

The complaint

Mrs B has complained that Shawbrook Bank Limited (“Shawbrook”) rejected her claim against it under Section 140 of the Consumer Credit Act 1974.

What happened

Mrs B purchased a solar panel system (“the system”) for her home in 2016 and financed it through a 15-year fixed sum loan agreement with Shawbrook. The system was subsequently installed. Mrs B alleges that the supplier misled her into believing that the panels would be self-funding, which she says they weren’t. She says this caused her relationship with Shawbrook to be unfair on her.

Shawbrook did not accept Mrs B’s claim and did not subsequently issue a final response to her complaint about how it had dealt with her claim. So, the complaint was referred to this service. Mrs B’s complaint was considered by one of our investigators. He thought that while it did look like the supplier had indicated the system would be self-funding, there wasn’t sufficient evidence that this was untrue in Mrs B’s case. So, he didn’t think this amounted to a misrepresentation.

Mrs B disagreed. She reiterated (through her representatives) that she only bought the system as she believed it would be self-funding.

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

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.

Our investigator has explained why we have jurisdiction to consider this complaint and as neither party has disputed this, I don’t need to set this out again in this decision.

Shawbrook and Mrs B’s representative are 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. It has also been set out by our investigator. So, I also don’t consider it necessary to set all of that out in this decision.

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, for broadly the same reasons as those explained by the investigator, I do not uphold this complaint.

Mrs B says she was led to believe the system would be self-funding and that the benefit received from the system would cover the cost of the finance. The quote provided by the supplier formed the basis of the sale, including the meeting where this was discussed.

In the quote, there's a section headed 'Repayment options' with three tables showing repayments over 60 months, 120 months and 180 months. I've focused on the table for 180 months as this is the length of the loan that Mrs B entered into with Shawbrook. This table shows Mrs B's estimated monthly payment of £96.58. For each year of the 15-year loan it shows the expected grand total return from the system. It then averages that figure over 12 months, and subtracts the monthly loan repayment, to give an average difference between the monthly return from the system and the monthly loan repayment in each year.

180 payments of £96.58 p/m			
Yr	Acc. grand total	Est. monthly return	Average monthly repayment diff.
1	£1,185.32	£98.78	£2.20
2	£1,256.79	£104.73	£8.15
3	£1,332.89	£111.07	£14.49
4	£1,413.92	£117.83	£21.25

The quote and specifically this table, does appear to suggest that the system will provide an average profit per month of £2.20 from the first year – with the profit increasing year on year. This corroborates Mrs B's testimony. She says she was told the system benefits would outweigh the cost, which is also reflected in the paperwork. So, it does look like the system was sold on the basis that it would indeed be self-funding in the way Mrs B asserts.

However, in order for me to uphold this complaint, I'd need to be satisfied that the representation was untrue and, as our investigator explained, I'm afraid there doesn't seem to be sufficient evidence that the system isn't self-funding as the supplier stated.

Mrs B hasn't provided any bills (either pre or post installation so we can't see what her actual savings on her bills have been). She's also only provided Feed in Tariff ("FIT") statements for a very short period of time post installation. I'm satisfied she's had the opportunity to provide more evidence and dispute our investigator's conclusions, but none has been forthcoming. I understand that Mrs B sold the property where the system was installed and no longer lives there which may explain why she cannot provide any further evidence. But like our investigator, this means I've had to make a decision based on the available evidence.

The sales quotation document sets out that Mrs B's system is likely to generate 3990.56 kWh in energy annually resulting in FIT payments of £271.96. Based on FIT statements she's provided (which as I explained above is only for a short period of time post installation); it looks like the average annual generation of the system is 4200.17 kWh. This would result in a payment of £284.55 in FIT payments which is slightly more than estimated by the supplier at the point of sale. So, it seems to me the system is performing as expected (if not slightly better than estimated).

As we don't have any bills to check what Mrs B's system has saved her in energy bills, and the system appears to be performing in line with the suppliers estimates in terms of generation and FIT payments, I've taken the estimates from the quotes as a guide to help me decide this case. This gives a first-year benefit of £1,197.91 which is more than the annual cost of her loan. I understand Mrs B's actual monthly payments on her credit agreement is slightly different due to a deferral period selected on her credit agreement. But

based on the monthly cost set out on either the sales quote or credit agreement, the benefit of £1,197.91, outweighs the annual cost.

So, without any evidence to the contrary, it looks like the estimates and therefore the representations made by the supplier are not “untrue” and therefore do not amount to a misrepresentation.

So, I've gone on to consider whether a court may conclude that there existed an unfair relationship under section 140A the Act. A sufficient inequality of knowledge and understanding is considered a classic source of unfairness in a relationship between a creditor and a consumer. As I haven't found any misrepresentations, I think a court is unlikely to conclude that there is an unfair relationship under section 140.

Summary

Overall, while I accept that the supplier sold the system on the basis that it would be self-funding, and that the benefits would outweigh the cost of the system, I'm afraid there isn't sufficient evidence in this case that this representation is untrue. Therefore, I don't think there's sufficient evidence that the system was *misrepresented* to Mrs B and so, I don't think Shawbrook acted unfairly by not accepting this claim.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 6 February 2024.

Asma Begum
Ombudsman