

The complaint

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

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

What happened

In or around September 2014 Mr and Mrs B were contacted by a representative of a company I'll call "P" to talk about buying a solar panel system ("the system") to be installed at their home. After a visit from a representative of P, Mr and Mrs B decided to buy the system, and to finance it through a 15-year fixed sum loan agreement with Shawbrook. The system was subsequently installed.

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

- the total cost of the system was shown as £8,906.10 to mislead Mr and Mrs B, since when interest was added, the total cost was £17,388;
- the system would be self-funding by virtue of the feed in tariff (FIT) payments and electricity savings; and
- the system wouldn't cost Mr and Mrs B a penny.

In its final response to the complaint, Shawbrook explained that it didn't agree that the system had been misrepresented to Mr and Mrs B, or that there was any other reason for the claim to be upheld. But it offered to pay Mr and Mrs B £200 to apologise for the time it took to respond to their complaint.

One of our investigators looked into what had happened. She commented that P had given Mr and Mrs B three different estimates. Shawbrook was unable to provide a reason for this. It had told us it had contacted P to seek clarification, but no explanation had been provided. The investigator pointed out that the system was underperforming in comparison to all three estimates. She thought that Mr and Mrs B had been told that the system would be self-funding, based on the higher performance figures shown in the quote. That amounted to a misrepresentation. And she thought it was this that had induced them to enter into the contract and that they'd suffered a financial loss as a result.

Shawbrook didn't agree with the investigator's view. As an agreement couldn't be reached, the case has been passed to me.

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 sections 56 and 75 of the Act. Section 75 provides protection for consumers for goods or services bought using credit.

As Mr and Mrs B paid for the system with a fixed-sum loan agreement, Shawbrook agrees that section 75 applies to this transaction. This allows Mr and Mrs B to 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 Mr and Mrs 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 their 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 looked at these in detail, and have considered 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 that it is therefore relevant, alongside Mr and Mrs B's recollection of the sale, when considering if there were any untrue statements of fact.

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

Point of sale documentation

The documents P gave Mr and Mrs B at the point of sale included three different generation estimates. I've summarised these in the table below.

Date	Document	Generation estimate(s) kWh	Optional extras	Cost of system	Year 1 income & savings
Undated	Typed contract (unsigned)	3,140.80	Hot water controller	£8,906.10	£897.68
27.09.14	P personal quotation (unsigned)	3,140.80 3,266.43	Hot water controller	£8,906.10	£1,069.28
27.09.14	One-page handwritten contract (signed)	2,889	None	£8,906.10	£705.33

Shawbrook has asked P to provide clarification about the sales process to explain why Mr and Mrs B were given three different generation estimates. But P hasn't provided the clarification requested.

Where the evidence is incomplete or inconclusive, I need to decide what I think's most likely to have happened, based on the information I have.

Mr and Mrs B say that P told them their system would be self-funding, as the combined return from the FIT and the savings on their electricity bills would be enough to cover the cost of the system. As shown in the table above, the quote showed estimated first year income and savings of £1,069.28. That would have been nearly enough to cover Mr and Mrs B's monthly repayments right from the first year. And by the twelfth year, it would have generated enough to cover the total amount payable under the credit agreement.

But the MCS certificate shows an estimated annual generation figure of 2,889 kWh – significantly lower than that shown in the quote. And this matches the estimated generation shown in the handwritten contract. The handwritten contract, which Mr and Mrs B appear to have signed on the same day the quote was prepared, doesn't include a hot water controller, or any other optional extras. But the cost wasn't reduced to reflect this, or the fact that the estimated generation output was, in fact, significantly lower than shown in the quote. And I've seen nothing to suggest that Mr and Mrs B were given an amended quote to reflect the lower estimated generation figure.

The signed, handwritten contract shows an expected total first year return of £705.33. But it doesn't mention that total cost of £8,906.10 doesn't include interest on the loan. And there's no mention of the monthly loan repayments Mr and Mrs B would need to make. This means Mr and Mrs B wouldn't have been able to use this document to make an accurate comparison of the cost and benefit of the system. And I think Mr and Mrs B would have relied on the representations made to them by P's salesperson that the cost of the system would be covered by the FIT payments and the savings they'd make on their energy bills.

So in the absence of an amended quote, showing the lower expected generation figure alongside the details of the benefits of the system, I think the overall benefit of the system was misrepresented to Mr and Mrs B. And I think it's likely that they were induced to enter into the contract on the basis of the higher generation and return estimates shown on the quote.

As it is, the system has been performing at a lower rate than shown in the MCS certificate, and a significantly lower rate than either of the figures shown in the quote.

Our role is to resolve individual disputes between consumers and businesses fairly, reasonably, quickly and informally. Determining fair compensation isn't always an exact science and it's more difficult in a case like this, where solar panels have been installed at the property.

I've thought about whether it would be fair to unwind the credit agreement, remove the solar panels and give Mr and Mrs B a refund of all 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, given that the panels are working and generating green energy. And I think there's an alternative that would put Mr and Mrs B in a fair position.

I think that the fairest solution is to ensure that Mr and Mrs B don't suffer a financial loss as a result of having had the system installed. This means that the solar panel system needs to be cost-neutral over the 15-year loan term. In other words, Mr and Mrs B's total outgoings (including the monthly loan repayments) should be equal to any income and savings that the panels generate.

Putting things right

To put things right Shawbrook should recalculate the loan so that Mr and Mrs B pay no more than the known and assumed savings and income to Mr and Mrs B from the solar panels over the 15-year term of the loan. And Mr and Mrs B should be allowed to keep the solar panel system. This will put Mr and Mrs B in a cost-neutral position over the loan term, meaning that they're not disadvantaged by the misrepresentation.

If the recalculated loan shows that Mr and Mrs B would have paid less each month than they have actually paid, Shawbrook should give Mr and Mrs B a choice between the following options as to how they would like the overpayments they've made to be used:

- (a) the overpayments are used to reduce the outstanding balance of the loan and they continue to make their current monthly payment, resulting in the loan finishing early,
- (b) the overpayments are used to reduce the outstanding balance of the loan and they pay a new monthly payment until the end of the loan term,
- (c) the overpayments are returned to Mr and Mrs B and they continue to make their current monthly payment resulting in the loan finishing early, or
- (d) the overpayments are returned to Mr and Mrs B and they pay a new monthly payment until the end of the loan term.

Shawbrook should pay Mr and Mrs B simple interest at 8% per year on the amount of each overpayment from the date of the overpayment to the date of settlement.

Finally, Shawbrook should pay Mr and Mrs B the £200 compensation it offered them for its delay in responding to their complaint, if it hasn't already done so.

My final decision

My decision is that I uphold this complaint. I require Shawbrook Bank Limited to put things right by doing as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 28 April 2022.

Juliet Collins
Ombudsman