

## **The complaint**

Miss C and Mr W complain that Shawbrook Bank Limited (“Shawbrook”), has rejected the claim they made under section 75 of the Consumer Credit Act 1974 (“the Act”) in relation to a solar panel system they say was misrepresented to them by the supplier.

## **What happened**

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

Miss C and Mr W later made a claim under section 75 of the Act to Shawbrook. They 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 Miss C and Mr W to enter into the contract with P. They have made the following points;

- P said the system would generate sufficient returns to cover the loan repayments but that hasn’t been the case.

Shawbrook didn’t issue a final response, so Miss C and Mr W referred their complaint to this service. Since then, Shawbrook have offered compensation of £200 to reflect the delays Miss C and Mr W have experienced while they investigated their complaint.

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 Miss C and Mr W and found no reason to uphold their complaint. But our investigator did think that Shawbrook’s offer of £200 compensation was reasonable in the circumstances.

Miss C and Mr W didn’t agree with the investigator’s view for the following reasons:

- they didn’t achieve the monthly returns that were detailed within the quote; and
- P didn’t fit the OWL energy monitor to enable energy generation to be automatically reported and monitored; and
- P didn’t resolve a complaint about damage to their garden from the use of scaffolding; and
- P connected illegal wires to a box mounted outside their property.

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 Miss C and Mr W paid for the system with a fixed sum loan agreement, Shawbrook agree that section 75 applies to this transaction. This means that Miss C and Mr W could 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 Miss C and Mr W 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 Miss C, Mr W 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 Miss C and Mr W'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

Miss C and Mr W have alleged that they were 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 Miss C and Mr W has said.

The system analysis page of the quote sets out the estimated income Miss C and Mr W 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	£	370.65
Export tariff in year 1	£	69.57
Total income in year 1	£	440.22

#### Feed in tariff over 20 years

Assumed rate of RPI	3.22	%
Average generation tariff	£	0.178
Average export tariff	£	0.067
Average annual income	£	606.75

I think that the first of these tables is clear that Miss C and Mr W could expect to receive a total FIT income in year one of £440.22.

The quote goes on to look at the electricity savings Miss C and Mr W could expect from the system. The expected year one electricity savings is £191.98 and the combined income and savings in year one is shown as £613.23. 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 Miss C and Mr W entered into with Shawbrook. This table shows the loan as repayable in 180 monthly payments of £83.92. 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 £83.92, to give an average difference between the monthly return from the system and the monthly loan repayment in each year.

### 180 payments of £83.92 p/m

Yr	Acc. grand total	Est. monthly return	Average monthly repayment diff.
1	£632.20	£52.68	£-30.73
2	£662.46	£55.21	£-28.20
3	£694.53	£57.88	£-25.53
4	£728.53	£60.71	£-22.70
5	£764.60	£63.72	£-19.69
6	£802.89	£66.91	£-16.50
7	£843.55	£70.30	£-13.11
8	£886.77	£73.90	£-9.51
9	£932.73	£77.73	£-5.68
10	£981.62	£81.80	£-1.61
11	£1,033.66	£86.14	£2.73
12	£1,089.10	£90.76	£7.35
13	£1,148.18	£95.68	£12.27
14	£1,211.17	£100.93	£17.52
15	£1,278.37	£106.53	£23.12

I think the quote clearly sets out the income Miss C and Mr W could expect to receive from the system, by way of FIT payments, as well as their 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 returns they 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 Miss C and Mr W that the system would be 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 Miss C and Mr W 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 20 years. This shows that by year 18 the overall benefits that Miss C and Mr W 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				
97.0%	1	£359.53	£67.48	£186.22	£0.00	£0.00	£0.00	£0.00	£613.23	£613.23	£51.10	7.81%
96.3%	2	£368.42	£69.15	£200.37	£0.00	£0.00	£0.00	£0.00	£637.95	£1,251.18	£53.17	8.12%
95.6%	3	£377.52	£70.86	£215.58	£0.00	£0.00	£0.00	£0.00	£663.97	£1,915.15	£55.33	8.45%
94.9%	4	£386.83	£72.61	£231.94	£0.00	£0.00	£0.00	£0.00	£691.37	£2,606.53	£57.61	8.81%
94.2%	5	£396.35	£74.39	£249.52	£0.00	£0.00	£0.00	£0.00	£720.25	£3,326.78	£60.02	9.18%
93.5%	6	£406.06	£76.22	£268.42	£0.00	£0.00	£0.00	£0.00	£750.70	£4,077.48	£62.56	9.56%
92.8%	7	£416.00	£78.08	£288.74	£0.00	£0.00	£0.00	£0.00	£782.81	£4,860.30	£65.24	9.97%
92.1%	8	£426.16	£79.99	£310.57	£0.00	£0.00	£0.00	£0.00	£816.72	£5,677.01	£68.06	10.4%
91.4%	9	£436.54	£81.94	£334.04	£0.00	£0.00	£0.00	£0.00	£852.52	£6,529.53	£71.05	10.86%
90.7%	10	£447.14	£83.92	£359.25	£0.00	£0.00	£0.00	£0.00	£890.33	£7,419.86	£74.19	11.34%
90.0%	11	£457.97	£85.96	£386.36	£0.00	£0.00	£0.00	£0.00	£930.29	£8,350.15	£77.53	11.84%
89.3%	12	£469.05	£88.04	£415.48	£0.00	£0.00	£0.00	£0.00	£972.57	£9,322.72	£81.05	12.39%
88.6%	13	£480.35	£90.16	£446.77	£0.00	£0.00	£0.00	£0.00	£1,017.29	£10,340.01	£84.77	12.95%
87.9%	14	£491.91	£92.33	£480.38	£0.00	£0.00	£0.00	£0.00	£1,064.62	£11,404.62	£88.72	13.55%
87.2%	15	£503.70	£94.54	£516.49	£0.00	£0.00	£0.00	£0.00	£1,114.74	£12,519.36	£92.89	14.2%
86.5%	16	£515.75	£96.80	£555.28	£0.00	£0.00	£0.00	£0.00	£1,167.83	£13,687.19	£97.32	14.87%
85.8%	17	£528.05	£99.12	£596.94	£0.00	£0.00	£0.00	£0.00	£1,224.10	£14,911.29	£102.01	15.59%
85.1%	18	£540.61	£101.47	£641.68	£0.00	£0.00	£0.00	£0.00	£1,283.76	£16,195.05	£106.98	16.35%
84.4%	19	£553.42	£103.88	£689.73	£0.00	£0.00	£0.00	£0.00	£1,347.03	£17,542.08	£112.25	17.15%
83.7%	20	£566.51	£106.33	£741.34	£0.00	£0.00	£0.00	£0.00	£1,414.17	£18,956.25	£117.85	18%
<b>Totals</b>		<b>£9,127.87</b>	<b>£1,713.28</b>	<b>£8,115.08</b>	<b>£0.00</b>	<b>£0.00</b>	<b>£0.00</b>	<b>£0.00</b>	<b>£18,956.25</b>	<b>£18,956.25</b>	<b>Ave. ROI:</b>	<b>12.07%</b>

As I've set out above, I'm satisfied that P told Miss C and Mr W 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 them to enter into the contract, and they 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 Miss C and Mr W. The MCS certificate and quote sets out that the system is expected to produce 2,868.81 kWh a year.

I have looked at Miss C and Mr W's FIT statements and can see that their system, on average, has generated 2,830.92 kWh to March 2019. This is slightly less than estimated by P at the point of sale but is within industry accepted tolerances of 10%. 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 is fair and reasonable.

P used Office of National Statistics (ONS) data between 2005 and 2014 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 they haven't been receiving the financial returns they 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. That said, with the recent rises seen in energy prices, that could well change going forward.

As I have explained, the assumptions used by P were based on the information available from the ONS covering 2005 to 2014. 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 Miss C and Mr W could've expected to receive from the system. So, whilst 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 Miss C and Mr W entered into the contract.

#### Other outstanding issues

Miss C and Mr W mentioned that the OWL energy monitor detailed within the quote wasn't installed correctly at their property. Shawbrook have confirmed that P's records show this was installed. They've also pointed out that the device was provided free of charge to Miss C and Mr W. So, I don't believe this aspect supports a misrepresentation of the system sold to them. I would recommend they take matters up further with P should they remain unhappy together with any other workmanship concerns.

#### Summary

I'm satisfied that the quote formed a central part of the sales process and it would've been discussed with Miss C and Mr W. 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 the Miss C and Mr W were sent the quote, had time to consider it and to raise any issues prior to installation.

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

However, I do support Shawbrook's offer to pay compensation of £200. This is to reflect any distress and inconvenience caused by the delays in completing their investigation into Miss C and Mr W's complaint. So, I shall be upholding this element of their complaint.

#### **My final decision**

My final decision is that I uphold Miss C and Mr W's complaint.

I require Shawbrook Bank Limited to pay compensation of £200 to Miss C and Mr W

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C and Mr W to accept or reject my decision before 20 April 2022.

Dave Morgan  
**Ombudsman**