

The complaint

Mr M has complained about the way Shawbrook Bank Limited dealt with claims he'd raised in relation to goods and services financed by a fixed sum loan agreement.

What happened

The circumstances of the complaint are well known, so I'm not going to go over everything again in detail. But to summarise, Mr M bought a solar panel system from a supplier I'll call "P" in October 2018 and paid a £100 deposit. The system cost around £9,500 and was to be paid back over 120 months with repayments of around £110 per month using a fixed sum loan agreement with Shawbrook. In February 2019 Mr M bought a battery for the system from P, also using a fixed sum loan agreement with Shawbrook for around £3,900, and a £100 deposit. This was to be paid back over 120 months with repayments of around £45 per month. I understand Mr M paid off the battery loan early and the total he'd paid for it was around £4,400.

I understand Mr M contacted P about system and sales concerns in 2019 and he also contacted Shawbrook around February 2021 to complain about the system. Around this time, he had a check on the system and was told it was in good working order and making good generation. But the report said the battery required reconnecting. Shawbrook didn't offer a substantive response to the complaint, so Mr M decided to refer it to the Financial Ombudsman. He said the system had been underperforming compared to the estimate quoted by P.

Since referring his complaint to the Financial Ombudsman, Shawbrook contacted us with an offer for Mr M. It said based on the meter readings provided by Mr M his system had been generating around 1,568 kWh per year. It noted the Microgeneration Certification Scheme (MCS) certificate estimated the initial generation would be around 2,258 kWh per year. So it said the system was only generating around 70% of what was estimated. Shawbrook made an offer to Mr M of around £1,470. It reached this figure by calculating the difference between what Mr M's system had achieved and would likely achieve for the term of the agreement compared to what he'd been estimated to achieve, along with adding interest. It also offered around £100 compensation.

Our investigator thought the offer was broadly fair, but Mr M didn't agree. In summary, he said the panels would continue to underperform by 30% and that they'd deteriorate over time. He said the compensation wasn't appropriate given the effort he'd been put to in sorting things out. And he said he was mis-sold the panels. He said P told him it would take 17 years to pay back the system. He said Shawbrook should either write off the remaining balance of the loan and pay him around £1,800. Or it should remove the system and battery and refund everything he'd paid. He said he wouldn't have taken out the system had he been correctly advised by P.

I issued a provisional decision that said:

I want to acknowledge that whilst I've summarised the events of the complaint, I've reviewed everything on file. If I don't comment on something, it's not because I haven't thought about it. I'm focussing on what I consider are the key issues.

Mr M paid for the system using a fixed sum loan agreement. This is a regulated consumer credit agreement, and our service is able to consider complaints relating to these sorts of agreements.

Section 75 of the Consumer Credit Act 1974 makes Shawbrook responsible for a breach of contract or misrepresentation by P under certain conditions. I think the necessary relationships between the parties exists and the claim is within the relevant financial limits.

It doesn't seem to be in dispute the system is underperforming by around 30% of what was estimated. Shawbrook's offer looks to put Mr M in the position he'd have been in had the estimates been correct. But I'm mindful the offer only covers Mr M for the 10 years the loan agreement would have been active for. Mr M says this isn't fair and doesn't account for the fact he was sold this system for the long-term benefit. He's pointed towards a 25-year performance guarantee. He's also pointed towards a quotation that said the panels could fund themselves within 17 years (although this is if they were bought for cash). So I think Mr M has a fair point that Shawbrook's offer doesn't go far enough.

Mr M has said he wouldn't have bought the system had he been given the correct performance information from P. It doesn't seem to be in dispute that P's figures were wrong. I think there'd be grounds to say this false statement induced Mr M into the agreement. So there's been a misrepresentation that Shawbrook is responsible for under section 75. There doesn't seem to be an issue with the installation per se, but there could also be an argument that P's assurances likely amounted to a contractual promise the system would perform at a certain level, which could amount to a breach of contract when it didn't.

I think Shawbrook needs to do something to put things right. The general remedy for a misrepresentation is to put Mr M back in the position he'd have been in had the misrepresentation not occurred. Mr M has said he wouldn't have entered into the agreement had it not been for the misrepresentation. I'm therefore intending to direct Shawbrook to have the system (and battery) removed and refund Mr M everything paid under the agreements. While there are two separate agreements for the system and battery, it seems like Mr M only bought the battery under a separate agreement because he had to wait for availability. I think both transactions are intrinsically linked so I think the agreements need to be considered together. I think it's only fair Shawbrook would be able to deduct any known or assumed benefits Mr M received from the system. I also think Shawbrook should pay its £100 compensation offer. It could have dealt with the claim sooner, and it's fair for some compensation to reflect that.

However, another option would be to direct Shawbrook to pay a compensation sum or offer a price reduction to reflect the underperformance. I think calculating a compensatory sum for the life of the panels may lead to a disproportionately complicated remedy which would be contrary to my requirement to deal with the complaint quickly and with minimum formality. But reducing the total amount payable is more straight-forward.

I can see that Mr M put a proposal together which Shawbrook may prefer to consider due to it being simpler than refunding repayments and removing the system. Mr M has highlighted he'd consider the offer if Shawbrook were to offer to adjust the overall price paid for the system and to cancel out the interest. I think he's suggesting he pays a total of 69.44% for the system with no interest applied. I believe this equates to £9,181.46. So if Shawbrook

would consider offering that, or something along those lines, it should let me know in response to this provisional decision and we can put it to Mr M.

Mr M responded to say the battery being disconnected was irrelevant to the running of the solar panel system. He said he didn't see the need to highlight the battery but said there was no harm in leaving it in. Shawbrook didn't have any further substantial comments to add.

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.

I'd like to thank the parties for their responses. Based on the responses I see no reason to depart from the conclusions I reached in my provisional decision.

I'll leave the directions in place but if Mr M wishes to keep the battery (without an associated refund) he can let us know in response to the final decision, if he wants to accept it.

Moreover, Shawbrook didn't explicitly say coming to a separate arrangement for Mr M to keep the panels was off the table. I would have thought that option would have been the least disruptive for everyone. I don't want to stop it from coming to a resolution with Mr M if the parties can agree. But it would need to do that within four weeks of Mr M accepting this final decision, if that's what he's going to do. Mr M has the security of this final decision in case the parties can't come to another agreement within four weeks.

Putting things right

I uphold this complaint and direct Shawbrook Bank Limited to:

1. End the two agreements and refund Mr M everything paid towards them. Shawbrook can deduct any known or assumed benefits Mr M has received from the system.
2. Interest should be added to the refund at a rate of 8% a year simple, from the date each payment was made to the date of settlement.
3. Arrange for the removal of the system (solar panels and battery) from Mr M's property and make sure the property is made good and any repairs required are carried out to a proper standard, at no cost to Mr M.
4. Pay Mr M £100 compensation.

If Mr M wishes to accept the final decision and keep the battery with no associated refund, he should let us know when responding to this final decision. In that scenario, directions 1 – 3 are amended to only include the agreement in relation to solar panel system.

If within 4 weeks of acceptance of this decision Shawbrook does come to an agreement with Mr M to keep the goods, directions 1 – 3 can be struck out.

If Shawbrook considers it is required to deduct tax from my interest award it should provide Mr M a certificate of tax deduction so he may claim a refund from HMRC, if appropriate.

My final decision

My final decision is that I uphold this complaint and direct Shawbrook Bank Limited to 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 M to accept or

reject my decision before 19 April 2024.

Simon Wingfield
Ombudsman