

The complaint

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

What happened

Mr S bought a solar panel system (“the system”) for his home in 2014. 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 S into believing that the panels would be self-funding, which they weren’t.

Mr S’s complaint was considered by one of our investigators. They thought that the benefits of the panels were mis-represented to Mr S, 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 S agreed with our investigators view of the complaint, but Shawbrook didn’t agree. Shawbrook disagreed for the following reasons:

- Shawbrook says that while the repayment table suggested the system would be self-funding from the outset, the performance table made clear it would take some time to recover the full cost of the system.
- It also added that Mr S had the system removed and re-installed so this could have caused the system to underperform.
- It said it would make an offer to compensate Mr S for lost generation up to the point the panels were removed by the consumer (via his own contractors).

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

In my provisional decision of 20 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. Shawbrook made an offer to settle the complaint which it says is in line with my recommendation. I understand Mr S’s representative has asked Shawbrook to check its calculation a few times and the calculation has been revised by Shawbrook. Neither party has made any additional comments beyond trying to ensure that redress has been worked out correctly.

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 uphold this case.

Mr S 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 months				repayment pm
				£100.24
Yr		Accumulated Grand Total	est. return MONTHLY	
1		£1,368.04	£114.00	£13.77
2		£1,452.53	£121.04	£20.81
3		£1,543.20	£128.60	£28.36
4		£1,636.52	£136.38	£36.14
5		£1,736.60	£144.72	£44.48
6		£1,843.95	£153.66	£53.43
7		£1,959.15	£163.26	£63.03
8		£2,082.81	£173.57	£73.33
9		£2,215.59	£184.63	£84.40
10		£2,358.21	£196.52	£96.28
11		£2,511.45	£209.29	£109.05
12		£2,676.14	£223.01	£122.77
13		£2,853.18	£237.76	£137.53
14		£3,043.55	£253.63	£153.39
15		£3,248.30	£270.69	£170.46

There's a section headed 'Repayment options' with three table 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 S entered into with Shawbrook. This table shows that Mr S is expected to pay £100.24 per month towards the loan. 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 of £100.24, to give an average difference between the monthly return from the system and the monthly loan repayment in each year.

The table does appear to suggest that the system will provide a monthly profit of £13.77 from the first year – with the profit increasing year on year. This corroborates Mr S's testimony. He says he was told the system benefits would outweigh the cost, which is also reflected in the paperwork.

The credit agreement shows the total loan repayments over 15-years would amount to £18,043.20. The quote included a table showing the annual cumulative benefits of the system. By the end of year 10, (i.e. well within the loan term) the table shows the benefits would have exceeded the total amount payable under the loan agreement.

System Performance and Returns					16	Evolution +		4.16	kw		
					Customer				Mr Jaswant Sohanpal		
Yr	Panel Degradation	FEED-IN-TARIFF		Electricity savings	Energy saving Optional Extras			TOTAL Annual income savings	Accumulated Grand Total	est. return MONTHLY	Annual ROI upfront payment
		Generation Income	Export		VO Savings	Heating Control	HW Controller				
1	100.0%	£466.60	£77.39	£248.39	£102.86	£288.00	£184.80	£1,368.04	£1,368.04		14.80%
2	100.0%	£480.25	£79.65	£269.50	£111.60	£311.04	£200.51	£1,452.53	£2,820.57	£121.04	15.71%
3	100.0%	£494.25	£81.98	£292.41	£121.09	£335.92	£217.55	£1,543.20	£4,363.76	£128.60	16.69%
4	99.7%	£506.90	£84.07	£316.15	£131.38	£362.80	£235.22	£1,636.52	£6,000.28	£136.38	17.70%
5	99.3%	£519.87	£86.23	£341.82	£142.55	£391.82	£254.31	£1,736.60	£7,736.88	£144.72	18.78%
6	99.0%	£533.16	£88.43	£369.57	£154.66	£423.17	£274.96	£1,843.95	£9,580.84	£153.66	19.94%
7	98.6%	£546.79	£90.69	£399.57	£167.81	£457.02	£297.27	£1,959.15	£11,539.99	£163.26	21.19%
8	98.3%	£560.76	£93.01	£431.99	£182.07	£493.58	£321.40	£2,082.81	£13,622.79	£173.57	22.53%
9	97.9%	£575.08	£95.38	£467.04	£197.55	£533.07	£347.47	£2,215.59	£15,838.39	£184.63	23.96%
10	97.6%	£589.76	£97.82	£504.93	£214.34	£575.71	£375.66	£2,358.21	£18,196.60	£196.52	25.51%
11	97.2%	£604.80	£100.31	£545.88	£232.56	£621.77	£406.13	£2,511.45	£20,708.05	£209.29	27.16%
12	96.9%	£620.22	£102.87	£590.15	£252.33	£671.51	£439.06	£2,676.14	£23,384.18	£223.01	28.94%
13	96.5%	£636.02	£105.49	£638.00	£273.77	£725.23	£474.66	£2,853.18	£26,237.36	£237.76	30.86%
14	96.2%	£652.22	£108.18	£689.71	£297.04	£783.25	£513.14	£3,043.55	£29,280.90	£253.63	32.92%
15	95.8%	£668.82	£110.93	£745.62	£322.29	£845.91	£554.73	£3,248.30	£32,529.21	£270.69	35.13%
16	95.5%	£685.83	£113.75	£806.04	£349.69	£913.58	£599.69	£3,468.58	£35,997.79	£289.05	37.51%
17	95.1%	£703.27	£116.64	£871.34	£379.41	£986.67	£648.27	£3,705.62	£39,703.41	£308.80	40.08%
18	94.8%	£721.14	£119.61	£941.93	£411.66	£1,065.61	£700.79	£3,960.74	£43,664.14	£330.06	42.84%
19	94.4%	£739.46	£122.65	£1,018.22	£446.65	£1,150.85	£757.55	£4,235.38	£47,899.52	£352.95	45.81%
20	94.1%	£758.23	£125.76	£1,100.67	£484.62	£1,242.92	£818.89	£4,531.09	£52,430.61	£377.59	49.01%
Total		£12,063.42	£2,669.40	£11,588.92	£4,975.92	£13,179.45	£8,622.07	£52,430.61	£52,430.61	Average ROI	28.35%

In light of this, it seems Mr S was told the system would be self-funding from the start and would pay for itself within the loan term. I think Mr S, 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.

Based on the FIT statements Mr S has provided, I think it's clear that the system is not self-funding. Therefore, overall, I think the evidence supports the conclusion that a misrepresentation took place and Mr S was not given clear information to demonstrate that the solar panels would not be self-funding and would equate to an additional cost for him. So, I think it should put things right.

Underperformance

I've then gone on to consider Shawbrook's concerns over some of the panels being removed and reinstalled in March 2016, when Mr S had some works carried out on his roof. I've considered carefully the comments and the offer it's made – but I don't think it's fair and I'll explain why.

Shawbrook's offer to only compensate Mr S for underperformance of the system pre removal in March 2016, does not put right the matter of the system not being self-funding despite being sold as such. I'm also not satisfied that Mr S's roof contractors, mainly caused the underperformance or issues that Shawbrook appears to have remedied in July 2016. I'm also not satisfied that the repair has fixed the problems with underperformance, and I'll explain why.

The quote sets out the system is expected to produce 3120 kWh of energy per year.

Pre removal

I've looked at the FIT statements to check how the system was performing, pre-March 2016 and can see that, as at December 2015, the system's average generation was 2099.90 kWh. This is significantly less than how the system was expected to perform and long before any panels were removed and reinstalled. Based on this level of generation, I think it's more likely the system is not self-funding, and it was also underperforming. So Shawbrook is obligated to put it right.

Impact of the removal (March 2016)

Shawbrook says that it went out to inspect the system in July 2016. It feels the removal must have caused the underperformance, as the customer reported a fault shortly after the removal and re-installation of the panels in March 2016. However, as explained above, the system was significantly underperforming long before the removal, so I don't find Shawbrook's claim persuasive. I think it's more likely there was a fault with the system long before Mr S had any works carried out on his roof and the panels were removed.

I do accept that there's a possibility that the removal may have caused further underperformance, but only for the period between March 2016 and July 2016. I understand in July 2016, P inspected the system and found there was "no voltage to the panels". The notes aren't particularly detailed, but it looks like this was fixed and Mr S was charged £250 plus VAT for the repair.

Post repair performance

For the period between March 2017 and March 2018 – (so post repair and taking out any generation up until March 2017) the system average performance was only 2481.34kWh. While this is slightly better than the annual generation pre-2016, it still falls far short of the output that was estimated at the point of sale. So, it looks like the system underperformed pre- removal and has continued to underperform post repair albeit the repair appears to have improved performance to some degree.

In the context of so many years of underperformance, it seems any potential impact the removal had on the overall performance of the system is limited to the very short period of time between March 2016 (when the panels were removed) and July 2016 (when the system was inspected and put right by P).

In my view, the claim that the removal caused the fault doesn't explain the underperformance pre-March 2016 or post repair as the system has continued to underperform. I'm not satisfied that any potential additional underperformance caused by the removal and reinstallation of some of the panels, has materially affected the overall system performance or the outcome of this complaint. I can also see Mr S was charged for the repair – despite the system underperforming so significantly prior to anything Mr S and his contractors may or may not have done. So, I don't think it's fair for this to be factored into the redress calculation I am intending to order Shawbrook to carry out.

Summary

- I think the system was mis-represented to Mr S on the basis that it would be self-funding and that hasn't materialised. I'm satisfied that this amounts to a misrepresentation. So, I think that Shawbrook didn't treat Mr S fairly and he lost out because of what Shawbrook did wrong. And this means that it should put things right.
- I think the system significantly underperformed since it was installed when compared to the sales estimates.
- I think Mr S removing and reinstalling some of the panels may have contributed to the underperformance but only for a short period between March 2016 and July 2016 when the system was repaired.
- Given that the system is still underperforming post repair, I don't think the works Mr S carried out on his roof and the removal and reinstallation of some of the panels materially affected the overall output of the system.

Putting things right

I think that it would be fair and reasonable in all the circumstances of Mr S's complaint for Shawbrook to put things right by recalculating the original loan based on the known and assumed savings and income to Mr S 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.

I would add that Shawbrook should use the FIT statements available to assess what benefit Mr S has received to date. Usually, we would expect Shawbrook to use the estimated annual output in the sales quotation or MCS certificate to work out what benefit Mr S would receive going forward. But given this system has never performed in line with the quote, despite being inspected and repaired, I don't think Shawbrook should use the sales documents to guide future performance. I think instead, it should use the current average annual generation, and assume the system will perform at that level going forward and redress should be worked out on that basis.

Mr S can submit updated FIT statements and bills to help Shawbrook carry out its redress calculation.

In the event the calculation shows that Mr S 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 S by way of explanation.

If the calculation shows there is a loss, if the loan is ongoing, I require Shawbrook to restructure Mr S's loan. It should recalculate the loan to put Mr S 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 S 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 S, and he continues to make his current monthly payment resulting in his loan finishing early, or*
- D. the overpayments are returned to Mr S, and he pays a new monthly payment until the end of the loan term.*

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

If Mr S 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.

I'm satisfied that there was sufficient information available at the time that Mr S first contacted Shawbrook that means the claim should have been upheld. I direct that Shawbrook should pay £100 compensation for the trouble and upset caused.

Mr S has made no additional comments (other than asking Shawbrook to check the offer). Shawbrook has been given clear instructions on how to carry out the redress calculation which I'll set out again below. If Mr S accepts my findings, Shawbrook must carry out the redress calculation in line with my decision.

But in the absence of any new points for me to consider regarding the merits of the complaint, I find no reason to depart from my original findings as set out in my provisional decision.

So having again reviewed this complaint in its entirety, I still think this complaint should be upheld. I summarise my view below.

- I think the system was mis-represented to Mr S on the basis that it would be self-funding and that hasn't materialised. I'm satisfied that this amounts to a misrepresentation. So, I think that Shawbrook didn't treat Mr S fairly and he lost out because of what Shawbrook did wrong. And this means that it should put things right.
- I think the system significantly underperformed since it was installed when compared to the sales estimates.
- I think Mr S removing and reinstalling some of the panels may have contributed to the underperformance but only for a short period between March 2016 and July 2016 when the system was repaired.
- Given that the system is still underperforming post repair, I don't think the works Mr S carried out on his roof and the removal and reinstallation of some of the panels materially affected the overall output of the system.

Putting things right

For the avoidance of any doubt, I think that it would be fair and reasonable in all the circumstances of Mr S's complaint for Shawbrook to put things right by recalculating the original loan based on the known and assumed savings and income to Mr S 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.

I would add that Shawbrook should use the FIT statements available to assess what benefit Mr S has received to date. Usually, we would expect Shawbrook to use the estimated annual output in the sales quotation or MCS certificate to work out what benefit Mr S would receive going forward. But given this system has never performed in line with the quote, despite being inspected and repaired, I don't think Shawbrook should use the sales documents to guide future performance. I think instead, it should use the current average annual generation, and assume the system will perform at that level going forward and redress should be worked out on that basis.

Mr S can submit updated FIT statements and bills to help Shawbrook carry out its redress calculation.

In the event the calculation shows that Mr S 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 S by way of explanation.

If the calculation shows there is a loss, if the loan is ongoing, I require Shawbrook to restructure Mr S's loan. It should recalculate the loan to put Mr S 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 S 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 S, and he continues to make his current monthly payment resulting in his loan finishing early, or
- D. the overpayments are returned to Mr S, and he pays a new monthly payment until the end of the loan term.

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

If Mr S 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.

I'm satisfied that there was sufficient information available at the time that Mr S first contacted Shawbrook that means the claim should have been upheld. I direct that Shawbrook should pay £100 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 S to accept or reject my decision before 8 December 2023.

Asma Begum

Ombudsman