

The complaint

Mr and Mrs F are unhappy with the outcome of their complaint to Shawbrook Bank Limited following a claim they made under Section 75 of the Consumer Credit Act 1974 (the 'Act') for some problems that they've had with their solar panel system.

What happened

Mr and Mrs F purchased a solar panel system from a supplier that I'll call 'P'. This included some energy saving devices and a battery. They financed the purchase through two fixed term loans from Shawbrook, one for the battery and the other for the rest of the system. The panels were fitted in May 2018 and the battery in January 2019.

The parties are familiar with the background to this complaint, so I don't intend to set it out in detail here. But, in summary, the system hasn't been working properly. Mr and Mrs F say that it's been costing them more in electricity usage than before it was fitted.

Mr and Mrs F have been in dispute with their energy provider, 'O', since early 2019, as their bills went up considerably after the panels were fitted and they're now in arrears with their payments. Mr and Mrs F have had an independent report done on what may be causing their system to function incorrectly. This recommended that the wiring be changed and that the battery be removed, as it was drawing power from the grid. It also wasn't needed as Mr and Mrs F used most of the electricity that the panels would generate.

Our investigator thought that Mr and Mrs F's complaint should be upheld. She recommended that the battery system be removed and that the loan agreement relating to it be unwound. She also thought that the solar panel system's wiring should be inspected and repaired. She said this could either be done by a third party or by S. Although if S did the repairs, then these would need to be checked by an independent expert. She recommended compensation for some of the electricity usage, the cost of the report and the distress and inconvenience caused to Mr and Mrs F. As Mr and Mrs F had been having some financial difficulties, she also said that Shawbrook should look to agree a repayment plan with them for the solar panel loan.

Mr and Mrs F and Shawbrook agreed with some of our investigator's recommendations, but not others. As agreement couldn't be reached, the matter has come to me for 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.

Having considered everything, I've come to the same conclusion as our investigator, for substantially similar reasons to those given in her opinions on this complaint. I'll explain why.

I'll start by saying that I was very sorry to hear about the difficulties that Mr and Mrs F have had getting this problem sorted. This matter has gone on now for much longer than it ever should've. And I think that P should have taken Mr and Mrs F's concerns a lot more seriously when they first complained to it.

P's response that the system appeared to be working fine on their computer system was clearly not enough here. It should've gone out to check what the problem was. P was aware that, at the very least, one of the problems was with the SMET1 electricity smart meter that Mr and Mrs F had at their home. And P really should have recommended that meter was changed when the system was first installed. As a result, almost four years later, Mr and Mrs F still have a system that appears to be functioning incorrectly.

Mr and Mrs F's complaint has been brought against Shawbrook for P's failings in getting the system fixed. Shawbrook is responsible for that under Section 75 of the Act in the same way that P would be for breach of contract and/or misrepresentation. Here, Mr and Mrs F bought a solar panel system from P that was sold on the basis that it would save them money. And so far it hasn't. Shawbrook must take responsibility for that.

Mr and Mrs F have asked why this Service isn't holding P responsible for the trouble they've experienced. That's because P isn't a regulated financial service business and so doesn't fall under our jurisdiction. But Shawbrook does. So, whilst I can't hold Shawbrook responsible for every failing of P's, I can require that it answer to Mr and Mrs F's Section 75 claim for breach of the contract that it financed and any misrepresentation with respect to the battery system. As P is still trading, it will in any event end up bearing the cost of this award.

Our investigator has already set out her detailed thoughts on this complaint in her views, so I don't intend to address everything here again, as I agree with most of what she's said. The parties also please shouldn't assume that I haven't considered everything that they think may be important, just because I don't mention it in this decision. I have looked at everything that's been sent to us and reached my own impartial conclusion.

What's at issue here is that both parties don't agree entirely with the redress that our investigator has recommended. So, I'll focus on explaining that in this decision. For completeness though, I have found that there has been both a breach of contract and a misrepresentation here.

The system clearly isn't performing as intended. The cause of that may be due to the wiring being incorrect - or indeed because the SMART meter in Mr and Mrs F's home wasn't compatible with this system - it's now been replaced with a SMET2 meter which I understand does not have the same problems as the SMET1. Mr and Mrs F's expert has said that both of these things are to blame - and I find that report persuasive. In response, Shawbrook has sent us some certifications indicating that the system was signed off as working in the first place. But despite P having ample opportunity over the last few years to inspect the system and provide a report, it hasn't. And it didn't warn Mr and Mrs F about the problems with the smart meter when the panels were first fitted.

So, taking everything into account, I accept the recommendations made by Mr and Mrs F's expert and will be requiring that Shawbrook action them. The recommendations include that the solar battery should be removed and that the solar panel system's wiring be fixed to comply with the relevant standards. The expert also said that the Smart meter should be changed, which has already happened. That report cost £250 and I think that Shawbrook should cover the cost of it.

Mr and Mrs F would like the entire solar panel system removed. I understand their depth of feeling on this subject. Whilst at one point during this complaint they'd said that they'd prefer to keep the system, but not the battery, they now want it all removed to end the awful experience that they've had once and for all.

Deciding on what amounts to fair compensation in solar panel complaints often isn't simple. The parties will sometimes have had a very lengthy period of disagreement and complaints that we see do often roll on for many years. Compensation also isn't an exact science. And I must weigh up the interests of both parties in deciding what award it is fair and reasonable for me to make.

In this case, Mr and Mrs F have a solar panel system that includes not only the panels but also a number of other energy saving devices. The battery is one part of the system that I agree should be removed. But the rest, with some changes, should still be functional and save Mr and Mrs F some money in the long term.

In P's solar quotation, it estimated that Mr and Mrs F would use 75% of the electricity generated, so that's about 2,300 kWh of the estimated 3,100 kWh a year that the panels are expected to generate. Mr and Mrs F's expert says that they use substantially all of the energy generated. So, I'm at a loss to see why they would ever have needed the battery in the first place. Given this, I have found that P mis-sold the battery to Mr and Mrs F. Clearly representations were made as to why they should have the battery installed and these must have been incorrect. But for those misrepresentations, I don't think Mr and Mrs F would have bought the battery. So, it's now only fair that it be removed, as they will get limited benefit from it in the future.

The expert's report also says that the battery may not be functioning correctly. The expert says that it appears to be drawing power from the grid. Some batteries do this when there's insufficient power from the panels to charge them. And Mr and Mrs F have said that their mobile app shows that the battery is sometimes fully charged. Whilst that might explain some localised increased electricity usage, the energy stored by the battery should still have been available for use in the house. So, I don't think Mr and Mrs F will have lost out financially as a result. But I will be requiring that the battery system be removed, and the finance unwound. It will then be as though Mr and Mrs F never had the battery in the first place.

In terms of the solar panels and the other energy saving devices, I think it would be disproportionate if I were to require that these be removed. Instead, I agree with our investigator that they should be checked and, if required, changed to comply with the applicable regulatory standards.

It's possible that the replacement of the electricity meter will in part solve the problems that Mr and Mrs F have had to date. O has now replaced the meter for a second time – they now have a SMET2 meter, which apparently doesn't have the same problems recognising the energy generation. But the wiring for the panels may still need changing and there will be consequential changes required in any event when the battery is removed.

It's rare that we'd consider that an entire solar panel system should be removed where some changes would result in it operating correctly. Mr and Mrs F have quite a significant annual energy usage. Before the panels were fitted, they were using over 10,000 kWh a year. And the year after the amount was similar, if not a little higher.

I understand that there has been some commentary on a hot tub having been fitted at Mr and Mrs F's home after the panels went in. And Shawbrook think this may account for the increased usage. But Mr F has said that this has been off for much of the time. And I have no reason to doubt this. P clearly thought that the SMET1 meter was most likely responsible for the lack of electricity savings. And I agree that was more likely than not the main problem. If the panels had been working as intended, given Mr and Mrs F use most of the electricity they generate, you'd expect to have seen some reduction in the electricity used from the grid. And there hasn't been.

Of course, there may be a number of other explanations for that higher cost too. Like increased usage within the household. But something seems to have gone wrong here. And both P and Mr and Mrs F's expert think that the meter was likely to be involved.

If the panels were to be functioning correctly and all the electricity generated was used, Mr and Mrs F should save in the region of 3,000 kWh a year. Electricity prices are going up all the time at the moment. And from April this year, it's likely that, with the energy cost cap, Mr and Mrs F will be paying at least 28 pence a unit. So that's a potential saving of over £800 a

year. And this doesn't include any savings that may be made from the other energy saving devices as well.

Whilst I can completely understand why Mr and Mrs F would like the panels removed, I don't think that's fair and reasonable here. It appears that the system can be fixed and that's what I think should happen. Mr and Mrs F should then benefit from some savings going forward.

I also appreciate that Mr and Mrs F are nervous about having P fix the system. That's why our investigator recommended that either an independent expert carries out the repairs or inspects the system afterwards. I think that's a fair recommendation and should hopefully give Mr and Mrs F the peace of mind that the system will work correctly going forward.

I understand that Mr and Mrs F have been in dispute with O for some time about a very high electricity bill that they have. Our investigator has recommended that Shawbrook refund the difference in electricity usage from May 2018, when the panels were fitted, to March 2019 when P identified what the problem was likely to be. Given that I think that the smart meter was most likely to have been the main problem here - and it was that which led to an increase in energy usage - I think that our investigator's recommendation was a fair one. I can't hold Shawbrook responsible for O not changing the meter at the time P recommended it be changed in March 2019. So, the compensation should only be for the period above.

Mr and Mrs F think that the compensation should run on until such time as the panels have been fixed. But I don't agree. The household's usage was already high before the panels were fitted and it's just not possible for me to conclude that the increase in cost to Mr and Mrs F was solely down to the panels not working correctly for the whole time. They could just as easily have been using more energy at home. Or indeed, given the unit cost of electricity has gone up over that time too, that could well be the reason it has cost them more as well.

Mr and Mrs F are still in correspondence with O about the bills and I do hope that they can achieve a satisfactory conclusion there. The Smart meter does appear to have been at least part of the cause of the higher bills. And whilst I think it's fair for Shawbrook to compensate Mr and Mrs F for part of that cost – which it's calculated to be £273.02, I don't think it needs to cover any more than the period identified.

I was sorry to hear that Mr and Mrs F have been having some financial difficulties of late. This cannot have been easy for them. I too consider that Shawbrook should follow the regulatory requirements and treat Mr and Mrs F positively and sympathetically when considering what sort of a repayment plan can be agreed for the balance of the loan.

I won't be asking Shawbrook to write off any of the payments that haven't been met as part of this decision. Mr and Mrs F should, once the work has been carried out, have a system that is capable of saving them money in the long term. And it wouldn't be fair for me to say they should have that for free. But Shawbrook should take into account all of their circumstances, and what has happened during this complaint, in deciding what an affordable repayment plan looks like.

Mr and Mrs F have said that this whole saga has caused them significant distress and inconvenience. And I fully appreciate how difficult this must have been for them. But I can only compensate them for how Shawbrook has made this worse, rather than what P did to cause this in the first place. And I agree with our investigator that £300 is fair compensation for Shawbrook's role in the delays dealing with this claim.

My final decision

It's my final decision to uphold this complaint. I require that Shawbrook Bank Limited:

- Arrange to fully unwind the solar battery loan and purchase agreement. The battery system should be removed and Mr and Mrs F's property made good. All payments made by Mr and Mrs F toward that loan should be refunded and Shawbrook should

add simple interest to those payments at 8%* a year from the time that they were made until they're refunded. The loan and any negative entries must also be removed from any credit reference agency reports for Mr and Mrs F;

- Arrange for a third-party installer or P to repair and/or re-wire the solar panel system so that it complies with all the regulatory and best practice requirements that were in place at the time that it was originally fitted. If the work is carried out by P, then a third-party installer should be asked to verify that the work done is compliant and that the system is in proper working order;
- Pay Mr and Mrs F the cost of the difference in electricity use that they incurred between May 2018 and March 2019 when compared against that from the same period in the previous year;
- Refund the cost of the expert's report in the sum of £250;
- Pay Mr and Mrs F £300 compensation for the distress and inconvenience they've been caused; and
- Treat Mr and Mrs F positively and sympathetically when considering a repayment plan for the cost of their solar panel loan going forward.

*HM Revenue and Customs may require that Shawbrook deduct tax from any interest paid. Should Mr and Mrs F request it, Shawbrook should provide them with a certificate showing the tax deducted so that they may reclaim it if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F and Mr F to accept or reject my decision before 6 April 2022.

James Kennard
Ombudsman