

The complaint

Mr and Mrs N have complained that Shawbrook Bank Limited (“Shawbrook”) rejected their claim against it under Section 75 of the Consumer Credit Act 1974.

What happened

Mr and Mrs N bought a solar panel system (“the system”) for their home in 2017. The purchase was funded by a loan from Shawbrook, and that business is therefore liable for any misrepresentations and/or breach of contract of the installer under the relevant legislation. In this case, Mr and Mrs N allege that the installer misled Mr and Mrs N into believing that the panels would result in savings on their energy bills, and payments for the energy sent to the grid – neither of which have materialised. They therefore haven’t received the financial rewards they were expecting.

Mr and Mrs N’s complaint was considered by one of our investigators. They explained the following:

- The evidence suggested Mr and Mrs N’s energy bills had actually gone up following the installation of the system and therefore they hadn’t received the reduction in bills they had been expecting – they therefore felt the complaint should be upheld.
- Mr and Mrs N hadn’t received the payments for the energy sent to the national grid, but that was because Mr and Mrs N hadn’t applied for the scheme in place at the time, and this was neither the responsibility of the installer nor Shawbrook. They suggested Mr and Mrs N apply for the scheme in place now, so they can receive some benefit going forward.
- Our investigator recommended Shawbrook work out what benefit (if any) Mr and Mrs N will receive from the system over a 10-year period and restructure their loan. This would mean Mr and Mrs N only pay Shawbrook what they have received (and are likely receive) over the 10-year period which would make the system cost neutral to them and they wouldn’t suffer a financial loss.

Mr and Mrs N disagreed. They said they no longer wanted a system as they’d receive no benefit from it. They wanted Shawbrook to unwind the contract and refund all they had paid for it. They also said they wouldn’t be applying for any benefit as they no longer wanted the system.

Shawbrook initially said that Mr and Mrs N hadn’t substantiated their claims with any documents nor proved their loss. But subsequently didn’t reply to our investigators view of the complaint.

As the complaint couldn’t be resolved by our investigator, I’ve been asked to make a decision.

In my provisional decision of 22 September 2023, I set out why I was minded to not upholding the complaint. I invited both parties to provide any further submissions they may wish to make before I reached a final decision. Shawbrook did not make any comments

while Mr and Mrs N replied to my provisional decision re-iterating that they weren't informed they needed to apply for the benefits and thought they would automatically be added.

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 my provisional decision I explained the following:

In this case, the relevant law includes section 56 and section 75 of the Act. Section 75 provides protection for consumers for goods or services bought using credit.

As Mr and Mrs N paid for the system with a fixed sum loan agreement, Shawbrook agrees that section 75 applies to this transaction. This means that Mr and Mrs N could claim against Shawbrook, the creditor, for any misrepresentation or breach of contract by the installer in the same way they could have claimed against the installer. So, I've taken section 75 into account when deciding what is fair in the circumstances of this case.

Section 56 is also relevant. This is because it says that any negotiations between Mr and Mrs N and the supplier, are deemed to have been conducted by the installer as an agent of Shawbrook.

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.

Having carefully considered everything provided, currently I don't intend to uphold this complaint and I'll explain why.

Mr and Mrs N say they were told that the system would lead to savings on their energy bills, and that thousands of people had benefitted from solar panels. They were also told they'd receive payments for the energy produced by the system that would be sent to the grid. Mr and Mrs N have not received any payments for the energy produced by their system and their bills also haven't reduced – so I can understand why they feel the system hasn't produced the benefits they say they were promised.

It may be helpful to explain that in order for me to uphold this complaint, I'd need to be persuaded that the installers made specific statements about Mr and Mrs N's system, about how it would perform, and what benefit they would likely receive. That these statements were false at the time they made them and, had been relied on by Mr and Mrs N inducing them into purchasing the system. I, therefore, need to be satisfied that any losses they have suffered, have been caused by the installer mis-leading them.

Has there been a misrepresentation?

Mr and Mrs N's testimony isn't particularly detailed or specific other than that they were promised financial rewards, payments for the energy produced, and their bill would reduce. In cases of this type, normally we expect consumers to set out the specific estimates they were given as to how much they'd received in benefit, both in payments for the energy produced as well as savings in their energy bills – none of which is present here. Not in any documentation or in Mr and Mrs N's testimony from what they recall from the sale.

Encouraging consumers to buy the system and general opinions about how good the systems are, is to be expected during a sales meeting – but do not always amount to a

misrepresentation about the system consumers have bought. But even if I am to accept that the installer did make statements that amount to a representation that Mr and Mrs N relied on, I'm not satisfied that they have evidenced that any such statements were untrue at the time they were made - which would be required for me to uphold this complaint.

Were these statements untrue?

Mr and Mrs N never registered for the Feed in Tariff Scheme (FIT) so haven't received any payments for the energy sent to the grid. As explained by our investigator, it is generally the responsibility of consumers to apply for the FIT scheme and I've got no reason to doubt, that had they done so, they would have received the payments the installer informed them about. The statement therefore that they'd receive payments for the energy produced was not an untrue statement made by the supplier at the time it was made. It didn't materialise because Mr and Mrs N didn't register for the system after the installation. So, I don't think this means the installers statement was untrue.

I've looked at the meter reading Mr and Mrs N have sent in and based on that reading the system is actually generating more energy than was estimated. Their MCS certificate shows the system is expected to produce 3184 kWh energy per year. Their meter reading shows that the system generated on average 3387.60 kWh annually. So, their system is actually producing more energy than anticipated. It seems likely that Mr and Mrs N would have used some of that energy – leading to less energy needing to be purchased from their energy providers – therefore impacting how much they pay in their bills. I think it's highly unlikely that they are not using any of this energy at all.

Normally consumers submit pre-installation and post installation bills. These would show how much energy was being purchased (from their energy providers) before the installation of the system and how much energy was purchased after the installation. We could then work out what (if any) savings customers had achieved from using the panels taking account of any changes in tariff which is beyond the control of the installers.

However, unfortunately Mr and Mrs N's energy providers became insolvent shortly after the sale, so they haven't been able to obtain either pre or post installation bills. I understand our investigator has looked at their bank statements to see how much they were paying their energy providers, and this shows their payments went up rather than down after the installation, indicating the installers statement that their system would result in the customer saving on energy bills was untrue. But I don't agree, and I'll explain why.

Mr and Mrs N's bank statements show that their payments were around £37 a month prior to the installation of the system, and this went down to £30 a month shortly before the installation. After the installation the payments stayed at £30 a month until March 2018 – which is almost 9 months after the installation of the system (installation was June 2017). At this time, their payments tripled to £91.

So, while the payments they made to their energy providers appear to have gone up, this was a long time after the installation of the system. This doesn't necessarily mean they were paying more after installation than they would've paid if they didn't have the solar panels. The increase in their payments could have been caused by a number of outside factors such as an increase in energy prices, or that their previous payment was too low relative to what they were using and their account was in deficit, so they owed their supplier money which it was clawing back with the increased payment.

I also understand that this jump in their payments was shortly before a number of energy providers started to become insolvent. So, I think it's also likely, that their payments were impacted because of problems experienced with their utility providers. The problems Mr and

Mrs N experienced with their energy providers is outside the control of the installers as well as Shawbrook – and these factors do not mean the statements made by the installer during the sale (i.e. their bills would likely reduce because of the installation) were false at the time they may have made them. This wasn't an unreasonable statement to make, and I think it was likely true at the time it was made. This therefore doesn't amount to a misrepresentation.

It may be helpful to explain that, if Mr and Mrs N had not installed the system, they would likely have needed to purchase even more energy from their energy providers increasing their costs further. Correctly working solar panels produce energy, some of that energy is used by consumers (how much varies from household to household). When consumers use the energy provided by their solar panels, they need to buy less from the energy providers, which in turn results in a reduction in how much they need to pay their providers for energy – and therefore a supplier making a statement that the system would likely lead to a saving is not unreasonable to make. An increase in monthly payments does not necessarily mean Mr and Mrs N haven't benefitted – payments can still go up for all the reasons mentioned above. But without the panels, it's likely that these payments would have been even higher than they have been.

So I don't think their payments going up 9 months after the installation of the system is sufficient evidence that they haven't benefitted in the way they may have been led to believe they would. I think it's more likely they did make savings due to the installation of the system, although how much cannot be ascertained without their bills. But I'm not persuaded that any such representations were untrue at the time they were made, so I don't uphold their complaint on this basis.

Summary

I appreciate the difficulties Mr and Mrs N have experienced in substantiating their claim. But the only accurate measure of performance I have here, is how much energy the system has produced, which shows it is overperforming. Had they registered for FIT, I have no reason to doubt that they would have received payments for the energy produced by the system. Them not registering for the scheme does not mean the installer or Shawbrook have failed in any way. And while their bills haven't reduced, as they expected, this was more likely caused by outside factors beyond the control of the installers.

Overall, I'm not satisfied that the statements the installer may have made during the sale, were untrue at the time they made them. So, I don't think there's sufficient evidence here that the statements made by the supplier amount to misrepresentations, and I don't intend to uphold Mr and Mrs N's complaint on this basis. While I understand the FIT scheme is now closed to new applications, I would encourage Mr and Mrs N to look into the current scheme in place, so they receive some payment for the unused energy being sent to the grid.

Mr and Mrs N feel I haven't addressed their main concern, which was that, while the supplier told them about the main benefits of the system, (which were FIT payments and savings on energy bills), the supplier failed to disclose the process by which the FIT benefit could be obtained. They were led to believe that the benefit was to automatically be triggered upon installing the system. They feel that information regarding the registration process should have been something the supplier informed them about. I understand that by the time Mr and Mrs N looked into why they weren't receiving the benefit, the FIT scheme had closed to new applicants, leading to them losing thousands in benefit.

As I've previously explained, the onus is on consumers to apply for the benefits, and it is usually made clear in the sales information. It is standard in this industry for consumers to apply for the benefit, in fact it is my understanding, that while suppliers can support

consumers, they are unable to complete the registration process for them. Given that this information is usually given to consumers, in order for me to uphold this complaint on this basis, I'd need persuasive evidence that this particular supplier either misled Mr and Mrs N (i.e. that the benefit would be automatically triggered) or failed to disclose something that is very common and widely divulged during the sale.

Unfortunately, neither Shawbrook nor Mr and Mrs N have been able to provide all the sales paperwork related to the sale, so I've had to make my decision based on the available evidence and the wider circumstances.

So, the starting position is that it was Mr and Mrs N's responsibility to apply for the FIT and I haven't seen anything in the documents suggesting the supplier mis-led them in this regard. I would add that Mr and Mrs N's system was installed in 2017 and the FIT scheme didn't close to new applicants until April 2019. If Mr and Mrs N had been led to believe they would automatically receive the FIT benefit, I would have expected them to look into this when they didn't receive the benefit sooner than they did. Especially, given they themselves accept the benefits were something the supplier told them about and promoted.

I'm afraid that while I sympathise with Mr and Mrs N's position, I'm not satisfied that there is sufficient evidence that the losses associated with not being registered for FIT benefit was as a result of any failings of the supplier. As explained in my provisional decision, I would still encourage them to look into applying for the current scheme in place so they can get some benefit going forward.

Overall, for the reasons set out above, I don't think there's sufficient evidence here that any of the statements made by the supplier amount to misrepresentations. I'm also not satisfied that there's sufficient evidence that the supplier (and therefor Shawbrook) should be held liable for the losses associated with Mr and Mrs N not being registered for the FIT scheme. While I am very sorry to disappoint Mr and Mrs N, I still don't think it was unfair for Shawbrook not to accept their claim.

My final decision

For the reasons explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N and Mr N to accept or reject my decision before 14 November 2023.

Asma Begum

Ombudsman