DRN-4419368

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 2013. 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 adjudicators. She 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 term of the loan. This restructure should be based on evidence of the actual performance of the panels, and a number of assumptions on future performance.

Shawbrook agreed to settle the case in accordance with our adjudicator's view of the complaint. Mr S, through his representative, didn't agree with the redress offer made by Shawbrook. He felt the calculation should be based on the actual benefits he's received up until 2019 (when he moved out of the property), and an assumption made that he would have received those same benefit amounts for the duration of the loan rather than the rates and assumptions used by Shawbrook.

As an agreement couldn't be reached, the case was passed to an ombudsman.

In my provisional decision of 5 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 responded agreeing to my provisional findings and submitted an updated redress offer which was passed to Mr S's representative. But Mr S (nor his representative) made any additional 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:

Our adjudicator explained why we have jurisdiction to consider this complaint and as neither party as disputed this, I don't need to consider this any further.

Shawbrook and Mr S's representative are 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.

Bearing in mind that both parties have also accepted that the system was mis-represented to Mr S, I don't need to consider that as part of this decision. It seems clear, the only matter left in dispute is how to put things right which I'll consider as part of this decision.

Determining fair compensation is not always an exact science and it is all the more difficult in a case like this where solar panels have been installed at a property. Usually, if I'm persuaded that a consumer wouldn't have purchased the system but for the misrepresentation, we'd usually ask financial businesses to unwind the contract. But this would involve the removal and disposal of a working system that Mr S wanted – which would be disproportionately costly and cause Mr S significant inconvenience.

This is why we have an established approach to redress in these types of cases. We ask financial businesses to work out what benefit (usually including savings and Feed in tariff (FIT) payments) consumers are likely to achieve over the term of the loan and charge them no more than that for the system. Financial businesses use any data of performance and benefits received to date, and use a number of reasonable assumptions about future performance to formulate the likely benefit a consumer will achieve over the term of the loan (i.e. the self-funding amount). Financial businesses can then charge the consumers no more than that.

Mr S's circumstances, evidence and data available

Mr S has provided FIT statements from the time of installation until October 2019. I understand he subsequently moved out of the property so was unable to provide any further FIT statements. Mr S moved out of his property and is no longer receiving the benefit associated with the system. However, I think it's apparent that if a consumer no longer resides at or owns the home where the solar panels are installed, that he would no longer be getting the benefit. This is through no fault of either the installer or Shawbrook so, we wouldn't usually expect Shawbrook to take this into account. We normally ask businesses to still work out the self-funding amount for the full original term of the loan using the data they have available, and use assumptions, for future losses as well as losses to date that can't be evidenced due to a lack of evidence.

FIT estimates

Businesses use actual FIT statements available to calculate a consumer's FIT benefit and where none is available, they estimate how much FIT payments consumers are likely to achieve based on the estimated annual generation in their MCS certificate, and their applicable FIT rates. FIT payments, however, also increase in line with the retail prices index (RPI). So, when consumers do not have actual FIT statements, Shawbrook uses the MCS certificate generation estimate, and the FIT rate consumers are on to work out what their FIT payments are likely to have been (for any periods where evidence is unavailable as well as future benefit amounts). It also applies the RPI increases (as published by the Office of National Statistics) to those amounts to estimate a more accurate amount of the likely benefit a consumer will receive.

As at 25 October 2019, Mr S's system had generated 18,526.04 kWh in energy. Mr S's MCS certificate estimated that his system will annually generate 3738 kWh of energy. But based on his FIT statements and the final reading on the 25/10/2019 of 18,526.04 kWh, his average annual generation is only 3076.43 kWh, which is lower than his MCS estimate and outside of the usual tolerance levels that we think is reasonable in these types of cases.

Savings on electricity bills

Mr S has provided no pre or post installation bills to evidence what his savings have been due to the solar panel system.

Where no bills have been submitted, usually we ask businesses to work out savings based on the annual generation of the system (either actual or the MCS estimate), using a self-consumption rate of 37%. For clarity, the self-consumption rate is the amount of electricity generated by the solar panels that Mr S is able to use or self-consume whilst he is in his home. The rate of electricity in the sales paperwork suggests Mr S's unit rate was 16.5p. Businesses can use the actual rates shown in electricity bills consumers provide, and if not available, they use a default starting unit price of around 15p from the start of the loan. Electricity prices, however, also increase over time. Therefore, the savings customers make (because they are no longer buying as much electricity from their provider as they would do without panels), also increases.

My understanding is that Shawbrook uses the data published by the Office of National Statistics to track actual average electricity price increases over time. Shawbrook then applies the percentage increase to the default unit rate of 15p over the term of the loan, to estimate the savings consumers will make for any periods that actual savings data is not available. They also make reasonable assumptions of likely future increases and apply that.

Is Shawbrook's offer fair?

I have looked at both Shawbrook's offer of compensation as well as Mr S's representative's calculation of what the self-funding amount should be – this is at the heart of the dispute.

Mr S's representatives redress calculation doesn't take into account the RPI increases to the FIT payments that Mr S would have received. And I'm not sure how they've calculated Mr S's savings when they've used a generation figure of 2,036.48 kWh – that is neither the figure in Mr S's MCS certificate nor the average annual generation based on Mr S's FIT statements.

Redress period

Mr S's representative also commented that Mr S was informed that the system would be self-funding within six years, not the 15 years we have recommended. However, as explained by our adjudicator, the purpose of the redress methodology is not to make any misrepresentation come true. But to ensure that consumers are charged no more than they would likely receive over the loan term, and any benefit received after this date, is profit. We normally decide the redress should be calculated over the loan term because we need to ensure the redress is fair and reasonable to both Mr S and Shawbrook. Because Mr S's system can expect to produce benefit (through energy savings and Feed-In Tariff payments) for 20 years, I think a loan term of 15 years is reasonable when calculating the redress. So, I do not think a shorter period would strike the appropriate balance in terms of fairness.

Shawbrook's redress calculation

Shawbrook has used a default electricity starting rate of 15p, applying the average electricity price increases as set out by the ONS. The breakdown of the averages has been set out by Shawbrook in its letter of December 2022, and my understanding is that a copy of this has been sent to Mr S's representative. I think that the manner in which Shawbrook has worked out Mr S's estimated savings over the duration of the loan period of 15 years is reasonable. Its relying on data from the ONS and using a default starting rate which is lower than that set out in Mr S's sales paperwork as being the rate he was paying at the time of sale.

Shawbrook has used the MCS certificate to estimate how much energy Mr S's system will likely generate going forward from October 2019 onwards. This is in line with what we would normally expect. In my experience, most systems perform at least around the level set out in the MCS certificates, and usually slightly more than that. However, as I've explained above, Mr S's system has generated less than the MCS certificate – more than the tolerance level we think is reasonable. It's not clear why it has underperformed to this degree, and I can no longer order an inspection given Mr S no longer owns the property at which the panels are installed. But based on the system not performing in line with the MCS certificate, I'm inclined to think that it may be fairer to use the average annual generation as at 25 October 2019 (the latest FIT statement we have available) rather than the MCS certificate.

So overall I'm satisfied the manner in which Shawbrook has formulated its offer of redress is in line with our established approach to these types of cases. But given the system underperformance, I think it should use the average annual generation as at 25 October 2019, and assume the system will generate that much energy from 2019 onwards. The estimated savings and FIT payments should be worked out on that basis.

It is self-evident that determining an exact figure over the 15-year period of the loan is difficult. My role is to determine fair compensation and arrive at an outcome that is fair and reasonable overall. And in cases of this nature that isn't an exact science.

But having considered all the facts of this case, I think the redress offered by Shawbrook, with my recommended adjustment to the annual generation figure from October 2019, is fair and reasonable in all the circumstances of the case. While there may be other methods of putting things right, I think this method is fair.

I realise that this may still be very disappointing for Mr S (and his representative), but I think its fair for Shawbrook to take account of the fact that the system benefit is likely to increase over time and I don't think it's fair to ask it to assume that the benefit the system will produce as at October 2019, will stay the same throughout the duration of the loan, when I don't think that would be the case.

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 the 15-year term of the loan, so he pays no more than that.

I'm satisfied with Shawbrook's usage of the self-consumption rate of 37%, and I'm satisfied a starting electricity unit price of 15p per kWh is fair. I also think it's fair for it to apply the average percentage increases to that rate as it has done.

Shawbrook should, however, use the average generation figure based on the meter reading as at 25 October 2019 as set out on Mr S's FIT statements – and assume the system will generate the same annual generation going forward, rather than the MCS certificate.

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, then where 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 term of the loan.

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.

Shawbrook has offered £100 compensation for the time taken to resolve Mr S's complaint. I think that's fair and intend to direct Shawbrook to pay £100 compensation for the trouble and upset caused.

I can see Shawbrook has agreed to my provisional findings and is willing to resolve the complaint on this basis. And while Mr S hasn't accepted my findings, he has also made no additional points for me to consider. 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. For the reasons explained in my provisional decision (and as set out above), I uphold this complaint and Shawbrook should put things right as I've set out below.

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 the 15-year term of the loan, so he pays no more than that.

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Shawbrook has offered £100 compensation for the time taken to resolve Mr S's complaint. I think that's fair and direct Shawbrook to 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 23 November 2023.

Asma Begum
Ombudsman