

The complaint

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

What happened

In or around June 2016, Mrs B and Mr B 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 B and Mr B decided to purchase the system and finance it through a 15-year fixed sum loan agreement with Shawbrook. The system was subsequently installed.

In March 2020, the CMC made a claim on Mrs B and Mr B'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 Mrs B and Mr B to enter into the contract with P. The CMC said the following misrepresentations had been made:

- the system would be self-funding through the Feed in Tariff (FIT) income and electricity savings it generated; and
- the system would result in significant savings on electricity bills; and
- the financial benefits would cover the finance payments; and
- the cash price agreed was £8,339.50 but the real cost was £16,139.80 under the loan agreement.

Shawbrook didn't issue a final response within eight weeks so Mrs B and Mr B's complaint was referred to this service by the CMC. Shawbrook later completed their investigation. They didn't agree that the system was misrepresented. But they did acknowledge the delay in issuing their final response and offered £200 to recognise the trouble and upset caused due to the length of the time it took to review their complaint.

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 Mrs B and Mr B and found no reason to uphold that aspect of their complaint. But our investigator did agree that Shawbrook should pay £200 in respect of the delay in issuing complaint their response.

The CMC didn't agree with the investigator's view for the following reasons:

- Mrs B and Mr B deny ever receiving the solar quote; and
- Mrs B and Mr B claim they were advised by the salesperson the system would self-

fund month-on-month; and

- the system is supposed to be profitable on a month-on-month basis; and
- the system is not performing to the promised level.

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 B and Mr B paid for the system with a fixed sum loan agreement, Shawbrook agrees that section 75 applies to this transaction. This means that Mrs B and Mr B 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 B, Mr B 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 B and Mr B'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.

Cost of the system

The loan agreement clearly sets out that the cash price of the goods.

Mrs B and Mr B have said that the cost of the system was documented as £8,439.50. They have suggested this was done to mislead them as this figure did not include any interest associated with the loan, so hid the true cost of the system of £16,139.80.

I'm satisfied that the quote provided to Mrs B and Mr B makes it clear that the cost of the system is £8,439.50. This is supported by the credit agreement which sets out that the cash price of the system was £8,439.50. The total amount of credit was £8,339.50 and goes on to show that the total amount payable would be £16,139.80.

And as the quote provided by P is clear that there would be a monthly loan repayment due, as set out in the table below, I'm satisfied that the two documents, the quote and the credit agreement, made it clear that although the cost of the system was £8,449.50, it would cost Mrs B and Mr B more than this as they had decided to pay for it with an interest bearing loan.

FIT payments

Mrs B and Mr B have alleged that they were told their monthly loan repayments would be covered, or 'self-funded' by the FIT payments and electricity savings. I've considered the quote that was provided by P and whether this supports what Mrs B and Mr B have said.

The system analysis page of the quote sets out the estimated income Mrs B and Mr B could expect to receive by way of FIT payments from the system. This is split out into the expected FIT payments in the first year and the expected average income over 20 years. The FIT scheme only provides payments for a 20-year period.

Feed in tariff - year 1

Generation tariff in year 1	£	141.98
Export tariff in year 1	£	80.68
Total income in year 1	£	222.66

Feed in tariff over 20 years

Assumed rate of RPI	3.04	%
Average generation tariff	£	0.069
Average export tariff	£	0.078
Average annual income	£	354.94

I think that the first of these tables is clear that Mrs B and Mr B could expect to receive a total FIT income in year one of £222.66.

The quote goes on to look at the electricity savings Mrs B and Mr B could expect from the system. The expected year one electricity savings is £383.78 and, when taking into account the optional extra's chosen by Mrs B and Mr B, the combined income and savings in year one is shown as £841.04. This is shown in a table titled 'Putting it all together'

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 180 months as this is the length of the loan that Mrs B and Mr B entered into with Shawbrook. This table shows the loan as repayable in 180 monthly payments of £89.11. 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 £89.11, to give an average difference between the monthly return from the system and the monthly loan repayment in each year.

180 payments of £89.11 p/m

Yr	Acc. grand total	Est. monthly return	Average monthly repayment diff.
1	£841.04	£70.09	£-19.02
2	£890.60	£74.22	£-14.89
3	£943.33	£78.61	£-10.50
4	£999.43	£83.29	£-5.82
5	£1,059.14	£88.26	£-0.85
6	£1,122.70	£93.56	£4.45
7	£1,190.35	£99.20	£10.09
8	£1,262.39	£105.20	£16.09
9	£1,339.09	£111.59	£22.48
10	£1,420.78	£118.40	£29.29
11	£1,507.78	£125.65	£36.54
12	£1,600.47	£133.37	£44.26
13	£1,699.21	£141.60	£52.49
14	£1,804.42	£150.37	£61.26
15	£1,916.53	£159.71	£70.60

I think the quote clearly sets out the income Mrs B and Mr B could expect to receive from the system, by way of FIT payments, as well as their expected contractual monthly loan repayments. Whilst I accept that the table doesn't simply compare the FIT income to the monthly loan repayments, 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.

Self-funding

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

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 B and Mr B were told by P that the system would be self-funding over a duration of time.

Page 12 of the quote has a table detailing the performance over 30 years. This shows that by year 14 the overall benefits that Mrs B and Mr B could expect to receive would have exceeded the total amount payable under the loan agreement.

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	£141.98	£80.68	£383.78	£163.20	£0.00	£71.40	£0.00	£0.00	£841.04	£841.04	£70.09	9.97%
100.0%	2	£146.30	£83.13	£410.34	£174.49	£0.00	£76.34	£0.00	£0.00	£890.60	£1,731.64	£74.22	10.55%
100.0%	3	£150.74	£85.66	£438.73	£186.57	£0.00	£81.62	£0.00	£0.00	£943.33	£2,674.97	£78.61	11.18%
99.6%	4	£154.71	£87.91	£467.21	£198.68	£0.00	£86.92	£0.00	£0.00	£995.43	£3,670.40	£82.96	11.79%
99.2%	5	£158.77	£90.22	£497.54	£211.57	£0.00	£92.56	£0.00	£0.00	£1,050.67	£4,721.07	£87.55	12.45%
98.8%	6	£162.93	£92.59	£529.82	£225.30	£0.00	£98.57	£0.00	£0.00	£1,109.23	£5,830.30	£92.44	13.14%
98.4%	7	£167.21	£95.02	£564.20	£239.92	£0.00	£104.96	£0.00	£0.00	£1,171.30	£7,001.60	£97.61	13.87%
98.0%	8	£171.59	£97.51	£600.79	£255.49	£0.00	£111.77	£0.00	£0.00	£1,237.14	£8,238.74	£103.10	14.66%
97.6%	9	£176.09	£100.06	£639.74	£272.05	£0.00	£119.02	£0.00	£0.00	£1,306.95	£9,545.70	£108.91	15.49%
97.2%	10	£180.69	£102.68	£681.21	£289.68	£0.00	£126.74	£0.00	£0.00	£1,381.00	£10,926.69	£115.08	16.36%
96.8%	11	£185.42	£105.37	£725.35	£308.45	£0.00	£134.95	£0.00	£0.00	£1,459.53	£12,386.22	£121.63	17.3%
96.4%	12	£190.26	£108.12	£772.34	£328.43	£0.00	£143.69	£0.00	£0.00	£1,542.85	£13,929.08	£128.57	18.28%
96.0%	13	£195.24	£110.95	£822.36	£349.70	£0.00	£153.00	£0.00	£0.00	£1,631.24	£15,560.32	£135.94	19.32%
95.6%	14	£200.34	£113.84	£875.60	£372.34	£0.00	£162.90	£0.00	£0.00	£1,725.03	£17,285.34	£143.75	20.44%
95.2%	15	£205.57	£116.81	£932.27	£396.44	£0.00	£173.44	£0.00	£0.00	£1,824.54	£19,109.88	£152.04	21.62%
94.8%	16	£210.92	£119.86	£992.60	£422.10	£0.00	£184.67	£0.00	£0.00	£1,930.15	£21,040.03	£160.85	22.87%
94.4%	17	£216.42	£122.97	£1,056.81	£449.40	£0.00	£196.62	£0.00	£0.00	£2,042.22	£23,082.25	£170.18	24.19%
94.0%	18	£222.06	£126.18	£1,125.15	£478.47	£0.00	£209.33	£0.00	£0.00	£2,161.18	£25,243.43	£180.09	25.61%
93.6%	19	£227.83	£129.47	£1,197.89	£509.40	£0.00	£222.86	£0.00	£0.00	£2,287.44	£27,530.88	£190.62	27.11%
93.2%	20	£233.75	£132.83	£1,275.32	£542.32	£0.00	£237.27	£0.00	£0.00	£2,421.49	£29,952.36	£201.79	28.7%
92.8%	25	£0.00	£0.00	£1,774.37	£754.54	£0.00	£330.11	£0.00	£0.00	£2,859.03	£32,811.39	£238.25	33.88%
92.4%	30	£0.00	£0.00	£2,468.68	£1,049.78	£0.00	£459.28	£0.00	£0.00	£3,977.75	£36,789.14	£331.48	47.13%
Totals		£3,698.82	£2,101.84	£19,232.10	£8,178.33	£0.00	£3,578.03	£0.00	£0.00	£36,789.14	£36,789.14	Ave. ROI:	14.53%

As I've set out above, I'm satisfied that P told Mrs B and Mr B that the system would pay for itself by year 14, 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 B and Mr B The MCS certificate and quote sets out that the system is expected to produce 3,286.46 kWh a year.

I have looked at Mrs B and Mr B's FIT statements and can see that their system, on average, has generated 3,411.39 kWh. This is slightly 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. I think this 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 have 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 B and Mr B could've expected to receive from the system. So, while 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 B and Mr B entered into the contract.

The CMC continues to question whether the quotation document formed central part of the sales process with P when Mrs B and Mr B agreed to enter into the contract for the system. I've been provided with confirmation that the solar quote was emailed to Mrs B and Mr B following the original sales meeting. I have also carefully considered the points made by the representative along with those made by Shawbrook on behalf of P. Having done so, I remain satisfied that the quotation did form a central part of the sales process when Mrs B and Mr B agreed to enter into the contract.

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 B and Mr B to enter into the contract for the system. So, I won't be upholding this aspect of their complaint.

However, Shawbrook didn't provide its final response to Mrs B and Mr B's complaint until after it had been referred to this service. I believe that the fact Mrs B and Mr B didn't receive a response to their complaint undoubtedly caused them trouble and upset. So, I'll be supporting Shawbrook's offer by making an award of £200 to cover this.

My final decision

My final decision is that I uphold Mrs B and Mr B's complaint. In full and final settlement of it, Shawbrook Bank Limited must pay Mrs B and Mr B £200.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr B to accept or reject my decision before 10 March 2022.

Dave Morgan
Ombudsman

