

The complaint

Mr and Mrs K have complained about the way Shawbrook Bank Ltd responded to claims they'd made under section 75 ("s.75") of the Consumer Credit Act 1974 (the "CCA").

What happened

Mr and Mrs K bought a solar panel system ("the system") from a supplier I'll call "S" using a fixed sum loan agreement with Shawbrook in June 2013. The system cost £8,625 and Mr and Mrs K paid a £100 advance payment. There was a £175 administration fee and a total charge for credit of £5,213.80. The agreement was due to be paid back with 120 instalments of £114.49.

The system was installed in July 2013. Mr and Mrs K paid off the agreement in December 2013 so this is when their relationship with Shawbrook ended.

In August 2022 Mr and Mrs K wrote to Shawbrook to put in a claim. They said S sold the system as being self-funding through feed in tariff (FIT) payments. They said S told them the system would reduce their energy bills and that the FIT payments would cover their loan repayments. They said they were reassured that S had been trading for some time and it offered a warranty on the system. Mr and Mrs K said S didn't give them enough time to go through the paperwork nor were they shown the terms and conditions. They said they were encouraged to sign the paperwork and pay the deposit while the salesperson was in their home.

Mr and Mrs K explain S is no longer trading and that it misrepresented the system. Mr and Mrs K requested a full refund of monies paid plus interest under s.75.

Mr and Mrs K decided to refer their complaint to the Financial Ombudsman in March 2023 and Shawbrook issued a final response in May 2023 saying as the concerns were raised more than six years after the sale of the system it considered the claim time barred under the Limitation Act 1980 ("the LA"). So it didn't uphold the claim or complaint.

One of our investigators looked into things and thought the claim exceeded the time limits that were set out in the LA, so she didn't think Shawbrook's answer was unfair. She also thought if there were any other grounds to uphold the complaint. She said the alleged misrepresentation took place around nine years before Mr and Mrs K made their claim for damages. She said she couldn't think of another reason Shawbrook ought to consider the claim.

Mr and Mrs K didn't agree. They said it was illogical to say they should have known at the point of sale S had misrepresented the system. They said they had no reason to doubt what S had told them. They also said they'd seen other cases similar to theirs that have been upheld. As things weren't resolved, the complaint has been passed to me to decide.

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 want to acknowledge that whilst I've summarised the events of the complaint, I've reviewed everything on file. If I don't comment on something, it's not because I haven't thought about it. I'm focussing on what I consider are the key issues.

Mr and Mrs K paid for the system using a fixed sum loan agreement. This is a regulated consumer credit agreement, and our service is able to consider complaints relating to these sorts of agreements.

S.75 makes Shawbrook responsible for a breach of contract or misrepresentation by S under certain conditions. I think the necessary relationships between the parties exists and the claim is within the relevant financial limits.

The event complained of here is Shawbrook's alleged wrongful rejection of Mr and Mrs K's s.75 claim in May 2023. This relates to a regulated activity under our compulsory jurisdiction. Mr and Mrs K brought their complaint about the claim to the ombudsman service in March 2023. And they asked us to continue the investigation off the back of the final response letter. So, their complaint in relation to the s.75 claim was brought in time for the purposes of our jurisdiction.

However, the law imposes a six-year limitation period on claims for misrepresentation and breach of contract, after which they become time barred.

In this case the alleged misrepresentation and alleged breach cause of action arose when an agreement was entered into in June 2013. Mr and Mrs K brought their s.75 claim to Shawbrook in August 2022. That is more than six years after they entered into an agreement with it. Given this I think it was fair and reasonable for Shawbrook to have not accepted the s.75 claim. So, I do not uphold this aspect of the complaint.

I appreciate Mr and Mrs K have said they've seen other complaints similar to theirs that have been upheld. But we have to look at each individual case on its own merits. That being said, while the complaint raised was about Shawbrook's handling of a s.75 claim, I've also considered if there's any other grounds that could have led to their complaint being upheld, including whether the relationship with Shawbrook might be considered unfair under s.140A CCA.

However, I haven't seen anything to suggest that s.140A or anything else would, given the facts of this complaint, lead to a different outcome here. Therefore, while I'm sorry to hear they're unhappy, I don't find I have the grounds to direct Shawbrook to take any action.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K and Mrs K to accept or reject my decision before 5 November 2024.

Simon Wingfield
Ombudsman