

## **The complaint**

Mr G has complained about the way Shawbrook Bank Limited (“Shawbrook”) responded to claims he’d made under section 75 (“s.75”) of the Consumer Credit Act 1974 (“the CCA”), and an alleged unfair relationship taking into account section 140A (“s.140A”) of the CCA. The s.75 part of the complaint has been dealt with under a separate complaint reference. This complaint will focus solely on the complaint under s.140A of the CCA.

Mr G is represented in this complaint. For simplicity, I will refer to Mr G throughout this decision.

## **What happened**

In April 2016, Mr G entered into a fixed sum loan agreement with Shawbrook to pay for a solar panel system (“the system”) from a supplier I’ll call “P”. The credit amount was £8,217. Mr G was due to pay back the agreement with 180 payments of £89.25 over 183 months.

In 2022, Mr G put in a claim with this service about Shawbrook explaining he thought the system was mis-sold. A new complaint was set up in 2023 (this one) solely to look at this in terms of s.140 of the CCA. In summary, Mr G said that P told him that the system would be self-funding. Mr G says that P had deliberately misled him at the point of sale as the system has not been self-funding. And Mr G holds Shawbrook responsible for the misleading statements made by P.

Ultimately, Mr G said the system was misrepresented and believed the statements and several other actions at the time of the sale created an unfair relationship between himself and Shawbrook. Shawbrook disagreed with the complaint.

Mr G’s complaint was considered by an Investigator, in summary they thought that:

- The s.140A complaint was one we could look at under our rules and that it had been referred in time.
- Misrepresentations could be considered under s.140A.
- There was insufficient evidence that misrepresentations had been made in this case.

Mr G responded saying that he had been misled by P. As things weren’t resolved, the complaint was 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.

## **My findings on jurisdiction**

The Unfair relationship under s.140A complaint

The event complained of here is Shawbrook's participation, for so long as the credit relationship continues, in an alleged unfair relationship with Mr G. Here the relationship was ongoing at the time the complaint was raised. So, the complaint has been brought in time for the purposes of our jurisdiction.

## **Merits**

### The unfair relationship under s.140A complaint

When considering whether representations and contractual promises by P can be considered under s.140A I've looked at the court's approach to s.140A.

In *Scotland & Reast v British Credit Trust* [2014] EWCA Civ 790 the Court of Appeal said a court must consider the whole relationship between the creditor and the debtor arising out of the credit agreement and whether it is unfair, including having regard to anything done (or not done) by or on behalf of the creditor before the making of the agreement. A misrepresentation by the creditor or a false or misleading presentation are relevant and important aspects of a transaction.

Section 56 ("s.56") of the CCA has the effect of deeming P to be the agent of Shawbrook in any antecedent negotiations.

Taking this into account, I consider it would be fair and reasonable in all the circumstances for me to consider as part of the complaint about an alleged unfair relationship those negotiations and arrangements by P for which Shawbrook were responsible under s.56 when considering whether it is likely Shawbrook had acted fairly and reasonably towards Mr G.

But in doing so, I should take into account all the circumstances and consider whether a court would likely find the relationship with Shawbrook was unfair under s.140A.

### What happened?

Mr G says he was verbally misled the system would effectively pay for itself. I've taken account of what Mr G says he was told. I've also reviewed the documentation that I've been supplied.

The fixed sum loan agreement sets out the amount being borrowed; the interest charged; the total amount payable; the term; and the contractual monthly loan repayments. I think this was set out clearly enough for Mr G to be able to understand what was required to be repaid towards the agreement. I've noted the loan agreement is signed by Mr G and dated 25 April 2016.

Of interest too is the Quotation that was prepared for Mr G. It is signed by him and dated 20 April 2016. So, it seems more likely that Mr G saw this form. And based on the date of his signature, it seems that he saw this before entering into the loan agreement some days later. In the quotation it shows that the total income and savings in year one could be £709.29.

I think the above-mentioned document ought to have shown Mr G the savings wouldn't have covered the annual loan repayments cost which was around £1,071. I would have expected Mr G to have queried the shortfall if he'd been told the system would be self-funding.

Mr G has told us that the actual performance of the solar system has come far short of the quotation's figures. Mr G thinks this suggests the system was misrepresented to him. In doing so, Mr G has referenced individual aspects of the system. I note that whilst the quotation provides possible benefits for individual aspects of the system, it also brings those elements together in a section called *'Putting it all together'*. It is that part of the quotation I took the year one figure from.

I've noted that the quotation makes no guarantees about the actual performance of the system. I have noted that it says,

*"The performance of solar PV systems is impossible to predict with certainty due (sic) the variation of solar radiation from location to location and from month to month...Savings are dependent on individual circumstances and may be higher or lower than those stated above and are based on the manufacturers own figures."*

I'm not pretending this is straightforward, but it seems more likely that it would have been straight-forward enough for Mr G to have seen the system might not be self-funding, based on the evidence he had at the time and prior to him agreeing to the loan agreement.

Overall, while I've carefully considered what Mr G says he was told, given what I've set out above, I'm not persuaded there's sufficient evidence Mr G was misled the system would be self-funding. Therefore, I don't have the grounds to say that Shawbrook misrepresented the system to Mr G or are liable for an unfair relationship in this matter. And I've seen insufficient evidence to think they were unfair to decline Mr G's claim.

### **My final decision**

My final decision is that I don't uphold Mr G's complaint about Shawbrook Bank Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 9 January 2025.

Douglas Sayers  
**Ombudsman**