

## **The complaint**

Mr O has complained that Shawbrook Bank Limited (“Shawbrook”) rejected his claim against it under Section 75 of the Consumer Credit Act 1974.

## **What happened**

Mr O bought a solar panel system (“the system”) for his home in 2016. The purchase was funded by a loan from Shawbrook that was repayable over 15 years. Shawbrook is therefore liable for the acts and omissions of the supplier under the relevant legislation. In this case, that relates to the supplier misleading Mr O into believing that the system would be self-funding, in that the income and savings from the system would cover the monthly loan repayments.

Mr O’s complaint was considered by one of our investigators. They thought that the benefits of the panels were mis-represented to Mr O, and that fair redress would be for the loan to be restructured to make the panels cost no more than the benefit they would provide over the term of the loan. This restructure should be based on evidence of the actual performance of the panels, and a number of assumptions on future performance.

Shawbrook said it had asked for comments from the supplier but never provided these. It later asked for a decision from an ombudsman and confirmed it had nothing further to add. As such, I’ve been asked to make a decision on this complaint.

## **What I’ve decided – and why**

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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.

Having carefully considered everything provided, for the same reasons as those explained by the investigator, I uphold this complaint.

The sales documents provided show the cost of the system but not its benefits. So, I think it was reasonable for Mr O to have relied on what he was told when making his decision to purchase the system. He was told that the system would be self-funding in that the income and savings would cover the monthly loan repayments. That is not the case. So, I’m satisfied there was a misrepresentation which induced Mr O to purchase the system when he otherwise would not have done so.

Section 75 of the Consumer Credit Act 1974 means that Shawbrook can be held responsible for the supplier's misrepresentation. So, I think that Shawbrook didn't treat Mr O fairly when it rejected his claim. And this means that Shawbrook should put things right.

### **Putting things right**

I think that it would be fair and reasonable in all the circumstances of Mr O's complaint for Shawbrook to put things right by recalculating the original loan based on the known and assumed savings and income to Mr O from the solar panels over the original loan term, so he pays no more than that.

Usually, the recalculation would include a reduction for the benefit a consumer has received from the solar panel system including payments received from the Feed in Tariff (FIT) scheme. But we've been told that Mr O's solar panels were not registered for the FIT scheme, and he has not received any FIT payments. So, in these circumstances, I don't think it's fair that any FIT payments are included in the recalculation.

Shawbrook is aware of our approach on this. And that putting things right in this way is much less expensive for Shawbrook than unwinding the credit agreement.

I understand Mr O no longer lives at the property where the solar panels are installed. But I don't think this should have any bearing on how Shawbrook puts things right. Mr O would've been aware that by moving out of the property he would no longer benefit from them, and so gave up the opportunity to benefit from future savings. So, Shawbrook can still take into account the savings Mr O would have received over the term of the loan.

In the event the calculation shows that Mr O is paying (or has paid) more than he should have, then Shawbrook needs to reimburse him accordingly. Should the calculation show that the misrepresentation has not caused a financial loss, then the calculation should be shared with Mr O by way of explanation.

If the calculation shows there is a loss, then where the loan is ongoing, I require Shawbrook to restructure Mr O's loan. It should recalculate the loan to put Mr O 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 per year from the date of the overpayment to the date of settlement.

So, I think the fairest resolution would be to let Mr O have the following options as to how he would like his overpayments to be used:

- A. The overpayments are used to reduce the outstanding balance of the loan and he continues to make his current monthly payment resulting in the loan finishing early,
- B. the overpayments are used to reduce the outstanding balance of the loan and he pays a new monthly payment until the end of the loan term,
- C. the overpayments are returned to Mr O, and he continues to make his current monthly payment resulting in his loan finishing early, or
- D. the overpayments are returned to Mr O, and he pays a new monthly payment until the end of the loan term.

If Mr O accepts my decision, he should indicate on the acceptance form which option he wishes to accept.

If Mr O has settled the loan, Shawbrook should pay him the difference between what he paid in total and what the loan should have been under the restructure above, with 8% interest.

If Mr O has settled the loan by refinancing, he should supply evidence of the refinance to Shawbrook, and Shawbrook should:

1. Refund the extra Mr O paid each month with the Shawbrook loan.
2. Add simple interest from the date of each payment until Mr O receives his refund.
3. Refund the extra Mr O paid with the refinanced loan.
4. Add simple interest from the date of each payment until Mr O receives his refund.
5. Pay Mr O the difference between the amount now owed and the amount he would've owed if the system had been self-funding.

I'm satisfied that there was sufficient information available at the time that Mr O first contacted Shawbrook that means the claim should have been upheld. To recognise the distress and inconvenience this caused, I direct Shawbrook to pay £100 compensation to Mr O.

### **My final decision**

For the reasons I've explained, I uphold Mr O's complaint. Shawbrook Bank Limited should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 21 December 2023.

Phillip Lai-Fang  
**Ombudsman**