

The complaint

Mr R complains that Shawbrook Bank Limited ("Shawbrook"), has rejected the claim he made under section 75 of the Consumer Credit Act 1974 ("the Act") in relation to a solar panel system he says was misrepresented to him by the supplier.

Mr R is represented by a claims management company ("the CMC").

What happened

In or around December 2015, Mr R was 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 his home. After being visited by a representative of P, Mr R decided to purchase the system and finance it through a 10-year fixed sum loan agreement with Shawbrook. The system was subsequently installed.

In September 2019, the CMC made a claim on Mr R'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 Mr R to enter into the contract with P. The CMC said the following misrepresentations had been made:

- the system would pay for itself within eight years,
- Mr R would receive £447.46 in the first year and £13,340 in FIT payments across 20 years,
- Mr R was told he'd save £158.40 on his electricity bill in the first year and £7,524 over 25 years
- The FIT payments and savings would cover the loan repayments
- The system was an excellent investment

Shawbrook hadn't issued a final response within eight weeks, so Mr R's complaint was referred to this service by the CMC.

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 R and found no reason to uphold the complaint.

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

- The loan section of the quote wasn't discussed with and signed by Mr R and highlighted the wrong loan term.
- Mr R was told the system would be self-funding over the term of the loan.
- Mr R wasn't provided with the quote and information pack during the original sales meeting.
- Mr R was misinformed about the deadlines for proposed FIT rate changes and that P

would make all necessary arrangements for registration.

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 Mr R paid for the system with a fixed sum loan agreement, Shawbrook agrees that section 75 applies to this transaction. This means that Mr R could claim against Shawbrook, the creditor, for any misrepresentation or breach of contract by P in the same way he 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 Mr R 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 CMC continues to question whether the quotation document formed a central part of the sales process with P when Mr R agreed to enter into the contract for the system. I have carefully considered the points made by the CMC 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 Mr R agreed to enter into the contract

The quote is a detailed document that sets out key information about the system, the expected performance, financial benefits and technical information. And as I'm satisfied that it formed a central part of the sales process it is therefore relevant when considering if there have been any untrue statements of fact alongside Mr R'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.

FIT payments

Mr R has alleged that he was told his 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 considered whether this supports what Mr R has said.

The system analysis page of the quote sets out the estimated income Mr R 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	£	372.56
Export tariff in year 1	£	75.10
Total income in year 1	£	447.66

Feed in tariff over 20 years

Assumed rate of RPI	3.20	%
Average generation tariff	£	0.165
Average export tariff	£	0.067
Average annual income	£	614.75

I think that the first of these tables is clear that Mr R could expect to receive a total FIT income in year one of £447.66.

The quote goes on to look at the electricity savings Mr R could expect from the system. The expected year one electricity saving is £158.40 and, when taking into account the optional extra's chose by Mr R the combined income and savings in year one is shown as £606.06. 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 120 months as this is the length of the loan that Mr R ultimately entered into with Shawbrook. This table shows the loan as repayable in 120 monthly payments of £117.26. 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 £117.26, to give an average difference between the monthly return from the system and the monthly loan repayment in each year.

120 payments of £117.26 p/m

Yr	Acc. grand total	Est. monthly return	Average monthly repayment diff.
1	£606.06	£50.50	£-66.54
2	£633.63	£52.80	£-64.24
3	£662.76	£55.23	£-61.81
4	£693.57	£57.80	£-59.24
5	£726.16	£60.51	£-56.53
6	£760.67	£63.39	£-53.65
7	£797.22	£66.44	£-50.60
8	£835.96	£69.66	£-47.38
9	£877.05	£73.09	£-43.95
10	£920.65	£76.72	£-40.32

I can see that the quote did highlight the table for 180 months rather than the 120 months chosen by Mr R. But as the quote included the table above, I think it shows this information was provided to Mr R. I also acknowledge that Mr R hasn't signed this part of the quote. While I haven't been provided with an explanation for this, I can see that Mr R did sign the quote on page 22 which included reference to the loan illustration.

I think the quote clearly sets out the income Mr R could expect to receive from the system, by way of FIT payments, as well as his expected contractual monthly loan repayments for whichever term of loan he ultimately chose to take. 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 he could expect to receive by way of FIT income and any additional savings, wouldn't be immediately sufficient to cover the monthly loan repayments. Therefore, I'm not satisfied that he was told that the monthly loan repayments would be covered by the FIT income alone.

Self-funding

I'll now consider whether P told Mr R 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 Mr R was 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 estimated performance over 20 years. This shows that by year 17 the overall benefits that Mr R 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				
100.0%	1	£372.56	£75.10	£158.40	£0.00	£0.00	£0.00	£0.00	£608.06	£608.06	£50.50	6.8%
100.0%	2	£384.48	£77.50	£171.64	£0.00	£0.00	£0.00	£0.00	£633.63	£1,239.69	£52.80	7.11%
100.0%	3	£396.79	£79.98	£185.99	£0.00	£0.00	£0.00	£0.00	£662.76	£1,902.45	£55.23	7.44%
99.6%	4	£407.84	£82.21	£200.73	£0.00	£0.00	£0.00	£0.00	£690.80	£2,593.25	£57.57	7.75%
99.2%	5	£419.21	£84.50	£216.64	£0.00	£0.00	£0.00	£0.00	£720.35	£3,313.60	£60.03	8.08%
98.8%	6	£430.88	£86.86	£233.81	£0.00	£0.00	£0.00	£0.00	£751.54	£4,065.14	£62.63	8.44%
98.4%	7	£442.86	£89.27	£252.33	£0.00	£0.00	£0.00	£0.00	£784.46	£4,849.60	£65.37	8.81%
98.0%	8	£455.18	£91.76	£272.31	£0.00	£0.00	£0.00	£0.00	£819.24	£5,668.84	£68.27	9.19%
97.6%	9	£467.83	£94.30	£293.87	£0.00	£0.00	£0.00	£0.00	£856.00	£6,524.84	£71.34	9.6%
97.2%	10	£480.82	£96.92	£317.13	£0.00	£0.00	£0.00	£0.00	£894.87	£7,419.72	£74.57	10.04%
96.8%	11	£494.16	£99.62	£342.24	£0.00	£0.00	£0.00	£0.00	£936.01	£8,355.72	£78.00	10.5%
96.4%	12	£507.86	£102.38	£369.31	£0.00	£0.00	£0.00	£0.00	£979.55	£9,335.27	£81.63	10.99%
96.0%	13	£521.94	£105.22	£398.52	£0.00	£0.00	£0.00	£0.00	£1,025.68	£10,360.96	£85.47	11.51%
95.6%	14	£536.40	£108.12	£430.04	£0.00	£0.00	£0.00	£0.00	£1,074.57	£11,435.53	£89.55	12.06%
95.2%	15	£551.25	£111.12	£464.04	£0.00	£0.00	£0.00	£0.00	£1,126.42	£12,561.94	£93.87	12.64%
94.8%	16	£566.50	£114.20	£500.72	£0.00	£0.00	£0.00	£0.00	£1,181.42	£13,743.36	£98.45	13.26%
94.4%	17	£582.16	£117.35	£540.30	£0.00	£0.00	£0.00	£0.00	£1,239.81	£14,983.17	£103.32	13.91%
94.0%	18	£598.24	£120.59	£582.98	£0.00	£0.00	£0.00	£0.00	£1,301.82	£16,285.00	£108.49	14.61%
93.6%	19	£614.76	£123.93	£629.03	£0.00	£0.00	£0.00	£0.00	£1,367.72	£17,652.72	£113.98	15.35%
93.2%	20	£631.72	£127.34	£678.71	£0.00	£0.00	£0.00	£0.00	£1,437.77	£19,090.49	£119.82	16.13%
Totals		£9,863.45	£1,988.24	£7,238.76	£0.00	£0.00	£0.00	£0.00	£19,090.49	£19,090.49	Ave. ROI:	10.71%

As I've set out above, I'm satisfied that P told Mr R that the system would pay for itself by year 17, as supported by the table above. If that were an untrue statement of fact, and I'm satisfied that this was what induced him to enter into the contract, and he 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 Mr R. The MCS certificate and quote sets out that the system is expected to produce 3,096.96 kWh a year.

I have looked at Mr R's FIT statements and can see that his system, on average, has generated 3,301.53 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 and I think explain why he hasn't been receiving the financial returns he 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 Mr R 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 Mr R entered into the contract.

The CMC has referenced previous decisions in order to support their view of the misrepresentations presented by Mr R. I'm unable to comment on the circumstances relating to other complaints. So, my decision here is based upon the circumstances and evidence specific to Mr R's complaint only.

The CMC also suggested that P would make all necessary arrangements to arrange FIT payments and misinformed Mr R about changes in FIT rates. I think pages 14 and 15 of the quote are clear on the process for the FIT scheme registration. And while I haven't been provided with an evidence to suggest that Mr R was assured to benefit from a higher FIT rate than he did, the evidence I have seen suggests that P provided the necessary registration documents within a reasonable timescale following completion of the installation.

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 Mr R to enter into the contract for the system, and I have found no other reason to uphold this complaint.

My final decision

My final decision is that I do not uphold Mr R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 24 February 2022.

Dave Morgan
Ombudsman