

The complaint

Mr R and Mrs K made a claim to Shawbrook Bank Limited under sections 56 and 75 of the Consumer Credit Act 1974 ("the Act") in relation to a solar panel system they said was misrepresented to them by the supplier. Shawbrook agreed with Mr R and Mrs K's claim but they're unhappy with the remedy Shawbrook have offered.

Mr R and Mrs K are represented by a claims management company ("the CMC").

What happened

In or around March 2013 Mr R and Mrs K were visited by a company I'll call "G" to talk about purchasing a solar panel system ("the system") to be installed at their home.

Mr R and Mrs K decided to purchase the system and finance it through a 15 year (180 months) fixed sum loan agreement with Shawbrook. The cost including the finance was close to £23,200.

The system was subsequently installed with an estimated annual generation of 3306 kWh.

In February 2017 the system was inspected by a contractor appointed by the CMC. He found that the installation of the system breached industry guidelines. He said the cables below the panels had not been secured correctly, incorrect drill through slate fixings had been installed compromising the roof and risking water penetration damage, and cables had penetrated the roof felt further affecting the roof's integrity. He concluded: "*The entire system will need to be removed, slates replaced and have suitable fixings installed*". The contractor also calculated that the system's ability to generate income and savings would likely leave Mr R and Mrs K still owing around £4,900 at the end of 20 years.

In May 2018 Mr R and Mrs K made their claim to Shawbrook.

In February 2019 Shawbrook agreed with Mr R and Mrs K's complaint that the system had been misrepresented at the point of sale and made them an offer designed to put them in the position they would have been in if the solar system had, in fact, been self-funding. In short, they offered to restructure the original loan so that the repayments come to no more than the benefits Mr R and Mrs K have received and will continue to receive from the system. This meant:

- Mr R and Mrs K would keep the solar system and any benefits;
- The original loan amount would be reduced to equal the total benefits Mr R and Mrs K would receive from the system over the original loan term;
- Any payments already made would reduce the restructured loan balance;
- No interest would be payable on the restructured loan; and
- Shawbrook would pay Mr R and Mrs K 8% simple interest per annum on the difference between the monthly payments they'd made and the monthly benefits they'd received ('overpayments') by way of compensation – this interest would further

reduce the restructured loan balance.

Shawbrook also offered £200 in compensation for the time it took them to investigate the claim.

Mr R and Mrs K didn't accept this offer. They said the system was no longer working.

In May 2019 Shawbrook's contractor attended Mr R and Mrs K's home to repair the system and confirm the cause of the fault. The contractor confirmed that the system was not generating, and that the inverter had developed a fault requiring replacement. But Shawbrook's contractor didn't agree that any other remedial works were necessary. The report said, "*all wiring and isolators are fine*".

Mr R and Mrs K rejected Shawbrook's offer to replace the inverter. The CMC told Shawbrook Mr R and Mrs K were "*seeking the remedy of rescission*" and wanted the system removed.

The CMC then brought the complaint to this service.

Meanwhile, Shawbrook's contractor inspected the site again on 24 October 2019. The engineer confirmed that the system is installed correctly and said, "*the only issue is the inverter*".

Our investigator's view

While we were looking into everything Shawbrook updated their offer. Our investigator said Shawbrook's updated offer would make the system self-funding over the original term of the loan and would remedy the financial impact Mr R and Mrs K had experienced from the loan repayments not being covered by the financial benefits of the solar panels. She concluded it was a fair and reasonable offer, and in line with what we'd ask them to do.

She said Shawbrook had calculated that Mr R and Mrs K had made overpayments (against what they would have done if the panels had been self-funding). The investigator set out four options for Mr R and Mrs K to choose from varying in the application of the overpayments and the length of the restructured loan.

Mr R and Mrs K's response to the view

The CMC, on Mr R and Mrs K's behalf, didn't accept this. They said the system hasn't worked since 2017 and this hadn't been reflected in Shawbrook's offer.

Our investigator asked Shawbrook to look into the performance issue, replace the inverter and recalculate the self-funding offer to reflect that they haven't received any benefits from the system since 2017. Shawbrook agreed but said, as their contractor (who visited in May 2019 and October 2019) hadn't found any other faults with the system or problems with the installation, they wouldn't agree to rectify the issues raised by the CMC's contractor in February 2017.

Mr R and Mrs K rejected Shawbrook's offer. The CMC told us they have no confidence in the system, and that they don't want the "*worry and stress*" if the system develops further faults. They confirmed they want the system removed.

Shawbrook told us they won't arrange for removal of the system as only the inverter has been found to be faulty and removal of the system would be inappropriate, and the cost disproportionate.

Our investigator said Shawbrook's offer to make the system self-funding and replace the inverter is fair given the circumstances.

As no agreement could be reached, the complaint has come 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.

Having done so, I note that Shawbrook have accepted Mr R and Mrs K's original complaint that the system was misrepresented to them at the point of sale. And they've offered to remedy that with an offer to make the system self-funding. So, instead of examining the sale of the system and whether it was misrepresented to Mr R and Mrs K I've only considered whether, in the circumstances that both parties accept that point, the offer made by Shawbrook is fair.

This service has dealt with numerous complaints about mis-sold solar panel systems and we have a general approach to compensation where a credit provider, such as Shawbrook, is held responsible for any loss under s.75 of the Act. Although each case is looked at on its own merits, our starting point is to ensure the consumer doesn't experience any financial loss as a result of the misrepresentation and, to achieve that, we often think that making the loan self-funding is the fairest outcome.

I've seen nothing presented in Mr R and Mrs K's case that is sufficiently different to those other complaints for me to consider departing from this general approach. So, I think Shawbrook needs to make sure Mr R and Mrs K pay no more than the benefits they'll likely get from the system over the original loan term (in this case, 15 years). And so that the system can provide those benefits, Shawbrook should, as they've already agreed to do, replace the inverter.

The CMC have rejected this offer as Mr R and Mrs K would prefer to have the system, which they don't trust and feel is poorly installed, removed.

Whilst I recognise that Mr R and Mrs K's experience of owning a solar panel system has not been what they expected, I agree with Shawbrook that it would be disproportionate to remove it. I've seen no evidence that prior to the inverter developing an error at some point in 2017, the system wasn't working. In February 2017 the system had generated 13605.52 kWh since installation in April 2013 – that's approximately 3,400 kWh a year; slightly above the annual generation estimate given at the point of sale.

I note that the CMC's contractor in February 2017 raised some issues about the standard of installation. But, given the performance of the system prior to the inverter failing, and the fact that I've not been presented with any evidence that the contractor's concerns about the integrity of the roof have materialised, I don't see any reason to require Shawbrook to do more than replace the inverter. There have been two further inspections since 2017, in 2019, the purpose of which was to check the standard of installation, and these concluded that the system is installed correctly. So, I think, on balance, the installation was satisfactory.

The offer Shawbrook have made makes the system cost-neutral for Mr R and Mrs K. Once the inverter is replaced they'll resume receiving benefits for the life of the system. In the

absence of any evidence that the system is beyond providing those benefits once the inverter is replaced, I think removing the system would be disproportionate.

The methodology that Shawbrook have used to calculate the compensation due to Mr R and Mrs K has been agreed with this service on previous similar complaints, and I think it's a fair and reasonable remedy to Mr R and Mrs K's complaint. Shawbrook should update the figures to the date any payment is made and/or applied to the loan account. This includes paying 8% simple interest a year on the overpayments up to the date that they are effectively repaid.

I know Shawbrook's original offer sought to limit the accumulation of compensatory interest to a period of 28 days after the date of their offer. However, I don't think that would be fair in the circumstances.

We can rarely say for sure what the cost is to someone of being deprived of money. For many people, it might have influenced a range of decisions about spending and borrowing over a period of time. For most consumers we think a rate of 8% simple interest per year is appropriate to reflect the cost of being deprived of money in the past. In Mr R and Mrs K's case the 8% interest is to compensate them for being deprived of the use of the money they overpaid for the system. And they'll continue to be deprived of the use of that money until it is effectively repaid to them.

Of course, they could have accepted Shawbrook's offer and received their refund in 2019. But I don't think they've unreasonably delayed their acceptance of the offer. They had a legitimate right to disagree with Shawbrook's proposed remedy and pursue an impartial review by this service through our two-stage process. And during the time that's taken they've continued to not have the use of funds they would have had if the system had not been misrepresented to them. So, I think it's fair and reasonable that Shawbrook compensate them with 8% simple interest a year for the entire time they've been without those funds.

Mr R and Mrs K's system hasn't been working as it should due to an issue with the inverter. Shawbrook have agreed to replace this at no cost to them. Due to the issue with the inverter, Mr R and Mrs K have not been receiving any benefit from their system by way of FIT payments or electricity savings. Therefore, when calculating the expected income and savings over the 15-year term of the loan, Shawbrook should ensure the calculation reflects the time when Mr R and Mrs K's were receiving no benefit. I note that Shawbrook have already agreed to do this – to recalculate the self-funding offer to reflect that Mr R and Mrs K haven't received any benefits from the system since 2017.

Finally, I understand that the CMC put Mr R and Mrs K's claim to Shawbrook on a number of alternative bases; these include that there was an unfair relationship under s.140A the Act, as well as the sale being in breach of the Consumer Protection from Unfair Trading Regulations 2008. For completeness, I'm satisfied that none of these bases for their claim change what I think is fair compensation for the unfairness that has resulted from the accepted misrepresentation.

Putting things right

Shawbrook have made an offer to settle this complaint, they've offered to replace the inverter and to make the system self-funding. I consider this offer to be fair compensation in all the circumstances, and I won't be asking them to remove the system.

Shawbrook Bank Limited should:

- Replace the defective inverter as they have previously agreed to do, so that the system can start generating again;
- Recalculate the loan so that Mr R and Mrs K pay no more than the known and assumed savings and income that they will receive from the solar panel system over the 15-year term of the loan;
- Ensure that their calculations take into account that the system has not been working since 2017;
- Allow Mr R and Mrs K to keep the solar panel system;
- Calculate any overpayments made by Mr R and Mrs K, apply them to the loan and repay them any balance;
- Add simple interest at 8%* a year to any overpayments from the date that they were made to the date that they are effectively repaid; and
- Pay Mr R and Mrs K £200 to reflect the distress and inconvenience caused.

*HM Revenue and Customs may require that Shawbrook deduct tax from any interest paid. Should Mr R and Mrs K request it, Shawbrook should give them a certificate showing how much tax has been taken off so that they may reclaim it if appropriate.

My final decision

My final decision is that I require Shawbrook Bank Limited to settle this complaint in the way I've set out above in the 'Putting things right' section of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R and Mrs K to accept or reject my decision before 30 March 2022.

Beth Wilcox
Ombudsman