

The complaint

Mrs Y complains that Shawbrook Bank Limited ("Shawbrook"), has rejected the claim she made under section 75 of the Consumer Credit Act 1974 ("the Act") in relation to a solar panel system she says has stopped working.

What happened

Around November 2014, Mrs Y purchased a solar panel system ("the system") using a fixed sum loan agreement with Shawbrook. Under section 75 of the Act, Shawbrook is responsible for any breach of contract or misrepresentations of the supplier.

In 2018, Mrs Y raised a complaint about the performance and installation of the system. She said the system had been mis-sold on the basis that it would pay for itself and that it hadn't been installed properly. This complaint was settled in 2019, following an offer from Shawbrook. I understand Mrs Y's loan was restructured as part of the resolution to the complaint and her monthly payments were reduced.

In May 2019, Mrs Y sold the house where the system was installed, and my understanding is that she no longer received any benefit associated with the system. However, she remained liable for repaying the restructured loan.

Around August 2021, Mrs Y decided to cancel her direct debit payment to Shawbrook. She said the new owners of the house where the system was installed, had informed her the system had stopped working. Mrs Y didn't feel she should have to keep paying for a system that was no longer working. At this time, she reiterated her earlier complaint points from 2018, and felt the system had never worked as it was meant to, and she wasn't happy with the resolution offered by Shawbrook in 2019.

In August 2022, Shawbrook replied that it would not review its response to Mrs Y's 2018 complaint as that complaint had closed after Mrs Y had accepted its offer in full and final settlement of her complaint. It also explained that it had no liability to her current section 75 claim about the system no longer working since 2021. This is because Mrs Y no longer owned the system as she'd sold and moved out of the house where the system was installed.

Unhappy, Mrs Y referred the complaint to this service. Our investigator looked into the complaint. He explained that Mrs Y's concerns regarding the installation and performance of the system had been dealt with in 2019, and these issues would not be revisited. He also didn't think her complaint regarding the system no longer working in 2021 should be upheld. He explained that Mrs Y no longer lived at the property, and Shawbrook had no liability in relation to the system.

Mrs Y didn't agree, saying that if she had still been living at the house where the system was installed, she'd still be having problems with heating and hot water. That she didn't feel it was fair for her to have no rights because she'd moved out. She again re-iterated that she didn't feel the resolution offered in 2019 actually resolved the complaint and she wasn't happy with it. More recently she's added that this isn't a new complaint, but problems had

been ongoing for nine years. She felt the system still did not work, and it was still paying out less than she had been led to believe it would.

As an agreement couldn't be reached, the case has been passed to me for review.

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.

Complaint made in 2018

Firstly, I'd like to explain that I understand Mrs Y is still of the view the system wasn't installed correctly, has never worked properly and she isn't happy with the resolution offered by Shawbrook in 2019 as part of her earlier complaint. I've read through everything she's reiterated and appreciate her strength of feeling regarding this matter. But this was dealt with under a separate complaint reference, and our investigator has already explained why this service won't revisit the earlier complaint – namely Mrs Y accepted the resolution offered by Shawbrook in full and final settlement of her complaint at the time. The complaint with our service had been closed for several years before she tried to have it revisited. So, while I understand she remains deeply unhappy with the outcome of the complaint she made in 2018, I will not refer to those issues any further as part of this decision.

Current complaint

When considering what's fair and reasonable, I'm required to take into account; relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time. I've noted only the main provision below.

As Mrs Y paid for the system with a fixed sum loan agreement, Shawbrook agrees that section 75 applies to this transaction. This means that Mrs Y could claim against Shawbrook, the creditor, for any misrepresentation or breach of contract by the supplier in the same way she could have claimed against the supplier. So, I've taken section 75 into account when deciding what is fair in the circumstances of this case.

I'm also satisfied in this instance that the debtor-creditor-supplier agreement hadn't been broken and there's an appropriate relationship between Mrs Y and Shawbrook for Shawbrook to consider a section 75 claim.

However, having done so, for broadly the same reasons as explained by our investigator, I don't uphold this complaint and I'll explain why.

Mrs Y says she was told by the new owners of her former home, that the system stopped working in 2021. Mrs Y therefore feels she should no longer be liable for the loan repayments. While I understand Mrs Y's frustration that the loan remains outstanding despite the system not working, I'm afraid I don't agree that she's no longer liable for the payments.

If there is a breach of contract on the part of the supplier (and therefore one Shawbrook is responsible for), generally the remedy is to have that breach of contract rectified usually with a repair or replacement or to have the service delivered. But the loan repayments remain payable.

A system may stop working for an array of different reasons and given that this has happened almost seven years after installation, I think it's fair for Shawbrook to want to

investigate whether there has been a breach of contract in the first place (which I can see it tried to do by trying to arrange an inspection), and then consider whether it had any liability to put matters right. In this case, there is the added complication that Mrs Y no longer owns or has control over the system.

I would add that when Mrs Y sold the house and moved out, she was aware she'd no longer receive any benefit from the system, and this would have been dealt with during the sale of the house. The fact that the system has stopped working, has had no financial implications for her, as she was no longer receiving any benefit. Therefore, any losses or difficulties are being experienced by the new owners not Mrs Y. And Shawbrook has no liability to the new owners. So even if there had been a breach of contract, Mrs Y has suffered no loss because of it. I understand she feels if she'd still owned the house then she'd be having problems with her heating etc. – but the fact remains she doesn't own the house and isn't experiencing any problems because of the system no longer working.

I would add that the rejection of the system (and therefore the consideration of any further payments being cancelled) is usually only really considered in very limited circumstances. If a newly installed system wasn't repairable for example. And the system did work for seven years and offer some benefit for that period – so I don't think it's likely that a full rejection of the system and the cancellation of further payments would have been fair in any event.

To summarise, Mrs Y no longer owns the house where the system is installed, so she's suffered no losses associated with the system failing to work post 2021. Additionally, as Mrs Y no longer owns the house or the solar panels, it would be difficult for Shawbrook to reasonably establish whether there has been any further breach of contract. Shawbrook also has no liability to put matters right for the new owners of the house, in any event, who are the ones experiencing problems with the system rather than Mrs Y. So, I don't think it was unfair or unreasonable for Shawbrook to reject her most recent section 75 claim.

I understand Mrs Y is likely to be dissatisfied with my findings. But while I appreciate her frustration, I cannot consider her concerns about the complaint she made in 2018 as part of this case – and our service has already explained why we are not able to re-open and revisit her earlier complaint. I've also explained why I am not upholding her current complaint. So, while I'm very sorry to disappoint her to this degree, I think the conclusion I've reached is fair and reasonable in all the circumstances of this case.

My final decision

My final decision is that I do not uphold Mrs Y's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs Y to accept or reject my decision before 17 January 2024.

Asma Begum
Ombudsman