

The complaint

Mr and Mrs H complain about Shawbrook Bank Limited's lack of response to a claim they made under sections 75 and 140 of the Consumer Credit Act.

What happened

In 2016, Mr and Mrs H purchased a solar panel system ("the system") from a supplier. They paid for it using a loan from Shawbrook, which was repayable over 15 years.

In 2022, just under six years later, a claims management company ("CMC") made a claim to Shawbrook on Mr and Mrs H's behalf. This said that the supplier had misrepresented the system as being self-funding, in that the income generated would cover the monthly loan repayments. The CMC also said that Mr and Mrs H's relationship with Shawbrook was unfair on her for a number of reasons.

Shawbrook acknowledged the claim but didn't give a substantive response within a reasonable time, so the CMC contacted the Financial Ombudsman Service to register a complaint. We notified Shawbrook of the complaint and gave it eight weeks to respond to it, but it did not do so as far as we are aware.

Our investigator looked into what happened but did not think the complaint should be upheld. Mr and Mrs H did not accept this, so I've been asked to make a decision.

The CMC said that the investigator didn't give sufficient consideration to Mr and Mrs H's recollection of what happened and placed too much emphasis on the sales documents. The CMC said the supplier did not go through these in detail with Mr and Mrs H. And that the salesperson, who was probably paid commission and controlled what Mr and Mrs H saw, told them repeatedly that the system would be self-funding, which contradicted what was shown in the documents.

As our investigator was unable to resolve the complaint, I've been asked to make a decision. The CMC has told us that it is no longer representing Mr and Mrs H.

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 means that Shawbrook can be liable for a misrepresentation or breach of contract on the part of the supplier when selling the system to Mr and Mrs H. And section 140 means that a court could find the relationship between Mr and Mrs H and Shawbrook was unfair on them. So, I've taken this into account when reaching my decision. Having done so, I've decided not to uphold this complaint.

Misrepresentation

Mr and Mrs H say they were misrepresented the system as being self-funding in that the income would cover their monthly loan repayments. But, considering all the evidence, I do not find their recollection to be sufficiently plausible and persuasive for me to conclude the alleged misrepresentation took place. This is because:

- The quote provided to them at the point of sale clearly shows the estimated benefits of the system, even comparing this in a table with their loan repayments. This shows that the total benefits of the system including savings would be less than the monthly loan repayments for the first seven years after installation.
- I think it is unlikely that the supplier would've prepared a quote clearly showing the system was not self-funding in this way and provided it to Mr and Mrs H while at the same time telling them the income alone (shown to be just over £4,000 in total over the 20 years the Feed-In Tariff would be paid) would cover the loan repayments (which were much more than this over the 15-year loan term).
- Mr and Mrs H would've noticed soon after installation that the income from the system was not covering the monthly loan repayments. If that had been their expectation at the point of sale, I would've expected them to take action at that point – for example by complaining to the supplier, which is still in business. Instead, they took no action until the CMC made a claim on their behalf almost six years after the sale took place.

Unfair relationship

Mr and Mrs H say their relationship with Shawbrook was unfair on them because of:

- The alleged misrepresentation.
- Undisclosed commission paid to the supplier by Shawbrook.
- Not being told about maintenance costs and how the system would degrade.
- No suitable credit assessment being carried out.
- Not being given the chance to read documents before signing them.

Having thought about this, I do not think a court is likely to conclude the relationship between Shawbrook and Mr and Mrs H was unfair on them. This is because:

- I do not think the alleged misrepresentation took place. There is no evidence the salesperson was paid commission, and even if they were that does not automatically mean they misrepresented the system in the way that has been alleged.
- Based on what we know about Shawbrook's relationship with the supplier, no commission would've been paid to the supplier in relation to Mr and Mrs H's loan agreement.
- The maintenance costs and degradation of the system are both included in a table in the quote which shows the benefits of the system over 25 years.
- My understanding is that Shawbrook's process involved a credit assessment being carried out before the loan application was accepted, and there is nothing to indicate that the lending was irresponsible or unaffordable.
- While Mr and Mrs H may have had limited time to read the sales documents and credit agreement prior to signing them, they were provided with both of these documents and a 14-day period when they could withdraw from the purchase and loan without penalty. So, they had two weeks to read the documents and ask questions or cancel the purchase and loan if there was anything they were unhappy with.

Shawbrook's failure to respond to the claim and complaint

I am disappointed to see that Shawbrook has seemingly failed to engage with Mr and Mrs H's claim and complaint. As far as I am aware Shawbrook did not respond to the claim within a reasonable time and did not respond to the complaint within eight weeks.

However, there is nothing to suggest that this has caused significant distress or inconvenience to Mr and Mrs H that would warrant an award of compensation. Particularly bearing in mind the claim and complaint has been handled by the CMC, which only stopped representing Mr and Mrs H in this matter after responding to our investigator's assessment.

Summary

I do not think the alleged misrepresentation took place or that a court would find the relationship between Shawbrook and Mr and Mrs H was unfair on them. So, I have decided not to uphold this complaint.

My final decision

For the reasons I've explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before 1 March 2024.

Phillip Lai-Fang
Ombudsman