

## **The complaint**

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

## **What happened**

Mr D 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 (who I’ll refer to as P) under the relevant legislation. In this case, that relates to the installer misleading Mr D into believing that the panels would be self-funding, which they weren’t.

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

- Shawbrook initially wanted electricity bills to enable it to fully assess the complaint and while this has been sent to Shawbrook, it has since made no comments.
- It also added that P was unable to install an optional extra called a boiler doctor – but he was refunded £600 for this, and an additional £418.33 for the first 4 years of estimated benefit. It says Mr D accepted this payment in full and final settlement of his complaint.

Our investigator replied explaining that without the boiler doctor benefit, the system was also still not self-funding so felt the complaint should still be upheld. Shawbrook still did not agree to our investigators view of the complaint. As the case couldn’t be resolved, the case was passed to an ombudsman.

In my provisional decision of 6 November 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 agreed with my provisional decision and agreed to put things right. Neither Mr D nor his representative made any further comments.

## **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 D 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 £71.59 p/m			
Yr	Acc. grand total	Est. monthly return	Average monthly repayment diff.
1	£1,001.62	£83.47	£12.11
2	£1,059.07	£88.26	£16.90
3	£1,120.14	£93.35	£21.99
4	£1,185.08	£98.76	£27.40
5	£1,254.16	£104.51	£33.15
6	£1,327.64	£110.64	£39.28
7	£1,405.82	£117.15	£45.79
8	£1,489.02	£124.08	£52.72
9	£1,577.58	£131.47	£60.11
10	£1,671.85	£139.32	£67.96
11	£1,772.23	£147.69	£76.33
12	£1,879.13	£156.59	£85.23
13	£1,992.99	£166.08	£94.72
14	£2,114.28	£176.19	£104.83
15	£2,243.51	£186.96	£115.60

*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 D entered into with Shawbrook. This table shows that Mr D is expected to pay £71.59 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 £71.59, 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 £12.11 from the first year – with the profit increasing year on year. This corroborates Mr D'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 £15,086.20. The quote included a table showing the annual cumulative benefits of the system. By the end of year 12, (i.e. well within the loan term) 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	£193.77	£107.04	£374.41	£149.76	£80.64	£0.00	£0.00	£96.00	£1,001.62	£1,001.62	£83.47	11.25%
100.0%	2	£198.86	£110.29	£400.32	£160.12	£87.09	£0.00	£0.00	£101.58	£1,059.07	£2,060.69	£88.26	11.9%
100.0%	3	£205.73	£113.85	£428.02	£171.20	£94.06	£0.00	£0.00	£107.48	£1,126.14	£3,189.63	£93.35	12.59%
99.6%	4	£211.13	£116.83	£455.81	£182.32	£101.17	£0.00	£0.00	£113.27	£1,180.34	£4,361.17	£98.36	13.27%
99.2%	5	£216.68	£119.89	£485.40	£194.15	£108.83	£0.00	£0.00	£119.37	£1,244.13	£5,605.30	£103.67	13.98%
98.8%	6	£222.37	£122.84	£516.89	£206.75	£117.07	£0.00	£0.00	£125.79	£1,311.71	£6,917.00	£109.31	14.74%
98.4%	7	£228.20	£126.06	£550.42	£220.16	£125.92	£0.00	£0.00	£132.96	£1,383.33	£8,309.33	£115.28	15.55%
98.0%	8	£234.18	£129.36	£586.12	£234.45	£135.44	£0.00	£0.00	£139.70	£1,459.24	£9,759.57	£121.61	16.4%
97.6%	9	£240.32	£132.78	£624.12	£249.64	£145.68	£0.00	£0.00	£147.21	£1,539.72	£11,299.29	£128.30	17.3%
97.2%	10	£246.61	£136.23	£664.58	£265.82	£156.69	£0.00	£0.00	£155.12	£1,625.04	£12,924.33	£135.42	18.25%
96.8%	11	£253.05	£139.79	£707.64	£283.05	£168.53	£0.00	£0.00	£163.48	£1,715.52	£14,639.85	£142.96	19.27%
96.4%	12	£259.67	£143.44	£753.48	£301.38	£181.25	£0.00	£0.00	£172.25	£1,811.48	£16,451.33	£150.95	20.35%
96.0%	13	£266.46	£147.20	£802.28	£320.90	£194.95	£0.00	£0.00	£181.50	£1,913.27	£18,364.60	£159.44	21.49%
95.6%	14	£273.42	£151.04	£854.22	£341.68	£209.66	£0.00	£0.00	£191.24	£2,021.25	£20,385.85	£168.44	22.71%
95.2%	15	£280.54	£154.98	£909.51	£363.80	£225.49	£0.00	£0.00	£201.50	£2,135.82	£22,521.67	£177.99	24%
94.8%	16	£287.86	£159.02	£968.36	£387.33	£242.50	£0.00	£0.00	£212.31	£2,257.40	£24,779.07	£188.12	25.37%
94.4%	17	£295.36	£163.16	£1,031.01	£412.40	£260.89	£0.00	£0.00	£223.70	£2,386.42	£27,165.49	£198.87	26.81%
94.0%	18	£303.05	£167.40	£1,097.68	£439.06	£280.47	£0.00	£0.00	£235.70	£2,523.36	£29,688.85	£210.28	28.35%
93.6%	19	£310.93	£171.77	£1,168.65	£467.45	£301.62	£0.00	£0.00	£248.33	£2,668.74	£32,357.60	£222.39	29.99%
93.2%	20	£319.01	£176.23	£1,244.18	£497.66	£324.35	£0.00	£0.00	£261.63	£2,823.07	£35,180.67	£235.26	31.72%
92.8%	25	£0.00	£0.00	£1,731.05	£692.40	£474.53	£0.00	£0.00	£345.51	£3,243.50	£38,424.17	£270.29	36.44%
92.4%	30	£0.00	£0.00	£2,406.41	£963.33	£694.25	£0.00	£0.00	£456.25	£4,522.25	£42,946.42	£376.65	50.81%
Totals		£5,946.91	£2,798.57	£18,762.57	£7,394.82	£4,719.98	£0.00	£0.00	£4,131.47	£42,946.42	£42,946.42	Ave. ROI:	16.99%

*In light of this, it seems Mr D was told the system would be self-funding from the start and would pay for itself within the loan term. I think Mr D, 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 statements Mr D has provided, I think it's clear that the system is not self-funding. As explained by our investigator, the annual benefit for the first year shows the system benefit is significantly less than the cost of the system. Therefore, overall, I think the evidence supports the conclusion that a misrepresentation took place and Mr D 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.*

### Boiler doctor

*Shawbrook has informed this service that at the time of installation, Mr D paid for an optional extra a "boiler doctor" to be installed. Unfortunately, this was not installed. P therefore refunded £600 for the cost of the boiler doctor and an additional £418.33 for the first 4 years of estimated benefit Mr D was expecting. It says Mr D accepted this in full and final settlement of his complaint in 2019.*

*I've reviewed this case in light of the above, but it does not change my view of Mr D's self-funding complaint and I'll explain why. Mr D has not complained about not receiving the boiler doctor and appears to be happy with a resolution offered at the time which he accepted. This matter appears to have been dealt with several years after the sale and does*

*not change what happened during the sale. I still think the system overall was misrepresented to him, and this needs to be put right.*

*For completeness, I would however add the following. I understand that, as Mr D is aware that he never received a boiler doctor, it's also reasonable to conclude that it ought to have been apparent to him that, he also wouldn't get the benefit associated with this item.*

*However, even without this, the benefit Mr D was led to believe he would receive, still outweighs the cost, so I think it's still reasonable for Mr D to have continued to believe the system would be self-funding.*

*The first year's estimated benefit is £1,001.62 but without the boiler doctor benefit, his annual benefit is only £905.62. But Mr D's annual loan cost is £859.08 which is less than the benefit (without the boiler doctor element of the benefit). Similarly, in the second year, the total estimated benefit in the quote is £1,059.07 and, without the boiler doctor benefit, it is £957.49 – which is still significantly more than the annual cost of the loan.*

*As our investigator outlined, Mr D's benefit for the first year included £241.40 in FIT payments and £129.50 in reduction of bills. If we assume the benefit associated with the remaining optional extras was achieved – this is an additional £230.40 giving a total first year benefit of £601.30. So, with or without the boiler doctor, the system was represented as being self-funding, and it isn't.*

*So, I don't think the removal of the boiler doctor should have altered Mr D's belief and reliance on the misrepresentation that the system would be self-funding. So, I still think the complaint should be upheld.*

### *Underperformance*

*I've gone on to consider the performance of the system and whether this is in line with the contract between P and Mr D. The MCS certificate and quote sets out that the system is expected to produce 4413.92 kWh a year. And the benefits shown in the quote were calculated based on that level of generation.*

*I have looked at Mr D's FIT statements and meter readings, and can see that the system, on average, has generated 3034.63 kWh. This is based on the most recent meter reading available of 19,953.78 kWh from September 2022. This is significantly less than estimated by P at the point of sale, so I'm satisfied that the system isn't performing as expected.*

*It is unclear why the system has underperformed. I can see the self-funding complaint was raised in 2020 and the FIT statements from 2019, similarly show the system had significantly underperformed. But no investigation appears to have taken place as to why the system hasn't generated the power it was estimated to produce although it doesn't look like Mr D realised this or raised concerns over power generation at the time. Usually, I would advise both Shawbrook and Mr D to investigate the issues now, however, Mr D has informed this service he moved out of the property in September 2022, so the system can no longer be inspected or repaired.*

*So, in order to bring this matter to a resolution, I still think the complaint should be upheld but redress should be calculated with a slight adjustment to our usual methodology. So rather than using the estimated annual generation in the MCS certificate of 4413.92 kWh, given the system isn't achieving the estimated figures in the MCS certificate, Shawbrook should use the average annual generation as at September 2022, and assume the system will perform at that level going forward. I think this is a fair way to put matters right bearing in mind the specific circumstances of this case.*

## Summary

- *I think the system was mis-represented to Mr D 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 D 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 and this should also be addressed at this stage.*

## **Putting things right**

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

*I would add that Shawbrook should use the FIT statements and meter readings available to assess what benefit Mr D has received to date. As explained above, usually, we would expect Shawbrook to use the estimated annual output in the sales quotation or MCS certificate to work out what benefit the system would produce going forward. But given this system has never performed in line with the quote, I don't think Shawbrook should use the sales documents to guide future performance. I think instead, it should use the most recent average annual generation, and assume the system will perform at that level going forward and redress should be worked out on that basis.*

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

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

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

*If Mr D 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 D 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.*

I understand Shawbrook has agreed to settle the case in line with my provisional decision and an offer has been sent in and forwarded to Mr D's representative. As explained above, Mr D (nor his representative) have made any further comments. So, 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. So, for the reasons I've set out in my provisional decision (and above), I uphold this complaint and Shawbrook should put things right as set out below.

### **Putting things right**

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

I would add that Shawbrook should use the FIT statements and meter readings available to assess what benefit Mr D has received to date. As explained above, usually, we would expect Shawbrook to use the estimated annual output in the sales quotation or MCS certificate to work out what benefit the system would produce going forward. But given this system has never performed in line with the quote, I don't think Shawbrook should use the sales documents to guide future performance. I think instead, it should use the most recent average annual generation, and assume the system will perform at that level going forward and redress should be worked out on that basis.

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

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

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

If Mr D 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 D 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 D to accept or reject my decision before 29 December 2023.

Asma Begum  
**Ombudsman**