DRN-3269406

The complaint

Mr A 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 he said was misrepresented to him by the supplier. Shawbrook agreed with Mr A's claim but he's unhappy with the remedy Shawbrook have offered.

Mr A is represented by a claims management company ("the CMC").

What happened

In or around June 2013 Mr A was visited by a company I'll call "G" to talk about purchasing a solar panel system ("the system") to be installed at his home.

Mr A decided to purchase the system and finance it through a 15-year (180 months) fixed sum loan agreement with Shawbrook. The purchase price of the solar system was almost £11,000. The cost including the finance was close to £21,200. The system was subsequently installed.

When the solar system failed to provide the savings and income Mr A said he'd been told to expect by G, he complained, via the CMC, that the system had been misrepresented to him. His claim was made in May 2019. He said he'd been led to believe the system would "*pay for itself*" within the term of the loan and provide a "*substantial income*", but that it had failed to provide the promised income and savings to cover the monthly loan repayments. The CMC said Mr A was seeking rescission of the supply contract and credit agreement.

The CMC made the following points aside from their claim that the system had been misrepresented. They said:

- The system had been poorly installed and was not fit for purpose;
- The misrepresentations made by G had created an unfair relationship under s.140A of the Act;
- Shawbrook, by continuing to offer finance in partnership with G when they ought to have known about G's "*wrongful conduct*", were responsible for that unfair relationship; and
- They believed Shawbrook had paid G commission.

The CMC asked Shawbrook to:

- Refund all sums paid under the credit agreement and the supply contract;
- Refund any interest and charges applied to the account;
- Pay interest on the refund at 8% per annum calculated from the date of the contract and until settlement;
- Pay compensation to cover the cost of removing the system and any repairs

required; and

- Pay the sum of £750 for distress and inconvenience.

In June 2019 Shawbrook agreed with Mr A's complaint that the system had been misrepresented by G at the point of sale and made him an offer designed to put him in the position he 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 A has received and will continue to receive from the system. This meant:

- Mr A would keep the solar system and any benefits and future benefits;
- The original loan amount would be reduced to equal the total benefits Mr A would receive from the system over the original loan term (they calculated that the savings and income Mr A would likely receive from the system over the 15-year term of the loan would be £11,077.40);
- Any payments already made would reduce the restructured loan balance; and
- Shawbrook would pay Mr A 8% simple interest per annum on the difference between the monthly payments he made and monthly benefits he received ('overpayments') by way of compensation for his loss of use of that money – this interest would further reduce the restructured loan balance.

Shawbrook said the 8% interest would be calculated up to 28 days from the date of their offer. So, if Mr A took longer than 28 days to accept the offer, the interest would not keep being added after day 28.

Shawbrook calculated that using this redress methodology Mr A's loan account was in credit and he was due around a £2,500 refund.

On the matter of whether Shawbrook paid G commission, Shawbrook rejected any allegation of an unfair relationship and explained that whilst they had paid G commission for introducing the business to them, "*the level of that commission was not such that it would create an unfair relationship*".

Shawbrook also acknowledged that the CMC's letter had mentioned "*negligent installation*" of the system, and they offered to investigate Mr A's concerns about that if he contacted them with more detail.

Mr A wasn't happy with this. The CMC said the offer did not reflect the loss Mr A had incurred because he'd been told the system would make him more than £77,000 but he'll only make around £11,750 over a period of 15 years. The CMC also said that Shawbrook had failed to address Mr A's claim under s.140A of the Act that there had been an unfair relationship between Shawbrook and Mr A. They said:

> "*Had you not offered funding for the purchase of this product, thereby endorsing it, our client would not be in the position he finds himself in. Therefore, it is only fair and reasonable that our client is put back in the position he would have been in had he not purchased the product*."

The CMC also said there'd been a breach of the implied terms of the contract in that the system had not been installed in accordance with industry standards. They said Mr A should be entitled to rescind the contract and finance agreement.

However, by way of "*compromise*" the CMC asked that Shawbrook:

- Allow Mr A to keep the system at a cost of £11,077.40;
- Allow Mr A to keep any benefits he has had from the system in terms of Feed in Tariff (FIT) payments and savings on his energy bills;
- Pay £1,893.32 in interest on the overpayments;
- Refund £591.46 in overpayments; and
- Pay Mr A £1,000 for loss of expected profit.

Shawbrook responded to the CMC in August 2019 explaining that they wouldn't be reviewing the redress offered. So, the CMC brought Mr A's complaint to this service. The CMC told us:

- the system had been mis-sold to Mr A by G;
- an unfair relationship within the meaning of s.140A of the Act had been created due to the misleading information provided to Mr A which led him to enter into linked agreements with Shawbrook and G;
- the system had failed to provide the savings and income promised to Mr A – G told him the system would pay for itself within the term of the loan and earn him more than £77,000 over a period of 25 years;
- the system is underperforming by approximately 6% against the generation estimate given at the point of sale; and
- Mr A was promised the system would pay for itself within 15 years and be a "*lucrative investment*".

The CMC reiterated that Mr A would be prepared to accept the "*compromise*" they'd set out to Shawbrook in settlement of his complaint.

Our investigator's view

Shortly before our investigator issued her view, Shawbrook amended the way they made their compensation calculations, and reviewed and updated Mr A's offer. They calculated the following:

A	Total estimated financial benefits from the system over 15 years	£11,074.36
B	Total payments made to date	£11,743.86
C	Total overpayments made towards the loan	£669.50
D	8% compensatory interest less 20% (basic rate income tax)	£2,184.10
E	Total refund payable (C+D)	**£2,853.60**

They also added £100 compensation for the distress and inconvenience caused to Mr A.

Our investigator said Shawbrook's offer makes the solar panel system cost-neutral for Mr A and would remedy the financial impact Mr A 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.

Mr A's response to the view

The CMC, on Mr A's behalf, didn't accept this. They said the system isn't performing as well as it should, and Mr A wants it removed.

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 A's original complaint that the system was misrepresented to him by G 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 A, 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 we find that a credit provider, such as Shawbrook, is 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 A'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 A pays no more than the benefits he'll likely get from the system over the original loan term (in this case, 15 years).

In line with that approach, Shawbrook have calculated the total estimated financial benefits from the system over 15 years as £11,074.36 and applied a redress methodology (which has been agreed with this service on previous similar complaints) which means Mr A will only be liable for that amount, and will be compensated for anything more he's paid.

The CMC have given a number of reasons for rejecting this offer. Firstly, they've said the offer doesn't reflect Mr A's loss in respect of expected income. They've explained Mr A was told the system would make him more than £77,000 over 25 years, so he should be compensated for that. Secondly, they've said that the system isn't performing as well as it should, so Mr A should be entitled to have it removed. Although, more recently, the CMC have confirmed that Mr A's preference is to keep the solar panels.

I don't agree with the CMC that Mr A should be compensated for loss of expected income. I appreciate that Mr A is very likely upset about what happened here and I expect he's bitterly disappointed that he won't see the significant income he was told he could expect by G. But we wouldn't normally expect the credit provider to make a misrepresentation such as that, true. As I've already explained, our general approach is to ensure the consumer doesn't experience any financial loss as a result of the misrepresentation. And an offer that makes the loan self-funding is usually the way to do that, as it makes the system cost-neutral for the consumer.

With regard to the system's performance, the CMC have told us that the system is underperforming by about 6% of the estimates Mr A was given at the point of sale (generating 2143 kWh as opposed to the estimated 2280 kWh). Whilst I haven't been provided with Mr A's FIT statements to review, I can see that Shawbrook's redress calculation relied on Mr A's FIT payments up until August 2018. Thereafter, because Mr A was unable to provide all the FIT payment statements, Shawbrook used an assumed rate based on industry data and an assumed RPI rate. So, I think any issues with

underperformance have already been considered within the redress offer as the statements he supplied would have shown that under-performance.

I'm also mindful that the CMC's "*compromise*" position asked Shawbrook to allow Mr A to keep the system at a cost of £11,077.40, which indicates a level of agreement with Shawbrook's calculation of the estimated financial benefits over 15 years. I note too that the CMC's own calculations of what Mr A will make from the system was around £11,750 over a period of 15 years. If the system has developed a problem or the performance has significantly reduced since the CMC made its suggested compromise (July 2019), I'd have expected the CMC to provide some evidence of that so that Shawbrook could take steps to get the system fixed and/or adjust their self-funding calculations to reflect any impaired performance, but nothing of that nature has been submitted to me. Mr A did say that the system had been fitted negligently. And Shawbrook offered to inspect it. Mr A didn't take them up on that offer, so I can't really ask Shawbrook to do anything more on that front. But if Mr A has more recent FIT statements he'd like Shawbrook to take into account before they finalise their self-funding calculations, I'd expect Shawbrook to consider those and make any necessary adjustments to the figures.

The offer Shawbrook have made makes the system cost-neutral for Mr A. He'll receive FIT and export tariff payments as well as savings on his energy bills. This will continue for the life of the system. In the absence of any evidence that the system has become dysfunctional or is beyond providing those benefits, I think removing the system would be disproportionate.

The methodology that Shawbrook have used to calculate the compensation due to Mr A has been agreed with this service on previous similar complaints, and I think it's a fair and reasonable remedy to Mr A'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 of Mr A's case.

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 A's case the 8% interest is to compensate him for being deprived of the use of the money he overpaid for the system. And he'll continue to be deprived of the use of that money until it is effectively repaid to him.

Of course, he could have accepted Shawbrook's offer and received his refund in 2019. But I don't think he's unreasonably delayed his acceptance of the offer. He 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 he's continued to not have the use of funds he would have had if the system had not been misrepresented to him. So, I think it's fair and reasonable that Shawbrook compensate him with 8% simple interest a year for the entire time he's been without those funds.

Finally, I understand that the CMC put Mr A'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 his claim change what I think is fair compensation for the accepted misrepresentation of the system.

I'm sorry that Mr A is likely to be disappointed by my decision. I'd also like to take this opportunity to apologise for the time Mr A has had to wait for us to reach a decision on his case. We've had many similar complaints, and these have taken considerable time to work through.

Putting things right

Shawbrook Bank Limited has made an offer to settle this complaint, which I consider to be fair compensation in all the circumstances. So, I require Shawbrook Bank Limited to:

- Recalculate the loan so that Mr A pays no more than the known and assumed savings and income that he will receive from the solar panel system over the 15-year term of the loan;
- Allow Mr A to keep the solar panel system;
- Calculate any overpayments made by Mr A, apply them to the loan and repay him 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 A £100 to reflect the distress and inconvenience caused.

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

My final decision

My final decision is that Shawbrook Bank Limited should remedy Mr A's complaint in the way I've set out in the 'Putting things right' section of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 22 March 2022.

Beth Wilcox
Ombudsman