

The complaint

Mrs H has complained about the way Shawbrook Bank Limited responded to claims she'd made under the Consumer Credit Act 1974 (the "CCA").

What happened

In April 2018 Mrs H entered into a 10 year fixed sum loan agreement with Shawbrook to pay for a £10,815 solar panel system ("the system") from a supplier I'll call "S". Mrs H was due to pay 120 instalments of around £125. She paid a £100 advance payment, and the total amount payable under the agreement was around £15,400.

Mrs H raised a previous complaint about the system with Shawbrook and it sent a final response in March 2022 broadly relating to:

- Mis-sale of the system in relation to the financial benefits Mrs H could expect to receive from the system.
- Not receiving feed in tariff (FIT) payments or the MCS certificate from S.

In July 2023 Mrs H contacted the Financial Ombudsman to refer another complaint against Shawbrook. She said, in summary:

- She agreed she signed the paperwork for the system, but she tried to cancel the purchase before it was installed.
- There were issues with her heating after the system was installed.
- She'd stopped making payments towards the agreement and didn't want to continue until the issues were resolved.

Shawbrook said, in summary:

- It referred the complaint to S and found it had been communicating with Mrs H about her problems. It said S had struggled to reach Mrs H but had offered her £200 in relation to the cost of repair to a wall where it installed and then removed a thermostat upon Mrs H's request. Shawbrook said S would also refund the cost of the thermostat upon evidence of its cost, such as a receipt.
- It found no evidence Mrs H had cancelled the loan. It said Mrs H had signed a satisfaction note in May 2018.
- Mrs H's system was performing as expected, without fault.
- The missed payments have been accurately recorded because the account has been in arrears since April 2020, when Mrs H let it know about financial difficulties.

One of our investigators looked into things and said:

- We didn't have the power to investigate the 2022 complaint because it wasn't referred in time.
- There was no evidence Mrs H tried to cancel the agreement.
- It seemed strange Mrs H would sign a satisfaction note when she said there were issues with her heating.
- She noted a high level of contact between Mrs H and S which she thought indicated

something was wrong. S's notes weren't very clear, but she thought Mrs H had been having issues with monitoring the system performance.

- She noted Mrs H had said the installation may have caused damage to the roof leading to a leak.
- Mrs H has been unhappy with the system for a long time and had not been paying for it.
- She thought Shawbrook should arrange to remove the system from Mrs H's property and make good any damage. She said it should cancel the loan and remove record of it from Mrs H's credit file.
- She thought the replacement thermostat seemed to have resolved some of the issues, but Shawbrook should reimburse Mrs H the cost of it.

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.

Mrs H 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 ("s.75") of the CCA makes Shawbrook responsible for a breach of contract or misrepresentation by S under certain conditions. I think the necessary relationships between the parties exists and the claim is within the relevant financial limits.

For the avoidance of doubt, under this decision I'm considering the complaint that was raised that led to the August 2023 final response letter, and not the 2022 complaint.

I think there's two main questions I need to consider when deciding this complaint. Did Shawbrook act unfairly by not allowing Mrs H to cancel the agreement? And did it act unfairly in the way it handled Mrs H's claim in relation to the breach of contract? If the answer to either of those questions is yes, I need to decide how to put things right.

Cancellation

The contract with S said Mrs H had 14 days to cancel. This would have cancelled the associated fixed sum loan agreement with Shawbrook as well. It gave instructions for how she could do that by post, fax or email. But I've not seen enough to show that Mrs H cancelled the contract within that time.

Shawbrook has supplied a call recording between S and Mrs H around a week before the install confirming the installation date. S also ran through a questionnaire where Mrs H said she was happy with explanations about the way the system was going to work, and that she had enough time to consider things. She said S's agent sent her details of the quote on the day. This indicates, that just prior to installation, Mrs H was happy to proceed.

Shawbrook supplied another call recording with Mrs H's partner after the installation to check they'd received the documents. And it supplied a satisfaction note that was signed as well. I appreciate Mrs H has disputed this, but without sufficient evidence to show otherwise, I've not seen enough to show that Shawbrook acted unfairly by executing the loan agreement. It seems like, at the time, Mrs H was happy with the purchase.

Breach of contract

The Consumer Rights Act 2015 (CRA) is also relevant to this complaint. The CRA implies terms into the contract that services will be carried out with reasonable skill and that goods supplied will be of satisfactory quality. The CRA also sets out what remedies are available to consumers if statutory rights under a goods or services contract are not met.

There's a lack of supporting evidence that sets out the installation wasn't carried out with reasonable skill and care.

Mrs H said the installation may have caused some damage to the roof. We put this to Shawbrook and it contacted S to see what it thought. S said Mrs H hadn't raised any concerns about a roof leak until October 2024. Given the installation was carried out six years prior, it would have thought the damage would have been apparent sooner if it was down to the installation.

We asked Mrs H if she had any supporting evidence to show there was damage on the property, and that it was caused by the installation. We also asked if Mrs H had any evidence of repairs that'd be carried out or replacement parts she needed to buy, but she's not been able to supply anything.

We also contacted Shawbrook to let it know a bit more about what Mrs H was unhappy about. We highlighted she said she had issues with her heating system after the installation, and that S's notes indicate she'd been in contact with it off and on for quite some time. We asked if Shawbrook or S might consider arranging an independent report on the system to ensure everything was working as expected.

Shawbrook spoke to S and responded to us. It said S had been out to visit Mrs H over the last year and found no issues. It said S also had difficulty reaching Mrs H to discuss matters. With regards to the monitoring system, S said it removed the thermostat that came with the system in 2018 because Mrs H didn't like it. It said Mrs H arranged for another energy provider to replace the thermostat. S highlighted it had offered Mrs H £200 to cover the cost of repairs to her wall from where the thermostat was installed and then removed. It said it also offered to cover the cost of the third-party thermostat.

S also explained Mrs H was refunded £67.50 to cover the 5 years she was missing her energy monitoring subscription and that her new system had no subscription cost. S said all works have been completed and checked, and that Mrs H's system is performing as expected.

On the one hand, it's not in dispute Mrs H was in contact with S over a prolonged period. And S has acknowledged her monitoring system was replaced. But on the other hand, I don't have sufficient evidence the installation wasn't carried out with reasonable skill and care, or that goods supplied under the agreement weren't of satisfactory quality. I've tried to give both parties a fair chance to submit evidence but I've primarily received conflicting explanations from the parties. I've not been shown any independent evidence that the property was damaged by the installation. And I've not seen sufficient evidence there was a fault with the monitoring system. I'd like to have been much more certain something went wrong if I were to say Shawbrook's response to the recent complaint was unfair.

I'm conscious I'm not looking at a complaint against S, I'm considering how Shawbrook has responded to a section 75 claim. Based on the evidence it's been given, it's not clear there's a breach of contract it's liable for. And given it seems as though the system is performing as expected I can understand why it doesn't think an independent report is required.

Conclusion

I'm very sorry to hear Mrs H is unhappy with the system. I'm also aware that Mrs H has been through a lot recently. I can't imagine how she must be feeling. But I need to resolve the complaint quickly and with minimum formality. In order to uphold the complaint, I'd need to be supplied sufficient evidence Shawbrook's answer to the claim was unfair, or that it treated her complaint about the alleged cancellation unfairly.

I've not seen enough to show Mrs H did try to cancel the contract or that Shawbrook is liable to do more in relation to her breach of contract claim.

This is a provisional decision, so if Mrs H (or Shawbrook) has any further evidence to submit I will review it before deciding whether to issue a final decision. But in the absence of further evidence I'm not minded to direct Shawbrook to take any further action.

I should point out that it seems as though S's offer is still on the table. So Mrs H can decide whether she wants to speak to it to take it up on the offer, but I don't find I have the grounds to direct Shawbrook to take any action.

I can't see we received a response from Shawbrook. Mrs H spoke to our investigator and, in summary, said she's been unhappy with the system from day one. She reiterated she'd tried to cancel the purchase and that there was an issue with the heating and the system. She also highlighted the damp issues in the property she suspects may have been caused by the system. She requests the system is removed and is unhappy no one is taking responsibility. She said it's impacting her wellbeing.

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 Mrs H for her response. Once again, I appreciate she's going through a lot, and I do thank her for taking the time to bring her complaint. She's not provided anything new for me to consider, so I see no reason to depart from the conclusions I reached in my provisional decision.

For the avoidance of doubt, I'm not saying something has definitely not gone wrong. But I'm required to base my decision on what I think is fair and reasonable, and I need to do that quickly and informally based on the evidence that's been submitted. Unlike the courts, I can't call witnesses, take sworn evidence, order reports are carried out, and so on. I need to look at what evidence the parties present and then reach a conclusion on whether anything needs to be done to put things right.

In Mrs H's case, I don't have sufficient evidence Shawbrook acted unfairly by not treating the purchase as having been cancelled within 14 days because I've not seen enough to conclude Mrs H did try to cancel the purchase. Moreover, other than reviewing a timeline of what's happened I don't have sufficient evidence the system wasn't installed with reasonable skill and care or that if there were issues with the installation, they haven't been remedied. I did ask our investigator to reach out to Mrs H to ask for supporting evidence but she's not provided anything other than her testimony.

If Mrs H is able to supply further supporting evidence there's a problem with the installation it might be something Shawbrook can consider for her. But under this decision, while I'm very sympathetic she's so unhappy with the system, I don't think I've seen enough to conclude Shawbrook needs to take further action.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 12 February 2025.

Simon Wingfield
Ombudsman