

The complaint

Mr A 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 were misrepresented to him by the supplier.

Mr A is represented by his brother, Mr U.

What happened

On or around 20 June 2015, Mr A was contacted by a representative of a company I'll call "P" to talk about purchasing two solar panel systems ('the systems') to be installed at two of his properties. I'll refer to these as Property Y and Property Z.

After being visited by a representative of P, Mr A decided to purchase the systems and finance them through a 15-year fixed sum loan agreement with Shawbrook. The systems were subsequently installed.

In 22 April 2017 Mr A made a claim under section 75 of the Act to Shawbrook. He said that 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 him to enter into the contract with P. Mr A has alleged that:

- P told him on multiple occasions that the energy stored from the system would be sold through the FIT scheme and the money generated would go towards the loan resulting in nil payments to be made by Mr A.

He has also explained:

- there was a delay registering the system to receive feed in tariff (FIT) payments; and
- Mr A fell behind with payments after five months. Shawbrook have added fees and charges which has adversely affected his credit file.

Shawbrook issued a final response and explained that P provided evidence showing that they sent the information required to register the systems to receive FIT payments in September 2015. However, they did acknowledge that there was a short delay and offered £100 to recognise this. They also explained that the fees and charges had been added to the account correctly and they didn't think that these should be removed. Shawbrook also didn't think 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 they thought that the case should be upheld. They thought that P had not provided Mr A with an accurate comparison of the cost and benefit of both systems.

Shawbrook did not respond in full to the assessment. 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 A paid for the system with a fixed sum loan agreement, Shawbrook agrees that section 75 applies to this transaction. This means that Mr A 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 A 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 Mr A 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 quotes are detailed documents that set 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 Mr A'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.

P produced two separate quotes for the two systems at Property Y and Property Z. However, there is one loan agreement which covers the cost of both systems.

Mr A's testimony

Mr A has provided his testimony explaining that he purchased the system because he was led to believe that the FIT payments would cover the loan repayments. He has said that he believed he wouldn't have to contribute anything towards the loan, and he purchased both systems on the basis that they would come at no additional cost to him.

Mr A has explained that there was a delay in P providing him with the information that he needed to register his systems so he could receive the FIT payments. He has said that he was able to make his first five months payments whilst the registrations were completed. However, once the systems were registered, and the FIT payments he received were lower than his monthly loan repayments, he has been unable to maintain his contractual loan repayments.

I have no reason to doubt what Mr A has said. It is difficult to understand why he would have entered into a 15-year loan contract which would have increased his monthly outgoings. He has been consistent in his testimony and I think his allegations are plausible when looking at the information provided by him and Shawbrook.

Cost and benefit of the system

I think it's clear that the quote was a central part of the sales presentation. Mr A has confirmed that he also received a copy of this document. I think this document is key and I think it supports Mr A recollections from the point of sale and that there have been untrue statements of fact that induced him to enter into the contract.

The loan agreement sets out that the cash price of the goods was £16,193.00, total charge for credit was £15,467.20 and total amount payable is £31,660.20. The monthly loan repayments are £175.86. This covers the cost of both systems installed at Property Y and Property Z.

P provided two separate quotes to Mr A explaining the financial benefit each system would provide to him.

The quote for Property Y contains a page titled 'repayments' with a series of tables. This has three tables set out over 60 months, 120 months and 180 months. I've focused on the table for 180 months this is the length of the loan that Mr A entered into with Shawbrook. This table sets out that there are 180 monthly payments of £87.48 due and compares the overall expected grand total from the system, averaged over a monthly basis, versus the expected loan repayments.

I think that this shows that Mr A could expect a monthly loss of £1.22 for the first year and then the system would provide a monthly profit of £3.97 and £9.52 in the second year and third year.

180 payments of £87.48 p/m

Yr	Acc. grand total	Est. monthly return	Average monthly repayment diff.
1	£1,035.16	£86.26	£-1.22
2	£1,097.36	£91.45	£3.97
3	£1,163.99	£97.00	£9.52
4	£1,235.39	£102.95	£15.47

Yr	Acc. grand total	Est. monthly return	Average monthly repayment diff.
5	£1,311.92	£109.33	£21.85
6	£1,394.01	£116.17	£28.69
7	£1,482.07	£123.51	£36.03
8	£1,576.59	£131.38	£43.90
9	£1,678.07	£139.84	£52.36
10	£1,787.07	£148.92	£61.44
11	£1,904.18	£158.68	£71.20
12	£2,030.06	£169.17	£81.69
13	£2,165.41	£180.45	£92.97
14	£2,310.97	£192.58	£105.10
15	£2,467.58	£205.63	£118.15

The quote for Property Z contains the same table and sets out that there are 180 monthly payments of £84.40 due. This table suggests that Mr A would have a monthly loss of £4.24 in year one followed by a monthly profit of £0.55 and £5.68 in year two and three.

180 payments of £84.40 p/m

Yr	Acc. grand total	Est. monthly return	Average monthly repayment diff.
1	£961.92	£80.16	£-4.24
2	£1,019.42	£84.95	£0.55
3	£1,080.99	£90.08	£5.68
4	£1,146.96	£95.58	£11.18

Yr	Acc. grand total	Est. monthly return	Average monthly repayment diff.
5	£1,217.66	£101.47	£17.07
6	£1,293.46	£107.79	£23.39
7	£1,374.78	£114.56	£30.16
8	£1,462.03	£121.84	£37.44
9	£1,555.70	£129.64	£45.24
10	£1,656.29	£138.02	£53.62
11	£1,764.35	£147.03	£62.63
12	£1,880.47	£156.71	£72.31
13	£2,005.30	£167.11	£82.71
14	£2,139.54	£178.29	£93.89
15	£2,283.94	£190.33	£105.93

I think it would be reasonable to expect P to provide paperwork to Mr A that accurately and clearly compared the cost to the benefit. However, I don't think that on this occasion this has happened. P have provided a detailed quotation for each system separately setting out the benefit in relation to the cost for each system in turn. But Mr A has one loan agreement to pay for both systems and therefore has one monthly repayment. Therefore, Mr A is unable to look at either quotation and determine his monthly cost compared to his monthly benefit and

I'm satisfied he would have relied on what the salesperson told him, that his monthly loan repayments would be covered by the FIT payments he would receive.

I also think a reasonable person would look at this and expect that they would be making a profit on both systems after the first year. My view is that this table does not reasonably represent a true picture of the situation that Mr A would not be receiving a monthly profit after making his loan repayments.

Based on this I think that the benefits of the systems were misrepresented to Mr A.

Delay in FIT registration

Mr A has complained that P did not provide him with all of the information required to register his system to receive FIT payments. As explained above, I believe that the benefits of the system were misrepresented, and I think the compensation explained below will take into account any delay in FIT registration.

Putting things right

Our role is to resolve individual disputes between consumers and businesses fairly, reasonably, quickly and informally.

Determining fair compensation is not always an exact science and it is more difficult in a case like this where solar panels have been installed at the property.

I've considered if it's fair to unwind the credit agreement, remove both sets of solar panels and refund Mr A the payments made (less any financial benefit gained from the installation of the solar panels). But I think it may be disproportionate to do this when the panels are generating green energy. I think there's an alternative that would put Mr A in a fair position.

In this case, I think fair compensation is trying to make sure that Mr A doesn't suffer a financial loss due to the misrepresentation which in my view would mean that both solar panel systems should be cost neutral over the loan term – in summary, my aim is to make sure that total outgoings (including the monthly loan repayments) are equal to any income and savings that the panels generate.

So, I think to put things right Shawbrook should recalculate the original loan based on the known and assumed savings and income to Mr A from both systems over the term of the loan, so he pays no more than that, and he keeps the systems. This should be done for each system. This will put Mr A in a cost neutral position over the loan term, meaning he's not disadvantaged by the misrepresentation.

Normally, by recalculating the loan this way, Mr A's monthly repayments would reduce, meaning he's paid more each month than he should've resulting in an overpayment balance. And, as Mr A has 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 A have the following options as to how he would like the 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 A and he continues to make his current monthly payment resulting in his loan finishing early, or
- d) the overpayments are returned to Mr A and he pays a new monthly payment until the end of the loan term.

If Mr A accepts my decision, he should indicate on the acceptance form which option he wishes to accept.

Shawbrook have added fees and charges to Mr A's account and have recorded negative entries on his credit file. I think it would be reasonable for all fees and charges to be removed from the account. I also think that Shawbrook should remove all negative entries added to Mr A's credit file in relation to this loan up to this point.

I also think that Shawbrook should pay £100 compensation for the trouble and upset caused.

My final decision

My final decision is that Mr A's complaint should be upheld. In full and final settlement of it, I require Shawbrook Bank Ltd to:

- Allow Mr A to keep the solar panels
- Estimate the potential savings and income to Mr A from the panels over the loan term, and rework the loan, so that he pays no more than this. Where possible it should use Mr A's electricity bills and FIT statements to do this
- Add 8% simple interest* to any overpayment made from the date the overpayment was made to the date of settlement
- Allow Mr A to decide how he'd like his overpayments to be used, using the four options described above.
- Remove all negative entries to Mr A's credit report in relation to this loan up to this point
- Pay Mr A £100 for the trouble and upset caused.

*if Shawbrook Bank Limited considers it's required by HM Revenue & Customs to take income tax from that interest, it should tell Mr A how much it's taken off. It should also give him a certificate showing this, if he asks for one, so he can claim the tax from HM Revenue & Customs.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 31 March 2022.

Sarah Holmes
Ombudsman