

The complaint

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

What happened

Mr W bought a solar panel system (“the system”) for his home in 2016. The purchase was funded by a loan from Shawbrook, and that business is therefore liable for the misrepresentations of the installer under the relevant legislation. In this case, that relates to the installer misleading Mr W into believing that the panels would be self-funding, which he says they weren’t.

Mr W’s complaint was considered by one of our investigators. They thought that the benefits of the panels were mis-represented to Mr W, 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 15-year loan term. This restructure should be based on evidence of the actual performance of the panels, and a number of assumptions on future performance.

Mr W agreed with our investigators view of the complaint, but Shawbrook didn’t agree. Shawbrook carried out an inspection of the system and says it took a meter reading from the date of inspection. This showed the system was overperforming in terms of power generation and the system was capable of being self-funding. Mr W hadn’t submitted the bills necessary to work out what savings (if any) he had benefitted from – so unless he could provide evidence of loss, Shawbrook would not offer redress in line with our established approach to these cases.

As the case couldn’t be resolved, the case was passed to an ombudsman.

In my provisional decision of 6 October 2023, I set out why I was minded to upholding the complaint. I invited both parties to provide any further submissions they may wish to make before I reached a final decision. Mr W accepted my findings and submitted details of his Feed in Tariff (FIT) payments and a meter reading to enable Shawbrook to work out redress based on updated data. Shawbrook re-iterated its earlier comments explaining that it believes the system is generating well and it may be self-funding so it didn’t think the complaint should be upheld.

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.

In my provisional decision I explained the following:

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 intend to uphold this case.

Was the system sold as self-funding?

Mr W's credit agreement shows his monthly loan payment is £77.95, and the total amount repayable under his loan agreement is £14,131. His annual loan payments amount to £935.40. I think the amount Mr W would have to repay was made clear to him during the sale. The figures in his quote are slightly different because it doesn't include a deferral period that was included in the actual credit agreement. But I think Mr W would have broadly understood how much he would need to pay from the quote, and the exact amounts were subsequently clearly set out on the credit agreement.

Mr W says he was led to believe the system would be self-funding and that the benefit received from the system would cover the cost of the finance. The quote provided by the supplier formed the basis of the sale, including the meeting where this was discussed.

180 payments of £76.69 p/m			
Yr	Acc. grand total	Est. monthly return	Average monthly repayment diff.
1	£967.99	£80.67	£3.98
2	£1,026.68	£85.56	£8.87
3	£1,089.24	£90.77	£14.08
4	£1,155.94	£96.33	£19.64
5	£1,227.07	£102.26	£25.57
6	£1,302.93	£108.58	£31.89
7	£1,383.85	£115.32	£38.63
8	£1,470.20	£122.52	£45.83
9	£1,562.33	£130.19	£53.50
10	£1,660.65	£138.39	£61.70
11	£1,765.60	£147.13	£70.44
12	£1,877.65	£156.47	£79.78
13	£1,997.27	£166.44	£89.75
14	£2,125.02	£177.09	£100.40
15	£2,261.44	£188.45	£111.76

There's a section headed 'Repayment options' with three tables showing repayments over 60 months, 120 months and 180 months. I've focused on the table for 180 months as this is the length of the loan that Mr W entered into with Shawbrook. This table shows Mr W's monthly payment of £76.69. For each year of the 15-year loan it shows the expected grand total return from the system. It then averages that figure over 12 months, and subtracts the monthly loan repayment, to give an average difference between the monthly return from the system and the monthly loan repayment in each year.

It does appear to suggest that the system will provide a profit of £3.98 from the first year – with the profit increasing year on year. This corroborates Mr W's testimony. He says he was told the system benefits would outweigh the cost, which is also reflected in the paperwork.

As I've explained above, the credit agreement shows the total loan repayments over 15-years would amount to £14,131. The quote included a table showing the annual cumulative benefits of the system. By the end of year 11, (i.e. well within the term of the loan) the table shows the benefits would have exceeded the total amount payable under the loan agreement.

Estimated performance over 30 years

Panel degradation	Yr	Income		Elec. savings	Energy saving optional extras *					Total income savings	Acc. grand total	Est. monthly return	Ann. ROI
		Generation Tariff	Export Tariff		VO savings	Heating control	H/W controller	Battery storage	Boiler doctor				
100.0%	1	£157.85	£89.70	£426.68	£172.80	£120.96	£0.00	£0.00	£0.00	£967.99	£967.99	£80.67	13.3%
100.0%	2	£162.65	£92.43	£456.21	£184.76	£139.64	£0.00	£0.00	£0.00	£1,026.68	£1,994.67	£85.56	14.11%
100.0%	3	£167.59	£95.24	£487.78	£197.54	£141.09	£0.00	£0.00	£0.00	£1,089.24	£3,083.91	£90.77	14.97%
99.6%	4	£172.00	£97.74	£519.44	£210.37	£151.76	£0.00	£0.00	£0.00	£1,151.32	£4,235.23	£95.94	15.82%
99.2%	5	£176.52	£100.31	£553.16	£224.02	£163.24	£0.00	£0.00	£0.00	£1,217.25	£5,452.48	£101.44	16.73%
98.8%	6	£181.15	£102.94	£589.06	£238.56	£175.60	£0.00	£0.00	£0.00	£1,287.29	£6,739.77	£107.28	17.69%
98.4%	7	£185.90	£105.64	£627.26	£254.04	£188.88	£0.00	£0.00	£0.00	£1,361.71	£8,101.48	£113.47	18.72%
98.0%	8	£190.77	£108.41	£667.95	£270.51	£203.15	£0.00	£0.00	£0.00	£1,440.80	£9,542.28	£120.07	19.8%
97.6%	9	£195.77	£111.24	£711.25	£288.05	£218.52	£0.00	£0.00	£0.00	£1,524.83	£11,067.11	£127.07	20.95%
97.2%	10	£200.89	£114.16	£757.35	£306.71	£235.03	£0.00	£0.00	£0.00	£1,614.15	£12,681.26	£134.52	22.18%
96.8%	11	£206.15	£117.15	£806.43	£326.59	£252.78	£0.00	£0.00	£0.00	£1,709.10	£14,390.37	£142.42	23.48%
96.4%	12	£211.54	£120.21	£858.67	£347.75	£271.89	£0.00	£0.00	£0.00	£1,810.05	£16,200.42	£150.84	24.87%
96.0%	13	£217.07	£123.35	£914.28	£370.27	£292.42	£0.00	£0.00	£0.00	£1,917.38	£18,117.80	£159.78	26.35%
95.6%	14	£222.73	£126.56	£973.48	£394.24	£314.50	£0.00	£0.00	£0.00	£2,031.52	£20,149.32	£169.29	27.92%
95.2%	15	£228.54	£129.87	£1,036.49	£419.77	£338.23	£0.00	£0.00	£0.00	£2,152.89	£22,302.21	£179.40	29.59%
94.8%	16	£234.50	£133.26	£1,103.56	£446.93	£363.76	£0.00	£0.00	£0.00	£2,281.99	£24,584.20	£190.17	31.36%
94.4%	17	£240.61	£136.73	£1,174.94	£475.84	£391.19	£0.00	£0.00	£0.00	£2,419.31	£27,003.51	£201.61	33.25%
94.0%	18	£246.87	£140.29	£1,250.92	£506.61	£420.70	£0.00	£0.00	£0.00	£2,565.40	£29,568.91	£213.78	35.25%
93.6%	19	£253.29	£143.94	£1,331.80	£539.36	£452.42	£0.00	£0.00	£0.00	£2,720.82	£32,289.73	£226.74	37.39%
93.2%	20	£259.88	£147.68	£1,417.88	£574.22	£486.53	£0.00	£0.00	£0.00	£2,886.19	£35,175.92	£240.51	39.67%
92.8%	25	£0.00	£0.00	£1,972.71	£798.92	£711.80	£0.00	£0.00	£0.00	£3,483.44	£38,659.36	£290.29	47.87%
92.4%	30	£0.00	£0.00	£2,744.63	£1,111.54	£1,041.37	£0.00	£0.00	£0.00	£4,897.53	£43,556.90	£408.13	67.3%
Totals		£4,112.24	£2,336.85	£21,381.94	£8,659.42	£7,066.45	£0.00	£0.00	£0.00	£43,556.90	£43,556.90	Ave. ROI:	19.95%

In light of this, it seems Mr W was told the system would be self-funding from the start and would pay for itself within the loan term. I think Mr W, who isn't an expert in understanding solar panel generation and benefit, would be dependent on the sales advisor taking him through the sales documents – and he was entitled to rely on what he was being told and what he saw on the paperwork. And both his testimony and the paperwork suggest the system was represented as being self-funding.

So overall, I think the evidence supports the conclusion that the system was sold as self-funding. Shawbrook appears to agree that the system was sold as self-funding but says based on the system power generation, its likely it is self-funding (or capable of being self-funding), so the system hasn't been misrepresented to him. It says that unless Mr W can evidence from his FIT payments and pre and post installation bills that the financial benefits haven't materialised, it will not offer compensation as he hasn't suffered a loss.

Has Mr W suffered a loss?

Shawbrook says that its records show the system generated 24,090.2 kWh as at 18 October 2022 (when the system was inspected). This gives an average annual generation of 3,892.39 kWh - which is more than Mr W's MCS estimate of 3653.87. As the system is generating electricity in line with the quote, (and actually slightly more than the MCS estimate), Shawbrook says Mr W hasn't suffered a loss.

The generation figures Shawbrook has submitted is significantly different to that submitted by Mr W and that on his FIT statements which showed his system was actually producing slightly less than the MCS estimate. I cannot explain why the figures are so different but, in any event, while I've thought about Shawbrook's comments, I'm not satisfied that this is sufficient evidence that the system is self-funding. The actual FIT payments Mr W received show the system benefit (in terms of financial payments rather than power generation), are not in line with the quote. And Mr W has provided a reasonable explanation of why he can't provide any pre-installation bills.

Mr W says he cannot provide pre-installation bills as he only moved into the property a few months before the installation – so he cannot show what (if any savings) he has made post installation. But he has provided the statements from his FIT provider showing how much FIT benefit he has received in the years following the installation. This shows he received FIT payments of £114.02 in the first year following the installation against the first year estimated FIT benefit of £247. In the second year, his FIT payments were also only £190.

As we do not have bills, I've looked at the savings estimated by the supplier at the time of sale. The electricity savings estimate was £426.68 and the savings from the optional extras was £293.76. If we assume the system savings are in line with the quote, this gives a total first year benefit received of £834.46. But the annual payments on the loan are £935.40. So, the system wasn't self-funding from the start as estimated by the supplier.

I understand there may have been a delay in applying for FIT payments which may have resulted in Mr W's FIT payments being less than anticipated for the first year. But the second-year results also show a similar result. The total annual benefit for the second year is £910.44 against the annual loan payments of £935.40.

Overall, while I've considered Shawbrook's concerns carefully, I think it's more likely the system isn't self-funding and therefore Mr W has suffered a loss. So, I think it is reasonable to uphold this complaint on the basis there was a misrepresentation and it likely caused Mr W a loss. However, when calculating the redress set out below, it is possible that no payment will be due to Mr W if the calculation shows that the system will be self-funding as set out in the quote (and as Shawbrook believes to be the case).

Putting things right

I think that it would be fair and reasonable in all the circumstances of Mr W's complaint for Shawbrook to put things right by recalculating the original loan based on the known and assumed savings and income to Mr W from the solar panels over a 15-year period, so he pays no more than that, and he keeps the solar panel system, and any future benefits once the loan has ended.

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

Mr W can provide any bills (including recent ones) and updated meter reading and FIT statements to enable Shawbrook to work out how much compensation Mr W is entitled to (if any). For any periods that actual data is not available, Shawbrook can use the data it has and any reasonable assumptions to help it complete its calculation.

Where no bills have been submitted, usually we ask businesses to work out savings based on the annual generation of the system (either actual or the MCS estimate), using a self-consumption rate of 37%. For clarity, the self-consumption rate is the amount of electricity generated by the solar panels that Mr W is able to use or self-consume whilst he is in his home.

Businesses can use the actual rates shown in electricity bills consumers provide, and if not available, they use a default starting unit price of around 15p per kWh from the start of the loan. Electricity prices, however, also increase over time. Therefore, the savings customers make (because they are no longer buying as much electricity from their provider as they would do without panels), also increases.

My understanding is that Shawbrook uses the data published by the Office of National Statistics to track actual average electricity price increases over time. Shawbrook then applies the percentage increase to the default unit rate of 15p over the term of the loan, to estimate the savings consumers will make for any periods that actual savings data is not available. They also make a reasonable assumption of likely future increases and apply that to the rate used.

Shawbrook can use the actual FIT data submitted and for any period's FIT data isn't available, Shawbrook can look at the average annual generation (if available), or the MCS estimate and make assumptions about what Mr W's FIT benefit is likely to be. I understand FIT payments do, however, also increase in line with the retail prices index (RPI) so it can also apply the RPI increases (as published by the Office of National Statistics) to those amounts to estimate a more accurate amount of the likely benefit Mr W will receive.

As explained above, Mr W is free to submit actual bills (including recent ones), FIT statements and an updated meter reading to enable Shawbrook to use actual data to complete its assessment of loss.

If the calculation shows there is a loss, if the loan is ongoing, I require Shawbrook to restructure Mr W's loan. It should recalculate the loan to put Mr W in a position where the solar panel system is cost neutral over a 15-year period.

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 from the date of the overpayment to the date of settlement.

So, I think the fairest resolution would be to let Mr W 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 W, and he continues to make his current monthly payment resulting in his loan finishing early, or*

D. the overpayments are returned to Mr W, and he pays a new monthly payment until the end of the loan term.

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

If Mr W has since 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.

Shawbrook has offered £200 compensation for the way it handled Mr W's claim. I intend to direct Shawbrook to pay £200 compensation for the trouble and upset caused.

Mr W has submitted updated data which has been sent to Shawbrook. Shawbrook has reiterated its earlier comments that it believes the system may be self-funding due to the generation figures it holds in its records. However, I have already explained why I don't think this is enough to persuade me that the system *is* self-funding. I've also explained why Mr W cannot submit pre-installation bills. So, for the reasons I've already explained, I still think it's more likely that the system was misrepresented to Mr W, that he likely has suffered a loss because of this and it's reasonable for the complaint to be upheld. If, however, when Shawbrook carries out its loss calculation, there is no payment due to Mr W, Shawbrook can explain this to him as set out below.

Overall, in the absence of any new points for me to consider, I find no reason to depart from my original findings as set out in my provisional decision. With this in mind, I uphold this complaint.

Putting things right

I think that it would be fair and reasonable in all the circumstances of Mr W's complaint for Shawbrook to put things right by recalculating the original loan based on the known and assumed savings and income to Mr W from the solar panels over a 15-year period, so he pays no more than that, and he keeps the solar panel system, and any future benefits once the loan has ended.

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

Mr W can still provide any bills (including recent ones) if they are available. I understand he has already sent in an updated meter reading and FIT statements to enable Shawbrook to work out how much compensation Mr W is entitled to (if any). For any periods that actual data is not available, Shawbrook can use the data it has and any reasonable assumptions to help it complete its calculation.

Where no bills have been submitted, usually we ask businesses to work out savings based on the annual generation of the system (either actual or the MCS estimate), using a self-consumption rate of 37%. For clarity, the self-consumption rate is the amount of electricity generated by the solar panels that Mr W is able to use or self-consume whilst he is in his home.

Businesses can use the actual rates shown in electricity bills consumers provide, and if not available, they use a default starting unit price of around 15p per kWh from the start of the loan. Electricity prices, however, also increase over time. Therefore, the savings customers

make (because they are no longer buying as much electricity from their provider as they would do without panels), also increases.

My understanding is that Shawbrook uses the data published by the Office of National Statistics to track actual average electricity price increases over time. Shawbrook then applies the percentage increase to the default unit rate of 15p over the term of the loan, to estimate the savings consumers will make for any periods that actual savings data is not available. They also make reasonable assumptions of likely future increases and apply that to the rate used.

Shawbrook can use the actual FIT data submitted and for any period's FIT data isn't available, Shawbrook can look at the average annual generation (if available), or the MCS estimate and make assumptions about what Mr W's FIT benefit is likely to be. I understand FIT payments do, however, also increase in line with the retail prices index (RPI) so it can also apply the RPI increases (as published by the Office of National Statistics) to those amounts to estimate a more accurate amount of the likely benefit Mr W will receive.

If the calculation shows there is a loss, if the loan is ongoing, I require Shawbrook to restructure Mr W's loan. It should recalculate the loan to put Mr W in a position where the solar panel system is cost neutral over a 15-year period.

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 from the date of the overpayment to the date of settlement.

So, I think the fairest resolution would be to let Mr W 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 W, and he continues to make his current monthly payment resulting in his loan finishing early, or
- D. the overpayments are returned to Mr W, and he pays a new monthly payment until the end of the loan term.

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

If Mr W has since 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.

Shawbrook has offered £200 compensation for the way it handled Mr W's claim. I direct Shawbrook to pay £200 compensation for the trouble and upset caused.

My final decision

For the reasons explained, I uphold this 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 W to accept or

reject my decision before 1 December 2023.

Asma Begum
Ombudsman