

The complaint

Mr S is unhappy with the response of Shawbrook Bank Limited (Shawbrook) following a claim against it under Section 75 of the Consumer Credit Act 1974 ("CCA").

What happened

Mr S was approached by a company that supplied and installed solar panel systems in December 2013. I'll refer to the company as "E". Following a meeting, Mr S agreed to enter into a contract with E for it to supply and install a solar panel system. To fund this, Mr S also agreed to enter into a 15-year fixed sum loan agreement with Shawbrook.

Mr S made a claim under Section 75 ("s75") of the CCA via his representative. The representative said that E had made a number of verbal misrepresentations to Mr S about the solar panel system that had induced him to enter into the contract. In summary he said E had told him the system would pay for itself within the term of the loan.

To put things right, the representative asked Shawbrook to unwind the credit agreement returning any payments made with interest and remove the panels from Mr S's property.

Shawbrook responded rejecting the claim. It said that the potential benefits of the panels were estimates, it was clear the benefits didn't include the cost of the finance agreement and it considered the panels would break even in 13 years. It also concluded that there might be a problem with Mr S's panels and offered to send out an engineer to look at the panels and offered a sum in recognition of any lost benefits due to the potential fault in the system.

Mr S did not accept the offer and brought his complaint to this service,

Whilst the complaint was with this service, Mr S's system was inspected, and the inverter was found to be faulty and Shawbrook arranged for this to be fixed. Mr S says at this time he was told at the initial visit that his panels were not working properly and told at the second visit by different engineers that his panels were now working as they should.

Shawbrook made an offer to resolve Mr S's complaint. It offered to calculate the benefits of the panels over the loan period and restructure the loan so that he would pay no more than that. It also gave him options as to how he could use his overpayments. It also offered him £100 for the trouble and upset caused.

Mr S did not accept the offer he said:

- He was not convinced that his panels were repaired. When his system was first inspected, he was told that only half of his panels were working, and he was not convinced that this had been resolved.
- He had at one point arranged with Shawbrook to overpay his monthly payments, but they had later reverted to his original payment. He considered that Shawbrook did this deliberately to get more money from him

- He had incurred an additional cost of £245 to have bird spikes and wire mesh installed.

In response the investigator said that the offer from the business was fair and in effect made Mr S's panel self-funding, which meant he would not be financially disadvantaged from the misrepresentation relating to the panels. She pointed out that by capping the amount Mr S would pay to the likely benefits of the panels this was likely to counter any financial loss that Mr S might have incurred due to not making overpayments as he had wanted. If Mr S had further concerns about his panels not working properly or issues with pigeons, these would need to be raised with Shawbrook separately, as they had not formed part of the original complaint to this service,

As agreement couldn't be reached, the complaint has been passed to me to review.

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.

As the investigator has already said, before this service can look at a complaint the business concerned has to have had the opportunity to investigate. In this case, the complaint concerned the potential misrepresentation of the benefits of the panels. Other issues, such as Mr S's costs for pigeon proofing, if he feels he received poor customer service when he tried to make overpayments or if the solar panel system fails again, these are not issues I can consider in this decision. If Mr S wishes to pursue these points, then he needs to raise them with Shawbrook separately.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice; and, where appropriate, what I would consider to have been good industry practice at the relevant time.

In this case the relevant law includes section 56 and section 75 of the CCA. Section 75 provides protection for consumers for goods or services bought using credit. It states:

"If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in the respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor".

As Mr S paid for the solar panel system with a fixed sum loan, Shawbrook agrees that section 75 applies to this transaction. This means that Mr S can claim against Shawbrook – the creditor – for any misrepresentation or breach of contract in the same way he could have claimed against E, the supplier. So, I've taken section 75 into account when deciding what is fair in the circumstances of this case.

Section 56 is also relevant. This is because it says that any negotiations between Mr S and E, as the supplier, are deemed to have been conducted by E as an agent of Shawbrook.

Mr S says he was approached by E and during a sales meeting told that the solar panel system would be entirely self-financing. Shawbrook are not disputing this and I will therefore focus on whether the offer made to resolve the complaint is fair.

The role of this service is to help settle disputes between consumers and businesses providing financial services fairly and reasonably with minimum formality. In cases like this one, determining fair compensation isn't an exact science. My role is to arrive at a fair and reasonable outcome taking account of the particular circumstances.

I've considered whether it would be fair for Shawbrook to arrange for the removal of the solar panels from Mr S's home and refund him all payments he had made toward the loan, minus any benefits he had received. Here, I don't think it would be fair or proportionate to require the removal of the solar panels from his home. Rather, I think fair compensation is to try and make sure that Mr S doesn't suffer a financial loss due to the misrepresentation which, in my view, would mean that the solar panel system would be cost neutral over the loan term. By allowing Mr S to keep the panels, I'm satisfied that he will likely benefit from lower electricity bills and FIT payments going forward.

Taking the above into account, I'm satisfied that the offer to make the solar panel system cost neutral over the term of the loan is fair.

I've carefully considered the methodology Shawbrook has submitted to this service to calculate the total benefits of the system. This methodology is based on the actual performance and estimated future performance of the system.

Shawbrook has outlined that when calculating the estimated future performance of Mr S's solar panel system, it will use a number of assumptions. Having considered these, I'm satisfied that the assumptions that have been used provide a fair and reasonable basis for calculating fair compensation.

In the course of the complaint investigation Shawbrook has also confirmed that it has included the overpayments Mr S did make in its figures, and given that the calculations and estimations of performance are based on the actual performance of Mr S's system to date, I don't think he's been disadvantaged by these calculations and the fault with the inverter, and this is a fair way to resolve the complaint.

Taking the above into account I'm satisfied that the current offer to make Mr S's solar panel system cost neutral over the 15-year loan term, is fair.

I understand that Mr S is not convinced that his panels are working properly. When his system was first inspected, he was told only half of his system was working. He then had his inverter replaced and was told by the second engineers that everything was now working fine. I don't think it's unreasonable to conclude that the replacement inverter resolved the issue that had been identified at the earlier visit, which is why he was later told that his system would now work fine. So, I'm not going to ask Shawbrook to do anything further in respect of this point.

I'm satisfied that there was sufficient information available at the time that Mr S first contacted Shawbrook that means his claim should have been upheld. The fact this didn't happen undoubtedly caused him trouble and upset. I consider the offer of £100 in recognition for this to be fair under the circumstances.

My final decision

My final decision is to uphold Mr S's complaint. In full and final settlement of it, Shawbrook bank must:

- allow Mr S to keep the solar panels,

- estimate the potential income and savings to Mr S from the solar panels over the loan and rework it so he pays no more than this. Where possible, it should use Mr S's electricity bills and FIT statements to do this,
- add 8% simple interest* to any overpayment made from the date the overpayment was made until the date of settlement,
- pay Mr S £100 for the trouble and upset caused.

*If Shawbrook Bank Limited consider that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr S how much it's taken off. It should also give Mr S a certificate showing this, if he asks for one, so he can claim the tax from HM Revenue & Customs.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 28 April 2022.

Sarah Holmes
Ombudsman