

The complaint

Mrs S and Mr W have complained about the way Shawbrook Bank Limited (“Shawbrook”) responded to claims they’d made under section 75 of the Consumer Credit Act 1974 (“the CCA”).

Mrs S and Mr W have been represented in their complaint. For simplicity, I have referred to Mrs S and Mr W throughout this decision.

What happened

On 12 February 2018, Mrs S and Mr W 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 cost of the system was £11,212.95 and after the payment of a deposit of £100, the credit amount was £11,112.95. The total amount payable under the agreement was £21,320.20. Mrs S and Mr W paid nothing for the first two months and the interest was deferred. The loan was to be repaid over a remaining term of 180 months with a monthly payment of £117.89.

Mrs S and Mr W put in a claim with Shawbrook explaining they thought the system was mis-sold. In summary, they said that P:

- Told them that the system would be self-funding.
- Had deliberately misled them at the point of sale as the system has not been self-funding.
- Made misleading statements for which Shawbrook was responsible.
- Had put them under pressure to buy the system.

Mrs S and Mr W also complained that Shawbrook had failed to go through a sound and proper credit assessment before agreeing the loan.

Shawbrook sent a final response letter and said the documentation provided didn’t show that the system had been misrepresented and they had performed adequate financial checks before providing the loan.

Mrs S and Mr W’s complaint was considered by an Investigator. In summary they thought that documentation from the time of the sale showed the estimated first year benefit was likely to be much less than what would be required to cover the credit agreement repayments. Consequently, they saw insufficient evidence to think that the system had been misrepresented to Mrs S and Mr W. Our investigator didn’t recommend that complaint be upheld.

Mrs S and Mr W was disappointed with that assessment and 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.

When considering what's fair and reasonable, I'm required to take into account; relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

In this case the relevant law includes section 56 and section 75 of the CCA ("s.56" and "s.75"). S.75 provides protection for consumers for goods or services bought using credit. As Mrs S and Mr W paid for the system with a fixed sum loan agreement, s.75 applies to this transaction. This means that Mrs S and Mr W could claim against Shawbrook, the creditor, for any misrepresentation or breach of contract by the supplier in the same way they could have claimed against the supplier. So, I've taken s.75 into account when deciding what is fair in the circumstances of this case.

S.56 is also relevant. This sets out that any negotiations between Mrs S and Mr W and the supplier are deemed to have been conducted by P 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.

I've read and considered the whole file, but I'll confine my comments to what I think is relevant. If I don't comment on any specific point, it's not because I've failed to consider it but because I don't think I need to comment on it in order to reach what I think is the right outcome in the wider context. My remit is to take an overview and decide what's fair "in the round".

What happened?

Mrs S and Mr W say they were verbally misled the system would effectively pay for itself. They said,

"The sales representative was adamant that the financial benefits from the system would make it a self-funding system which would pay for itself through the income and savings it would generate."

I've taken account of what Mrs S and Mr W say they were told. I've also reviewed the documentation that I've been supplied.

The fixed sum loan agreement signed by Mrs S and Mr W and dated 12 February 2018, 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 Mrs S and Mr W to be able to understand what was required to be repaid towards the agreement.

I'm also mindful of the document called "*Your Personal Solar Quotation*". This contained a section which described the estimated annual output and likely benefits. This suggested the estimated year one benefits could be £669.64. This is on page two and is prominently displayed. This document is signed by Mrs S and Mr W and dated 11 February 2018.

This information is repeated in greater detail further on in the document. And it says,

"The performance of solar PV systems is impossible to predict with certainty due the variation of solar radiation from location to location and from month to month. Your roof design, pitch, direction and any shading will also affect the system performance, these

variables have been taken into account in the calculations shown. Information provided by manufacturers independent testing and data via MCS and other industry recognised bodies. See individual manufacturer data and testing information. Savings are dependent on individual circumstances and may be higher or lower than those stated above and are based on the manufacturers own figures.”

The document also says, “*Your estimated payback time is 12 years*”. It then explains that,

“The estimated payback time is based on cash purchase. Note: The payback time will fluctuate dependant on any finance taken against the system.”

I think the above mentioned information ought to have shown Mrs S and Mr W the savings wouldn't have covered the annual loan repayments cost which would be around £1,414.68 when they became due to be paid. I would have expected Mrs S and Mr W to have queried the shortfall if they'd been told the system would be self-funding.

The performance estimate provided to Mrs S and Mr W at the point of sale doesn't make any statements or indications that the system will be self-funding, and the calculations displayed seem clear that it wouldn't be.

Overall, while I've carefully considered what Mrs S and Mr W say they were told, given what I've set out above, I'm not persuaded there's sufficient evidence Mrs S and Mr W were misled the system would be self-funding. Therefore, I don't have the grounds to say that P misrepresented the system to Mrs S and Mr W. And so, I've seen insufficient evidence to say that Shawbrook's decision to decline the claim was unfair.

Additional points

Shawbrook carried out a creditworthiness assessment, and I've seen no evidence from Mrs S and Mr W that supports their allegation that the check was insufficient or that the check should have led Shawbrook to have rejected Mrs S and Mr W's loan application.

Mrs S and Mr W have told us that the savings have been less than the estimated savings in the contract. I have seen insufficient evidence that those figures were anything other than estimated benefits. And Mrs S and Mr W have not been able to evidence their pre-installation energy costs. So, I do not think that the supplier's alleged failures have been sufficiently evidenced for me to think this amounted to a breach of contract.

Mrs S and Mr W alleged they were put under pressure to buy the system. This allegation was rebutted by Shawbrook.

The notion of pressure is a subjective one. I have listened to what Mrs S and Mr W have said. But in this case, I note that the allegation is not supported by any direct detailed testimony from Mrs S and Mr W. Neither is the allegation supported by any evidence from the time that supports such an allegation. I have noted that the documentation from the time of the sale included the right to cancel.

So, on balance, I have seen insufficient evidence to be able to uphold this aspect of the complaint raised by Mrs S and Mr W.

Summary

Overall, I do not think the alleged misrepresentation took place. And I don't think that Shawbrook acted unfairly when it rejected Mrs S and Mr W's claim and complaint.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr W to accept or reject my decision before 5 March 2025.

Douglas Sayers
Ombudsman