

The complaint

Mr and Mrs M complain about Shawbrook Bank Limited's response to a Section 75 claim they made in relation to a solar panel system ("the system").

What happened

In 2017, Mr and Mrs M purchased the system from a supplier. They paid for it using a loan from Shawbrook. They say they did so on the basis that the system would be self-funding, in that its financial benefits would cover the monthly loan repayments.

In 2021, through a claims management company ("the CMC"), Mr and Mrs M made a claim under section 75 of the Consumer Credit Act 1974. They said that the system was not self-funding in the way they'd been told, and that this misrepresentation had induced them to enter into the contract.

Shawbrook responded to the claim to say it didn't think the system had been misrepresented. The CMC then made a complaint about this on behalf of Mr and Mrs M, but Shawbrook didn't change its decision.

Our investigator looked into what had happened. They said the complaint should be upheld. Shawbrook accepted this and made an offer to settle the complaint in line with our usual approach – which was to calculate the benefits of the system over the term of the loan and ensure that Mr and Mrs M paid no more than this for the system.

Mr and Mrs M remained unhappy. They felt it was not appropriate to base the settlement calculations on their estimated savings at the time of sale or to take account of future savings. Their usage had changed with fewer people living in the house and they were also in process of selling the house, which means they would not get any future benefits. Because our investigator was unable to resolve the complaint, 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.

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.

Shawbrook has accepted our investigator's assessment, so I don't need to decide if this complaint should be upheld – all parties are in agreement that it should. So, all I must decide is what Shawbrook must do to put things right.

The usual remedy for misrepresentation is to cancel the contract and put the consumer back in the position they'd have been in if the misrepresentation didn't happen. This is because if

it was not for the misrepresentation the consumer wouldn't have gone ahead with the purchase.

However, in the case of solar panels that is impractical, since it would require the system to be removed, which is expensive and disruptive and could cause additional issues such as damage to the property. It also results in a perfectly good system being scrapped, when otherwise it would continue to generate renewable electricity for many years. So, with solar panels we take a different, more pragmatic, approach to putting things right.

That approach is to have the financial business recalculate the original loan based on the known past and assumed future savings and income from the solar panels over a reasonable period (usually the loan term) so the consumer pays no more than that. We think our approach is fair and reasonable for both the consumer and the financial business, since it minimises cost and disruption, avoids the system being scrapped and (in most cases) allows the consumer to continue to benefit from the system.

In this case Shawbrook has agreed that it will do that. But Mr and Mrs M don't think that is fair because their electricity usage (and therefore the savings they realised from the system) reduced and they are now selling the property, so will not receive benefits after the sale is completed. So, they would like the recalculation of the original loan to be adjusted to reflect this.

I'm not persuaded that would be fair and reasonable in this case. This is because at the time of sale the supplier based its estimated benefits on Mr and Mrs M's electricity usage at that time. I don't think the supplier would've been aware that Mr and Mrs M's usage would change dramatically or that they would sell the house, nor do I think they ought reasonably to have been aware of those things.

In any case, Shawbrook will base the calculation on Mr and Mrs M's actual usage if they provide electricity bills that show this. And when selling the house, the sale price would take account of the presence and benefits of the system, so I think Mr and Mrs M will be compensated for the lost future benefits of the system through the sale proceeds. That being the case it would not be appropriate for Shawbrook to also compensate them for losing those benefits.

Because of this, I'm satisfied that Shawbrook can settle this complaint in line with our usual approach, which I set out below.

Putting things right

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 the original term of the loan, so they pay no more than that.

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.

If the calculation shows there is a loss, then where the loan is ongoing, I require Shawbrook to restructure Mr and Mrs M's loan. It should recalculate the loan to put Mr and Mrs M in a position where the solar panel system is cost neutral over the original loan term.

Normally, by recalculating the loan this way, a consumer's monthly repayments would reduce, meaning that they would've paid more each month than they should've done resulting in an overpayment balance. And as a consumer would have been deprived of the monthly overpayment, I would expect a business to add 8% simple interest from the date of the overpayment to the date of settlement.

So, I think the fairest resolution would be to let Mr and Mrs M have the following options as to how they would like their overpayments to be used:

- A. the overpayments are used to reduce the outstanding balance of the loan and they continue to make their current monthly payment resulting in the loan finishing early,
- B. the overpayments are used to reduce the outstanding balance of the loan and they pay a new monthly payment until the end of the loan term,
- C. the overpayments are returned to Mr and Mrs M, and they continue to make their current monthly payment resulting in their loan finishing early, or
- D. the overpayments are returned to Mr and Mrs M, and they pay a new monthly payment until the end of the loan term.

If Mr and Mrs M accept my decision, they should indicate on the acceptance form which option they wish to accept.

If Mr and Mrs M have settled the loan, Shawbrook should pay them the difference between what they paid in total and what the loan should have been under the restructure above, with 8% interest per year for the time they've been without that money.

If Mr and Mrs M have settled the loan by refinancing, 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 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.

I'm satisfied that there was sufficient information available at the time that Mr and Mrs M first contacted Shawbrook that means the claim should have been upheld. I direct that Shawbrook should pay £100 compensation for the trouble and upset caused.

My final decision

For the reasons I've explained, I uphold this complaint and direct Shawbrook to put things right as 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 8 November 2023.

Phillip Lai-Fang
Ombudsman