

## The complaint

Mrs C complains that Shawbrook Bank Limited (“Shawbrook”) has rejected the claim she made under section 75 of the Consumer Credit Act 1974 (“the Act”) in relation to a solar panel system she says was misrepresented to her by the supplier.

Mrs C is represented by a claims management company (“the CMC”).

## Background

In or around July 2015, Mrs C 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 her home. After being visited by a representative of P, Mrs C decided to purchase the system and finance it through a 15 year fixed sum loan agreement with Shawbrook. The system was subsequently installed.

In July 2020 the CMC made a claim to Shawbrook on Mrs C’s behalf under section 75 of the Act. 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 C to enter into the contract with P. The CMC said the following misrepresentations had been made:

- the total cost of the system was documented as £9,850 to mislead Mrs C, as when the interest was added the total cost was actually £18,945;
- P had told her not to register for FIT payments, as P would do this for her, but it never did, and so she had received no income from the system;
- the system would generate free electricity;
- the system would be self-funding; and
- the feed in tariff (FIT) would provide enough income to cover the finance agreement repayments costs.

Shawbrook issued a final response and explained that it didn’t agree the system had been misrepresented to Mrs C or that there were any other reasons for the claim to be upheld. However it did offer her £200 compensation for its delay in responding to the complaint.

One of our adjudicators looked into what had happened. Having considered all the information and evidence provided, our adjudicator didn’t think that P had misrepresented the system to Mrs C and found no reason to uphold the complaint.

The CMC didn’t agree with the adjudicator’s view for the following reasons:

- although the salesman had given Mrs C a copy of the quotation after the meeting, he had never explained the figures to her or taken her through the document;
- Mrs C had never signed the quotation, and she believes that the salesman forged her signature on it;
- other customers have reported similar sales tactics, so Mrs C’s claims were credible;
- where a person is unaware that a representation is false, the fact that they could

have found out it was false by taking reasonable care is not a defence in law.<sup>1</sup>

As an agreement couldn't be reached, the case has been passed to me for review.

## **My findings**

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 sections 56 and 75 of the Act.

Section 75 provides protection for consumers for goods or services bought using credit. As Mrs C paid for the system with a fixed sum loan agreement, Shawbrook agrees that section 75 applies to this transaction. This means that Mrs C could claim against Shawbrook, the creditor, for any misrepresentation or breach of contract by P in the same way she 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 C 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 two different versions of the solar quotation document, 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 C's recollection of the sale.

Shawbrook and the CMC have each provided different versions of the quotation. They are broadly similar, and most of the differences between the figures in each are minor, but Shawbrook's copy contains an obvious error, namely that the area of Mrs C's roof is said to be more than 23 million square metres. I have therefore disregarded it and relied on Mrs C's copy, since it does not appear to contain any errors and it is the copy she was left with.

Since there is no dispute that Mrs C was given a copy of the quotation after the sales meeting, and that she agreed to buy the system, I don't think the allegation that the salesman forged her signature is plausible; why would he need to? She has probably just

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<sup>1</sup> Citing *Chitty on Contracts* (32nd edition), paragraph 7-043 (corresponding to para. 9-051, 34th ed.).

forgotten signing it during the five years which elapsed between the sale and her complaint. In any case, I think nothing turns on this point because she accepts that the quote was given to her.

The CMC continues to question whether the quotation document formed a central part of the sales process with P when Mrs C agreed to enter into the contract for the system. I have 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 C agreed to enter into the contract.

The credit agreement sets out the amount being borrowed, the interest to be charged, the total amount payable, the term of the loan and the contractual monthly repayments.

#### Cost of the system

The CMC has said that the cost of the system was documented as £9,850. It has said that this was done to mislead Mrs C as this figure did not include any interest associated with the loan, so it hid the true cost of the system, £18,945.

I'm satisfied that the credit agreement provided to Mrs C makes it clear that the overall cost of the system is £18,945. This sets out that the cash price of the system was £9,850, the total amount of credit is £9,850, the total charge for credit is £9,095, and it goes on to show that the total amount payable would be £18,945.

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 cash price of the system was £9,850, it would cost Mrs C more than this as she had decided to pay for it with an interest bearing loan.

#### FIT payments and registration

Mrs C has alleged that she was told her monthly loan repayments would be covered, or "self-funded" by the FIT payments. She has also alleged that P told her that it would register the system for her and that she need not do anything, with the result that she has received no FIT payments at all. I've considered the quote that was provided to her by P and considered whether this supports any of what she has said.

On page 15 of the quote it says, under the heading "Feed in Tariff (FIT)":

"All you have to do is fill out the form with the relevant information including the MCS number and the system is ready to be registered to start claiming your FIT. If you have any issues with this documentation we will be more than happy to help you complete it. It is the customer's responsibility to provide their personal details and bank details to the energy company."

I think that's clear, so I am not persuaded that the salesman told Mrs C that she did not need to do anything. He may have told her that P would help her with it, and she misheard or misunderstood, but I do not accept that P misrepresented whose responsibility it was, or that P is responsible for the system not having been registered for FIT payments.

The system analysis page of the quote sets out the estimated income Mrs C 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

<b>Generation tariff in year 1</b>	£	450.59
<b>Export tariff in year 1</b>	£	84.57
<b>Total income in year 1</b>	£	535.16

### Feed in tariff over 20 years

<b>Assumed rate of RPI</b>	3.22	%
<b>Average generation tariff</b>	£	0.178
<b>Average export tariff</b>	£	0.067
<b>Average annual income</b>	£	737.61

I think that the first of these tables is clear that Mrs C could expect to receive a total FIT income in year one of £535.16.<sup>2</sup>

The quote goes on to look at the electricity savings Mrs C could expect from the system. The expected year one electricity savings is £384.02 and, when taking into account the optional extras chosen by Mrs C, the combined income and savings in year one is shown as £1,080.46. 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 C entered into with Shawbrook. This table shows the loan as repayable in 180 monthly payments of £105.51. (This is incorrect; the loan agreement gives the correct monthly figure of £105.25, but the difference – 26p – is too small to affect the following observations.) 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 £105.51, to give an average difference between the monthly return from the system and the monthly loan repayment in each year. These figures are negative in the first three years.

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<sup>2</sup> In Shawbrook’s version of the quote, this figure is £528.88, a difference of about six pounds.

### 180 payments of £105.51 p/m

Yr	Acc. grand total	Est. monthly return	Average monthly repayment diff.
1	£1,080.46	£90.04	£-14.46
2	£1,142.78	£95.23	£-9.27
3	£1,209.37	£100.78	£-3.72
4	£1,280.58	£106.71	£2.21
5	£1,356.76	£113.06	£8.56
6	£1,438.27	£119.86	£15.36
7	£1,525.54	£127.13	£22.63
8	£1,619.01	£134.92	£30.42
9	£1,719.16	£143.26	£38.76
10	£1,826.51	£152.21	£47.71
11	£1,941.62	£161.80	£57.30
12	£2,065.09	£172.09	£67.59
13	£2,197.59	£183.13	£78.63
14	£2,339.81	£194.98	£90.48
15	£2,492.52	£207.71	£103.21

I think the quote clearly sets out the income Mrs C could expect to receive from the system, by way of FIT payments, as well as her 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 she could expect to receive by way of FIT income and any additional savings would not be immediately sufficient to cover the monthly loan repayments. Therefore, I'm not satisfied that she was told that the monthly loan repayments would be covered by the FIT income alone.

#### Self-funding

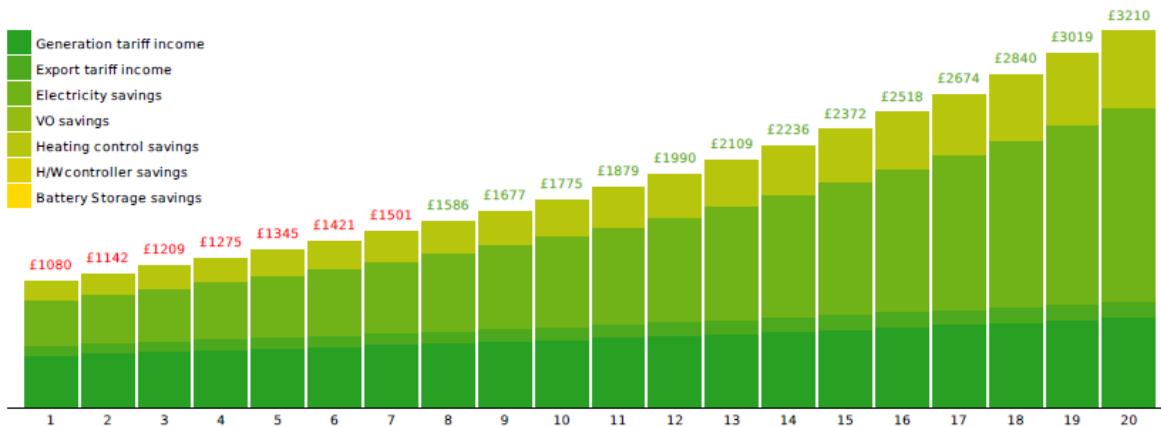
I'll now consider whether P told Mrs C that the system would self-funding.

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 (notwithstanding the 26p discrepancy in the monthly payments).

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 C was told by P that the system would be self-funding over a period of time.

The "Key Facts" page of the quote has a graph detailing the performance over 20 years. This shows that by year 8 the overall benefits that Mrs C could expect to receive would have exceeded the cash price of the system.



Your estimated payback time is



The estimated payback time is based on cash purchase. Note: The payback time will fluctuate dependant on any finance taken against the system.

A later page of the quote has a table detailing the performance of the system over 20 years. This shows that by the end of year 13 the overall benefits that Mrs C could expect to receive would have exceeded the total amount payable under the loan agreement (£18,945).

Panel degradation	Yr	Income			Energy saving optional extras *				Total income savings	Acc. grand total	Est. monthly return	Ann. ROI
		Generation Tariff	Export Tariff	Elec. savings	VO savings	Heating control	H/W controller	Battery storage				
100.0%	1	£450.59	£84.57	£384.02	£0.00	£161.28	£0.00	£0.00	£1,080.46	£1,080.46	£90.04	10.94%
96.4%	12	£615.54	£115.53	£897.17	£0.00	£362.51	£0.00	£0.00	£1,990.75	£17,886.25	£165.89	20.16%
96.0%	13	£632.73	£118.75	£968.31	£0.00	£389.88	£0.00	£0.00	£2,109.69	£19,995.93	£175.80	21.36%

As I've set out above, I'm satisfied that P told Mrs C that the system would pay for itself and the loan by year 13, as supported by the table above. If that were an untrue statement of fact, and I'm satisfied that this was what induced her to enter into the contract, and she 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 C. The MCS certificate and quote sets out that the system is expected to produce 3,446 kWh a year.

I have looked at Mrs C's recent meter reading and can see that her system, on average, has generated 3,390 kWh a year. This is only slightly less than estimated by P at the point of sale (a difference of less than two per cent), 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 2005 and 2014 to calculate the utility price and RPI inflation. I think that was reasonable. The assumptions used by P were based on the information available from the ONS at the time. 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 C could have expected to receive from the system.

### 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 C 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 this complaint.

I leave it to Mrs C to decide whether to accept Shawbrook's offer of £200 compensation for its delay in responding to his complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 16 March 2022.

Richard Wood  
**Ombudsman**