawbrook in July 2022. This is more than six years from when the damage occurred, and their cause of action accrued. So, the claim was not made in time, and neither the supplier nor Shawbrook would have any liability, even if there was a misrepresentation.

s.9 of the Limitation Act states, "An action to recover any sum recoverable by virtue of any enactment shall not be brought after the expiration of six years from the date on which the cause of action accrued."

I've considered this section because the basis of Mr and Mrs N's claim against Shawbrook is under s.75 and so is a sum recoverable by virtue of enactment (statute law from an act of parliament). But I don't think this changes the position compared to the other provisions in the Limitation Act. s.75 makes the lender jointly and severally liable for a supplier's misrepresentation or breach of contract – effectively making Shawbrook step into the shoes of the supplier.

This means that the limitation period under s.9 is the same as for misrepresentation and breach of contract – and gives rise to effectively the same cause of action. So, the claim was still not made in time.

Are there any grounds to extend the six-year time limit?

Mr and Mrs N have argued that due to ethical reasons the merits of the claim should be examined in any event. But the Limitation Act does not have any provisions allowing for the consideration of a claim for such reasons. The time limit for bringing such claims is six years – irrespective of how much merit a claim may have. That is to say that, even if Mr and Mrs N are right, and they were deliberately misled, their claim has still been brought too late. I would however clarify that I am making no such finding (regarding whether or not they were misled), I haven't considered the merits of the claim as it has been brought too late.

Although the limitation time period is six years for cause of action as set out above, the Act also provides for a second period in which a claim can be made. That is, if later than the six-year period, three years from the earliest date on which the claimant had both the knowledge required to bring a claim for damages, and the right to bring such a claim. So, I have considered whether the claim period should be extended under the three-year element of the rule, but, like our investigator, I don't find the claim period should be extended beyond the original six years.

Mr and Mrs N's issues relate to the solar panels, and associated benefits, not being in line with what they were led to believe by the salesperson and not covering the monthly loan costs. Mr and Mrs N would have been receiving feed in tariff payments, electricity meter readings, plus other things that would have alerted them to the fact that the solar panels were not producing the benefits Mr and Mrs N says they were told about.

Generally, I think this should have been apparent around a year after installation of the solar panels. And definitely within two years. As Mr and Mrs N should have therefore reasonably had cause to raise their claim within two years of taking out the panels, this would not extend the six-year part of the Limitation Act further. So, as our investigator explained, I don't think Mr and Mrs N were entitled to longer than six years to make their claim.

Claim under s.140 Consumer Credit Act

While Mr and Mrs N don't appear to have actually raised a claim under s.140, for completeness, like our investigator, I have also considered whether or not Mr and Mrs N would have a successful claim under s.140 of the Consumer Credit Act, which relates to Unfair Relationships.

Like s.75, there are however time limits for a claim to be considered under s.140 and Mr and Mrs N would have had six years from the end of the relationship with Shawbrook to bring her claim.

The loan with which Mr and Mrs N paid for the solar panels was paid off by May 2013, so, this is when the relationship ended. Mr and Mrs N would therefore have six years from this date (so until May 2019) to bring a claim under s.140. But as set out already, no claim was submitted until July 2022, which is more than six years later.

Summary

Having considered the specific circumstances here, it is likely that any claim in court that Mr and Mrs N would have against the solar panel provider would be considered to have been made out of time, in relation to the alleged misrepresentation. And consequently therefore, any 'like claim' Mr and Mrs N may have had against Shawbrook would also be considered out of time. Having considered the implications of the Limitations Act 1980 alongside the Consumer Credit Act, I don't consider Shawbrook acted unreasonably when it didn't accept Mrs N's claim for misrepresentation.

I appreciate Mr and Mrs N will remain unhappy with what I have set out here. I have noted what they have said about our website providing information about other successful claims that our service has decided. But those cases are likely to be where the claim was raised within the required timescales, which is unfortunately for Mr and Mrs N not the case here. And, as explained above, whether Mr and Mrs N were actually misled at the time of the sale by the solar panel salesperson is not something I have actually considered here as their claim has been raised too late.

My final decision

My final decision is that I don't uphold Mr and Mrs N's complaint against Shawbrook Bank Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N and Mrs N to accept or reject my decision before 8 March 2024.

Phillip Lai-Fang
Ombudsman