

The complaint

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

What happened

Mr and Mrs M bought solar panels for their home in 2019. The purchase was funded by a loan from Shawbrook, and that business is therefore liable for the misrepresentations or breach of contract of the installer under the relevant legislation. In this case, that relates to the installer misleading Mr and Mrs M into believing that the panels would be self-funding, which they weren't.

Mr and Mrs M's complaint was considered by one of our investigators. She thought that the benefits of the panels were mis-represented to Mr and Mrs M, and that fair redress would be for the loan to be restructured to make the panels cost no more than the benefit they would provide over a ten-year period. This restructure should be based on evidence of the actual performance of the panels, and a number of assumptions on future performance.

Shawbrook didn't agree saying the sales documents, which Mr and Mrs M signed, made it clear the system wouldn't be self-funding.

As an agreement couldn't be reached, the case was passed to an ombudsman.

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.

Shawbrook is familiar with all the rules, regulations and good industry practice we consider when looking at complaints of this type, and indeed our well-established approach. So, I don't consider it necessary to set all of that out in this decision.

Mr and Mrs M say that the supplier (which I'll refer to as P) told them the system would pay for itself from the income Mr and Mrs M would receive for the excess energy produced by the system that would be sold to the grid. But this has turned out to be untrue, so they felt they were mis-led during the sale. Mr and Mrs M say, bearing in mind their financial situation at the time, they weren't able to take on an additional financial obligation and wouldn't have bought the system if they'd been told that it would take a significant number of years for them to recover the costs, and that they'd have to cover the payments in the meantime.

Shawbrook says the documents from the time of sale (namely the sales quotation document), makes it explicitly clear that the system wouldn't be immediately self-funding, and that there would likely be a deficit between the benefits and costs for a number of years.

I have looked at the sales quotation document, and as Shawbrook says, it does make it very clear the system wouldn't be self-funding. The repayment table explicitly shows that there would be a deficit between the benefit and cost for the first 9 years after installation. The

table setting out the lifetime benefit the system is estimated to produce, also shows the benefits would unlikely cover the cost of the system for at least 12 years.

So, the case rests on whether I'm satisfied that P sales representative followed its usual sales process or if they instead did mislead Mr and Mrs M as they say.

Shawbrook says the sales quotation document formed part of P's usual sales process, that the sales representative would have referred to it during the sales meeting and that the consumers have also signed the quotation document. This service has seen a number of complaints like this, and usually, we can see that the document is an integral part of its usual sales process.

However, Mr and Mrs M says they were not shown the entire sales quotation document. They say they were only shown the page they signed which has some of the costs set out. Mr and Mrs M say, being concerned about the effect on their financial situation, they repeatedly checked that the benefits would outweigh the costs, and they were assured verbally that the system would be self-funding from the outset.

Mr and Mrs M also say they received a series of emails giving them more information, including the credit agreement around the time of the sale meeting in March 2019. They agreed an installation date of 2 April 2019 and the system was subsequently installed as agreed on 2 April 2019.

They've said they can now see they did receive a copy of the sales quotation document on 1 April 2019, but they weren't expecting any documents at this time, and didn't see or check this before the installation. They reiterate it wasn't referred to during the sales meeting.

Mr and Mrs M have sent in a screenshot of their email inbox, and I can see, as they say, they received a series of emails from P and Shawbrook in March 2019, but the quotation document wasn't sent until 1 April 2019. And shortly after this, they appear to have also received a number of post installation emails.

Mr and Mrs M's testimony has been very clear and consistent. They have provided a considerable amount of detail surrounding the sales meeting. I also note that there was a delay in them receiving payments for the excess energy produced by the system due to their provider needing to install an upgraded smart meter that could track how much energy was being sent to the grid. Once this was complete in 2021, and Mr and Mrs M received their first payments, they realised that these payments fell far short of what they say they were assured they would receive by P. Around this time, they promptly raised a complaint.

I've thought carefully about everything Mr and Mrs M have said and submitted as well as considering carefully Shawbrook's submissions. Overall having carefully considered everything provided, for the same reasons as those explained by the investigator, I uphold this case. I find Mr and Mrs M's testimony persuasive, and I'm not satisfied that the sales quotation document was referred to during the sales meeting. Instead, I find, that the system was, while unusually, likely misrepresented to them as they say.

I think the timeline of emails sent, and the way Mr and Mrs M behaved, namely raising a complaint promptly after realising their social energy payments wouldn't cover the cost of the loan, is compelling evidence of what they genuinely believed at the time of sale. Mr and Mrs M receiving the quotation document almost a week after the other sales documents were sent to them also explains why they didn't question the contents of it. The email being sent immediately before the installation left them very little opportunity to review it and realise the system wouldn't be self-funding. Additionally, receiving so many post installation emails shortly after it, I can see how this got missed.

Overall, I'm persuaded that a misrepresentation took place and Mr and Mrs M were not given clear information to demonstrate that the solar panels would *not* be self-funding and would equate to an additional cost for them. Based on what I've seen, I'm also satisfied that it's unlikely the system is self-funding, and they likely suffered a loss.

So, I think that Shawbrook didn't treat Mr and Mrs M fairly and they lost out because of what Shawbrook did wrong. And this means that it should put things right.

Putting things right

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mr and Mrs M's complaint for Shawbrook to put things right by recalculating the original loan based on the known and assumed savings and income to Mr and Mrs M from the solar panels over a 10-year period so they pay no more than that, and they keep the solar panel system, and any future benefits once the loan has ended.

In the event the calculation shows that Mr and Mrs M are paying (or have paid) more than they should have, then Shawbrook needs to reimburse them accordingly. Should the calculation show that the misrepresentation has not caused a financial loss, then the calculation should be shared with Mr and Mrs M by way of explanation.

Mr and Mrs M have settled the loan by refinancing, so they should supply evidence of the refinance to Shawbrook, and Shawbrook should:

1. Refund the extra Mr and Mrs M paid each month with the Shawbrook loan.
2. Add simple interest from the date of each payment until Mr and Mrs M receive their refund.
3. Refund the extra Mr and Mrs M paid each month with the refinanced loan.
4. Add simple interest from the date of each payment until Mr and Mrs M receive their refund.
5. Pay Mr and Mrs M the difference between the amount now owed and the amount they would've owed if the system had been self-funding

Shawbrook has offered £300 compensation for the trouble and upset caused and I think that's a fair offer. I direct that Shawbrook should pay £300 compensation for the trouble and upset caused.

My final decision

For the reasons I've explained, I'm upholding Mr and Mrs M's complaint. Shawbrook Bank Limited should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and Mr M to accept or reject my decision before 22 November 2023.

Asma Begum
Ombudsman