

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”).

What happened

In or around September 2017, 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 November 2019, the CMC made a claim on Mrs C’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 C to enter into the contract with P. The CMC said the following misrepresentations had been made:

- the system would be self-funding by virtue of the FIT payments and electricity savings; and
- the system would pay for itself within 12 years; and
- P would arrange for Mrs C FIT account to be opened; and
- Mrs C was told she’d save £16,650 on her electricity bill over 25 years; and
- the Voltage Doctor would save her £10,114 on her electricity bill over 25 years; and
- Mrs C would receive a profit of £20,000 once the loan was repaid; and
- Mrs C’s council tax bill would be reduced; and
- Mrs C would use 75% of electricity the panels would generate; and
- the system would work all year round and there wouldn’t be much difference in the winter months from the generation during the summer.

Shawbrook didn’t issue a final response within eight weeks of the complaint. When it did respond, it 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. But it acknowledged there had been delays with their investigations and offered Mrs C £200 to reflect this.

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 C and found no other reason to uphold the complaint. But our investigator did endorse Shawbrook’s offer of £200 to reflect the delays with their investigation.

The CMC didn't respond to our investigator's view. So, 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 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 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 C'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

Mrs C has alleged that she was told her monthly loan repayments would be covered, or 'self-funded' by the FIT payments and electricity savings. She also said P would arrange for her FIT account to be opened. But Mrs C's FIT account wasn't registered until May 2019. I've considered the quote that was provided by P and considered whether this supports what Mrs C has said.

Pages 16 and 17 of the quote provide details of the FIT scheme, how it operates and how to apply for it. It confirms that P *"will issue you with a Completion Pack, in this is your...FIT form. 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"*.

P has provided evidence and confirmed a completion pack and FIT registration form was sent to Mrs C by email and by post within a reasonable time of the system being installed and commissioned. And I haven't seen anything else to suggest that P was directly responsible for the late registration of Mrs C's FIT account. So, I can't reasonably conclude that P did anything wrong here.

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, once registered. 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

Current electricity spend per month	£	64
Generation tariff in year 1	£	93.17
Export tariff in year 1	£	57.57
Total income in year 1	£	150.74

Feed in tariff over 20 years

Assumed rate of RPI	3.04	%
Average generation tariff	£	0.060
Average export tariff	£	0.074
Average annual income	£	222.05

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 £150.74.

The quote goes on to look at the electricity savings Mrs C could expect from the system. The expected year one electricity savings is £267.32 and, when taking into account the optional extra's chose by Mrs C the combined income and savings in year one is shown as £571.66. 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 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 £98.45. 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 £98.45, to give an average difference between the monthly return from the system and the monthly loan repayment in each year.

180 payments of £98.45 p/m			
Yr	Acc. grand total	Est. monthly return	Average monthly repayment diff.
2	£606.89	£50.57	£-47.88
3	£644.48	£53.71	£-44.74
4	£684.61	£57.05	£-41.40
5	£727.46	£60.62	£-37.83
6	£773.22	£64.44	£-34.01
7	£822.08	£68.51	£-29.94
8	£874.28	£72.86	£-25.59
9	£930.05	£77.50	£-20.95
10	£989.63	£82.47	£-15.98
11	£1,053.31	£87.78	£-10.67
12	£1,121.37	£93.45	£-5.00
13	£1,194.12	£99.51	£1.06
14	£1,271.89	£105.99	£7.54
15	£1,355.05	£112.92	£14.47

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, I think it clearly sets 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.

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.

I'm of the view 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 duration of time.

The 'system performance and returns' page of the quote has a table detailing the performance over 25 years. This shows that by year 18 the overall benefits that Mrs C 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	£93.17	£57.57	£267.32	£153.60	£0.00	£0.00	£0.00	£0.00	£571.66	£571.66	£47.64	6.20%
100.0%	2	£96.00	£59.32	£286.78	£164.78	£0.00	£0.00	£0.00	£0.00	£606.88	£1,178.54	£50.57	6.59%
100.0%	3	£98.92	£61.12	£307.66	£176.78	£0.00	£0.00	£0.00	£0.00	£644.48	£1,823.02	£53.71	6.99%
99.6%	4	£101.52	£62.73	£328.74	£189.65	£0.00	£0.00	£0.00	£0.00	£682.64	£2,505.66	£56.89	7.41%
99.2%	5	£104.19	£64.38	£351.25	£203.45	£0.00	£0.00	£0.00	£0.00	£723.27	£3,228.93	£60.27	7.85%
98.8%	6	£106.92	£66.07	£375.30	£218.27	£0.00	£0.00	£0.00	£0.00	£766.56	£3,995.49	£63.86	8.32%
98.4%	7	£109.73	£67.80	£401.00	£234.16	£0.00	£0.00	£0.00	£0.00	£812.68	£4,808.17	£67.72	8.82%
98.0%	8	£112.60	£69.58	£428.44	£251.20	£0.00	£0.00	£0.00	£0.00	£861.82	£5,669.99	£71.82	9.35%
97.6%	9	£115.55	£71.39	£457.75	£269.49	£0.00	£0.00	£0.00	£0.00	£914.19	£6,584.18	£76.16	9.92%
97.2%	10	£118.57	£73.27	£489.06	£289.11	£0.00	£0.00	£0.00	£0.00	£970.02	£7,554.19	£80.83	10.53%
96.8%	11	£121.68	£75.18	£522.51	£310.16	£0.00	£0.00	£0.00	£0.00	£1,029.53	£8,583.72	£85.79	11.17%
96.4%	12	£124.86	£77.15	£558.23	£332.73	£0.00	£0.00	£0.00	£0.00	£1,092.97	£9,676.69	£91.06	11.86%
96.0%	13	£128.12	£79.16	£596.39	£356.96	£0.00	£0.00	£0.00	£0.00	£1,160.63	£10,837.32	£96.72	12.60%
95.6%	14	£131.47	£81.23	£637.14	£382.94	£0.00	£0.00	£0.00	£0.00	£1,232.78	£12,070.10	£102.73	13.38%
95.2%	15	£134.90	£83.35	£680.66	£410.82	£0.00	£0.00	£0.00	£0.00	£1,309.73	£13,379.83	£109.14	14.21%
94.8%	16	£138.41	£85.53	£727.14	£440.73	£0.00	£0.00	£0.00	£0.00	£1,391.81	£14,771.64	£115.98	15.11%
94.4%	17	£142.02	£87.75	£776.79	£472.82	£0.00	£0.00	£0.00	£0.00	£1,479.38	£16,251.02	£123.28	16.06%
94.0%	18	£145.72	£90.03	£829.81	£507.24	£0.00	£0.00	£0.00	£0.00	£1,572.81	£17,823.82	£131.07	17.07%
93.6%	19	£149.51	£92.38	£886.43	£544.16	£0.00	£0.00	£0.00	£0.00	£1,672.48	£19,496.30	£139.37	18.15%
93.2%	20	£153.39	£94.78	£946.90	£583.78	£0.00	£0.00	£0.00	£0.00	£1,778.86	£21,275.16	£148.24	19.31%
91.2%	21-25	£0.00	£0.00	£5,795.35	£3,621.74	£0.00	£0.00	£0.00	£0.00	£9,417.09	£30,692.25	£156.95	20.44%
Repair/Replace													
Totals		£2,427.24	£1,499.79	£16,650.66	£10,114.57	£0.00	£0.00	£0.00	£0.00	£30,692.25	£30,692.25	Ave. ROI:	13.32%

As I've set out above, I'm satisfied that P told Mrs C that the system would pay for itself by year 18, 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 2,289.14 kWh a year.

As I mentioned above, Mrs C's FIT account wasn't registered until May 2019. So, she didn't receive any FIT income before then. Our investigator asked the CMC to provide copies of any FIT statements Mrs C had received following completion of her registration. Unfortunately, these haven't been provided. So, I've not seen anything that might lead me to conclude that the system isn't 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. This and the failure to promptly register for FIT payments does, I think, explain why she hasn't been receiving the financial returns she 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, coupled with a lack of FIT income.

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 C 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 C entered into the contract.

Other energy savings assumptions

The CMC makes detailed reference to the validity of the assumptions used by P in relation to the extras that Mrs H chose to be installed at her home. In doing so, they have referenced reports and information from various sources.

This service has established that P's sales and quotation processes have been subjected to expert scrutiny. The question of the appropriateness of assumptions underpinning an individual quotation is a complex sector-specific matter. This service has been comforted that P's assumptions are appropriately regulated by specialist trade bodies and Alternative Dispute Resolution (ADR) entities, specific to the sector. Based upon this, I've not been provided with anything that leads me to doubt the validity of P's assumptions in Mrs C's case.

The sales presentation

Much of Mrs C's claim relates to information she believes was verbally provided during the initial sales meeting. I'm satisfied that the quote formed a central part of the sales process. It would've been discussed with Mrs C, which the original complaint supports. So, I've not been persuaded that the salesperson would've said something that would then have been contradicted by the quote. To support this, I'm satisfied that Mrs C was sent the quote, had time to consider it and to raise any issues prior to 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 Mrs C to enter into the contract for the system. So, I've found no other reason to uphold this aspect of the

complaint. But I do acknowledge that Mrs H experienced delays when awaiting Shawbrook's response to her complaint and claim. Their offer of £200 to reflect this feels fair here and I shall support that in my final decision.

My final decision

My final decision is that I partially uphold Mrs C's complaint.

I require Shawbrook Bank Limited to pay compensation to Mrs C of £200.

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

Dave Morgan
Ombudsman