

The complaint

Mrs H and Mr H complain that Shawbrook Bank Limited ("Shawbrook"), has rejected the claim they made under section 75 of the Consumer Credit Act 1974 ("the Act") in relation to a solar panel system they say was misrepresented to them by the supplier.

Mrs H and Mr H are represented by a claims management company ("the CMC").

What happened

In or around March 2016, Mrs H and Mr H were contacted by a representative of a company I'll call "P" to talk about purchasing a solar panel system ("the system") to be installed at their home. After being visited by a representative of P, Mrs H and Mr H decided to purchase the system and finance it through a 10-year fixed sum loan agreement with Shawbrook. The system was subsequently installed.

In July 2019 the CMC made a claim on Mrs H and Mr H's behalf under section 75 of the Act to Shawbrook. The CMC said that, following a cold call, P had made a number of representations about the system that had turned out not to be true, and it was these misrepresentations that had induced them to enter into the contract with P. The CMC said the following misrepresentations had been made:

- the system would be self-funding,
- P hadn't registered Mrs H and Mr H's system to receive feed-in-tariff ('FIT') payments as it had said it would, and;
- there had been an issue with the installation which had meant Mrs H and Mr H had been 'extracting electricity illegally' from the grid.

Shawbrook didn't issue its final response letter until the complaint had been referred to this service. In it, it explained that it didn't agree the system had been misrepresented to Mrs H and Mr H or that there were any other reasons for the claim to be upheld.

One of our investigators looked into what had happened. Having considered all the information and evidence provided our investigator didn't think that P had misrepresented the system to Mr and Mrs H and found no reason to uphold the complaint. It did, however, offer them £200 to recognise the trouble and upset caused due to the length of the time it took to review their complaint.

The CMC didn't agree with the investigator's view but did not provide any further comments.

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.

Relevant considerations

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.

In this case the relevant law includes section 56 and section 75 of the Act. Section 75 provides protection for consumers for goods or services bought using credit.

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

Section 56 is also relevant. This is because it says that any negotiations between Mrs H and Mr H and P, as the supplier, are deemed to have been conducted by P as an agent of Shawbrook.

For the purpose of this decision I've used the definition of a misrepresentation as an untrue statement of fact or law made by one party (or his agent) to a second party which induces that second party to enter the contract, thereby causing them loss.

Key documents

There are several documents that have been provided by both the CMC and Shawbrook. These include the credit agreement and solar quote, titled 'Your Personal Solar Quotation'. I've considered these in detail and whether they support the alleged representations made by P.

The quote is a detailed document that sets out key information about the system, the expected performance, financial benefits and technical information. I'm satisfied that it formed a central part of the sales process and is therefore relevant when considering if there have been any untrue statements of fact alongside Mrs H and Mr H's recollection of the sale. The credit agreement sets out the amount being borrowed, the interest to be charged, total amount payable, the term of the loan and the contractual monthly repayments.

Self-funding

I'll now consider whether P told Mrs H and Mr H that the system would self-funding.

There's a section headed 'Repayments' with three tables showing repayments over 60 months, 120 months and 180 months. I've focused on the table for 120 months this is the length of the loan that Mr and Mrs H entered into with Shawbrook. This table shows the loan as repayable in 120 monthly payments of £107.09. For each year of the 10-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 £107.09, to give an average difference between the monthly return from the system and the monthly loan repayment in each year.

120 payments of £107.09 p/m

Yr	Acc. grand total	Est. monthly return	Average monthly repayment diff.
1	£802.54	£86.88	£-40.21
2	£847.80	£70.65	£-36.44
3	£895.87	£74.66	£-32.43
4	£946.95	£78.91	£-28.18
5	£1,001.23	£83.44	£-23.65
6	£1,058.93	£88.24	£-18.85
7	£1,120.25	£93.36	£-13.73
8	£1,185.48	£98.79	£-8.30
9	£1,254.84	£104.57	£-2.52
10	£1,328.61	£110.72	£3.63

I think the quote clearly sets out the income Mrs H and Mr H could expect to receive from the system, as well as their expected contractual monthly loan repayments. In my view, it does clearly set out that the overall income they could expect to receive by way of FIT income and any additional savings, would not be immediately sufficient to cover the monthly loan repayments.

I've considered the table above which sets out the estimated average monthly income from the system, and the effect on that income of subtracting the monthly loan repayment. I'm satisfied that the table is clear and easy to understand.

I'm of the view that this makes it clear that the system wouldn't be self-funding from the start, I think the quote is clear that there would be a difference between the expected income and monthly loan repayments.

However, I do accept that Mrs H and Mr H were told by P that the system would be self-funding over a duration of time.

The 'Estimated performance over 30 years' page of the quote has a table detailing the performance over 20 years. This shows that by year 12 the overall benefits that Mrs H and Mr H could expect to receive 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	£170.68	£94.28	£383.98	£153.60	£0.00	£0.00	£0.00	£0.00	£802.54	£802.54	£66.88	9.86%
100.0%	2	£175.87	£97.15	£410.55	£164.23	£0.00	£0.00	£0.00	£0.00	£847.80	£1,650.34	£70.65	10.42%
100.0%	3	£181.22	£100.10	£438.96	£175.59	£0.00	£0.00	£0.00	£0.00	£895.87	£2,546.21	£74.66	11.01%
99.6%	4	£185.97	£102.73	£467.46	£186.99	£0.00	£0.00	£0.00	£0.00	£943.16	£3,489.37	£78.59	11.59%
99.2%	5	£190.86	£105.43	£497.81	£199.13	£0.00	£0.00	£0.00	£0.00	£993.22	£4,482.59	£82.77	12.2%
98.8%	6	£195.87	£108.20	£530.10	£212.05	£0.00	£0.00	£0.00	£0.00	£1,046.22	£5,528.82	£87.18	12.85%
98.4%	7	£201.01	£111.03	£564.49	£225.81	£0.00	£0.00	£0.00	£0.00	£1,102.34	£6,631.15	£91.87	13.55%
98.0%	8	£206.28	£113.94	£601.10	£240.45	£0.00	£0.00	£0.00	£0.00	£1,161.77	£7,792.92	£96.81	14.28%
97.6%	9	£211.67	£116.92	£640.07	£256.04	£0.00	£0.00	£0.00	£0.00	£1,224.72	£9,017.65	£102.06	15.05%
97.2%	10	£217.22	£119.98	£681.57	£272.64	£0.00	£0.00	£0.00	£0.00	£1,291.41	£10,309.05	£107.62	15.87%
96.8%	11	£222.90	£123.13	£725.73	£290.30	£0.00	£0.00	£0.00	£0.00	£1,362.06	£11,671.12	£113.51	16.74%
96.4%	12	£228.73	£126.34	£772.74	£309.12	£0.00	£0.00	£0.00	£0.00	£1,436.93	£13,108.05	£119.75	17.66%
96.0%	13	£234.71	£129.65	£822.79	£329.14	£0.00	£0.00	£0.00	£0.00	£1,516.27	£14,624.32	£126.36	18.63%
95.6%	14	£240.84	£133.03	£876.06	£350.44	£0.00	£0.00	£0.00	£0.00	£1,600.36	£16,224.68	£133.36	19.66%
95.2%	15	£247.12	£136.50	£932.76	£373.13	£0.00	£0.00	£0.00	£0.00	£1,689.50	£17,914.19	£140.79	20.76%
94.8%	16	£253.56	£140.06	£993.12	£397.27	£0.00	£0.00	£0.00	£0.00	£1,784.00	£19,698.19	£148.67	21.93%
94.4%	17	£260.17	£143.71	£1,057.36	£422.97	£0.00	£0.00	£0.00	£0.00	£1,884.21	£21,582.39	£157.02	23.16%
94.0%	18	£266.94	£147.45	£1,125.74	£450.32	£0.00	£0.00	£0.00	£0.00	£1,990.45	£23,572.84	£165.87	24.46%
93.6%	19	£273.88	£151.29	£1,198.52	£479.44	£0.00	£0.00	£0.00	£0.00	£2,103.13	£25,675.97	£175.26	25.84%
93.2%	20	£281.00	£155.22	£1,275.98	£510.42	£0.00	£0.00	£0.00	£0.00	£2,222.62	£27,898.60	£185.22	27.32%
92.8%	25	£0.00	£0.00	£1,775.30	£710.15	£0.00	£0.00	£0.00	£0.00	£2,485.45	£30,384.05	£207.12	30.54%
92.4%	30	£0.00	£0.00	£2,469.96	£988.03	£0.00	£0.00	£0.00	£0.00	£3,458.00	£33,842.04	£288.17	42.49%
Totals		£4,446.51	£2,456.13	£19,242.16	£7,697.26	£0.00	£0.00	£0.00	£0.00	£33,842.04	£33,842.04	Ave. ROI:	13.86%

As I've set out above, I'm satisfied that P told Mrs H and Mr H that the system would pay for itself by year 12, as supported by the table above. If that were an untrue statement of fact, and I'm satisfied that this was what induced them to enter into the contract, and they subsequently suffered a loss, that would amount to a misrepresentation.

Performance

I've gone on to consider the performance of the system and whether this is in line with the contract between P and Mrs H and Mr H. The MCS certificate and quote sets out that the system is expected to produce 3,588 kWh a year.

I have looked at Mrs H and Mr H's FIT statements and can see that their system, on average, has generated 4,443 kWh. This is more than estimated by P at the point of sale, so I'm satisfied that the system is performing as expected.

I have also looked at the assumptions used by P, including the self-consumption rate, expected annual increase in utility prices (EPR) and expected annual RPI inflation increase. I am satisfied that P's method for calculating these are fair and reasonable.

P used Office of National Statistics (ONS) data between 2006 and 2015 to calculate the utility price and RPI inflation. I have looked at the actual yearly increases between 2016 and

2020 and the increases have been lower than predicted by P at the point of sale and I think explains why they haven't been receiving the financial returns they may have been expecting from the solar panels. Since actual energy prices have been lower than the modelling predicted, the savings achieved through the energy generated by the system has been correspondingly lower.

As I have explained, the assumptions used by P were based on the information available from the ONS covering 2006 to 2015. And based on this, I don't consider it unreasonable for P to have used them as the basis for calculating the potential financial income Mrs H and Mr H could've expected to receive from the system. So, whilst I can appreciate that the returns may not have been as high as estimated at the point of sale, I'm not persuaded that this was due to unreasonable assumptions being used by P at the time Mrs H and Mr H entered into the contract.

Registration for the FIT payments

Mrs H and Mr H have said that P told them it would register their system to receive FIT payments and there was nothing further for them to do. And because of this delay they ended up with a lower FIT rate.

I'm satisfied that the contract makes it clear that the responsibility to register the system for FIT payments sits with the customer. This is because the FIT application form would have only been provided to Mrs H and Mr H once Shawbrook had released the funds to P for the system.

Therefore, I'm not persuaded that the delay in registering the system, and the lower tariffs received by Mrs H and Mr H, can be attributed to P. I also consider that the delay in registering the system for FIT payments, and the subsequent lower tariff paid, explains why Mrs H and Mrs H haven't received the level of income documented in the quote.

Installation issues

Based on the evidence that has been provided, I'm satisfied that there was an issue with the installation of the system, which only came to light when Mrs H and Mr H were contacted by their energy supplier.

This issue has now been resolved and, as Mrs H and Mr H haven't said, or provided this service with, any evidence to demonstrate that they've suffered a financial loss. So, I'm not persuaded I should make an award for this particular issue.

Summary

Having carefully considered the evidence provided by all parties in this complaint, I'm satisfied that there were no untrue statements of fact made by P that induced Mrs H and Mr H to enter into the contract for the system.

Shawbrook did not provide its final response to Mrs H and Mr H's complaint until after it had been referred to this service. I believe that the fact Mrs H and Mr H did not receive a response to their complaint undoubtedly caused them trouble and upset and consequently I'll make an award of £200 to cover this.

My final decision

My final decision is that I uphold Mrs H and Mr H's complaint. In full and final settlement of it, Shawbrook Bank Limited must pay Mrs H and Mr H £200 for the trouble and upset caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr H to accept or reject my decision before 8 February 2022.

Dave Morgan
Ombudsman