

The complaint

Mr J complains about Shawbrook Bank Limited (“Shawbrook”)’s response to a claim under section 140 of the Consumer Credit Act 1974 (“the Act”).

What happened

In 2014, Mr J purchased a solar panel system (“the system”) for his home. He paid the supplier using a fixed sum loan agreement with Shawbrook, which was repayable over 15 years.

In 2022, a claims management company (“the CMC”) made a claim on Mr J’s behalf under section 140 of the Act. It alleged that the system had been misrepresented to Mr J in that he was told the benefits of the system (income and savings) would cover the monthly loan repayments, making it self-funding. The claim alleged that this caused the relationship between Mr J and Shawbrook to be unfair on him.

Shawbrook didn’t respond to the claim, so the CMC made a complaint about this on Mr J’s behalf. Having not received a response within eight weeks, the CMC referred the complaint to the Financial Ombudsman Service.

Our investigator looked at what had happened and didn’t recommend the complaint be upheld. She concluded there was insufficient evidence to show there had been a misrepresentation or that the relationship between Mr J and Shawbrook was unfair on him.

The CMC disagreed with this on Mr J’s behalf, so 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.

When considering what’s fair and reasonable, I’m required to take into account relevant law and regulations, relevant regulatory rules, guidance, 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 140 of the Act. Section 140A is about unequal relationships between the parties to a credit agreement. In this case, Mr J’s claim relies on the alleged misrepresentation of the system and that this created an unfair relationship between Shawbrook and Mr J.

The only available evidence of what happened is what Mr J has told us and a copy of the credit agreement, which shows what Mr J paid for the system. There is no other evidence from the time of sale that helps indicate what happened. So, I need to think about whether Mr J’s recollection is plausible and persuasive enough to justify me upholding the complaint (for example, if I think there was a misrepresentation that most likely made his relationship with Shawbrook unfair on him – such that Shawbrook should’ve accepted his claim or upheld his complaint).

Having thought about the available evidence I have decided not to uphold this complaint. I am not persuaded that Mr J's recollection of what happened is plausible and persuasive enough for me to say there was a misrepresentation. I'll explain my reasons.

Mr J says he was told the system would pay for itself on a monthly basis, because the income and savings would cover the monthly loan repayments. Given that apparently didn't happen, I would expect Mr J to have noticed this soon after the system was installed and to then pursue the matter – with the supplier and with Shawbrook if the supplier didn't respond. Mr J says he tried to contact the supplier, but it did not return his calls and then went out of business. He contacted Shawbrook about this in 2021 via the CMC.

I understand that the installation of the system took place around July 2014. The supplier was dissolved in May 2019, almost five years later. I think that means that Mr J had almost five years in which he could've contacted the supplier. If he felt then that he had been misled I would've expected him to pursue this until he got a response – and if he didn't to have some evidence of his attempts (beyond his recollection).

But Mr J appears to have no evidence to confirm that he contacted the supplier about this issue – such as an acknowledgement or a copy of a letter or email he sent to the supplier. After the supplier was dissolved, it was then more than two years before he made his claim to Shawbrook via the CMC. So, between the sale and Mr J making a claim there was a gap of over seven years. I think this undermines the plausibility and persuasiveness of Mr J's recollection of what he was told, because I think he'd have some evidence of pursuing the matter.

Overall, I do not think there is enough evidence for me to conclude that the supplier misrepresented the system to Mr J in the way alleged. And I've not seen anything else that makes me think the relationship between Mr J and Shawbrook was unfair on him.

In light of this I do not think I have sufficient reason to uphold this complaint.

My final decision

For the reasons I've explained, I do not uphold this complaint.

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

Phillip Lai-Fang
Ombudsman