

## The complaint

Mr J 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 was misrepresented to him by the supplier.

Mr J is represented by a claims management company ("the CMC").

## What happened

In or around August 2014, Mr J 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 his home. After being visited by a representative of P, Mr J 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 on Mr J'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 Mr J to enter into the contract with P. The misrepresentations the CMC said had been made included:

- the system would not cost Mr J anything and provide him with a substantial income over the lifespan of the system; and
- the monthly loan instalments would be covered by the savings made on energy bills and the FIT (Feed in Tariff) payments; and
- the sales representative used jargon, facts and figures that made no sense to Mr J; and
- the system would pay for itself within 6 years;

Shawbrook didn't issue their final response within eight weeks so the CMC referred Mr J's complaint to this service.

One of our investigators looked into what had happened. She felt the benefits of the solar panel system had been misrepresented. She recommended that Shawbrook recalculate the original loan based upon the known and assumed savings and income to Mr J from the solar panels over the 15-year term of the loan, so he pays no more than that, and he keeps the solar panel system. In addition, she thought Shawbrook should also pay compensation of £100 to reflect the trouble and upset caused.

Shawbrook subsequently offered compensation of £200 as a reflection of the delays in their investigation of Mr J's complaint. Our investigator endorsed this offer confirming that this amount would override her originally recommended compensation for trouble and upset

The CMC haven't specifically provided their agreement to our investigator's recommendations. Shawbrook didn't agree with our investigator's findings. They said:

- P investigated Mr J's solar system in 2015 and found it was underperforming. P calculated the loss of generation as 2,708.44 kWh and compensated Mr J with an amount of £58.81 at the time, in line with their first-year guarantee, which Mr J accepted.

- Mr J didn't raise further concerns until the CMC contacted P in March 2021 about a system fault. P addressed the fault and replaced a component.
- A FIT statement provided by Mr J as at March 2020 showed the system had generated 13,640.19 kWh since installation. However, as P had already compensated Mr J in 2015, the lost generation of 2,708.44 kWh should be added to this figure to provide a more accurate average performance figure. This meant the average annual performance was within an acceptable tolerance.

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 consider; relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice; and, where appropriate, what I consider was 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 Mr J for goods or services bought using credit.

As Mr J paid for the system with a fixed sum loan agreement, Shawbrook agrees that section 75 applies to this transaction. This means that Mr J 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 J 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.

#### What happened?

If there is a dispute about what happened, I must decide on the balance of probabilities – that is, what I consider was most likely to have happened, given the evidence that is available and the wider surrounding circumstances.

The Mr J says that during a sales meeting they were told that the system would be entirely self-financing and come at no additional cost.

There are several documents that have been provided by both the CMC and Shawbrook. These include a loan statement and some illustrative performance tables. The tables are usually included within a solar quote, titled 'Your Personal Solar Quotation'. Neither the CMC nor Shawbrook have provided a copy of the original solar quote. But as I'm familiar with these tables from other such cases, I've considered these, along with the Mr J's testimony and recollection of the sales meeting, to decide on balance what is most likely to have happened.

The quote is usually a detailed document that sets out key information about the system, the expected performance, financial benefits and technical information. P, via Shawbrook, has told this service that this formed a central part of the sales process and the representative of P would have discussed this in detail with Mr J, explaining any benefits of the system, prior to Mr J agreeing to enter into the contract.

I've also noted that the CMCs letter of complaint to Shawbrook appears to support that the quote formed a central part of the sales process. The letter of complaint refers to *"the sales pitch and the sales literature provided to our client"*.

Having thought carefully about the available evidence, I'm satisfied that on balance the quote did form a central part of the sales process and therefore accept that the salesperson went through it during the meeting. So, I've taken this into account, along with Mr J's version of events when considering if there have been any untrue statements of fact.

The credit agreement usually sets out the amount being borrowed, the interest to be charged, total amount payable, the term of the loan and the contractual monthly repayments. Unfortunately, neither Shawbrook nor the CMC have provided a copy of the credit agreement. But the CMC have provided a statement of Mr J's loan with Shawbrook dated August 2019. It shows that the loan was first opened in August 2014 with an amount borrowed of £7,185.

The tables provided by the CMC and Shawbrook refer to the system performance and returns and show a cash price for the system of £7,185. It also includes a table confirming monthly repayments over 180 months of £78.22.

On balance I'm satisfied that Mr J was told that the cost of the system was £7,185. The tables set this out clearly. This is also supported by the loan statement which sets out that the original loan amount was £7,185 and the actual monthly repayment was £78.21.

Having considered all the evidence, including Mr J's recollections, I'm satisfied that he was told that there would be a monthly loan repayment due. The tables make this clear, as shown below. Overall, I'm satisfied that the documents, the quote tables and the loan statement, show that although the cost of the system was £7,185, it would cost Mr J more than this as he had decided to pay for it with an interest bearing loan.

Mr J has said that he was told his monthly loan repayments would be covered, or 'self-funded' by the FIT payments and electricity savings. I've considered the tables that were provided by P within their solar quote, as well as the Mr J's recollections of his meeting with P's representative to decide what is most likely to have been said.

The System Performance and Returns table includes the estimated income Mr J could expect to receive by way of FIT payments from the system. This is split out into the expected FIT payments each year and the expected average income over 20 years. The FIT scheme only provides payments for a 20-year period.

Yr	FEED-IN-TARIFF		Electricity savings	Energy saving Optional Extras				TOTAL income savings	Accumulated Grand Total	est. return MONTHLY
	Generation	Export		WC Savings	WC 5% Increased	Heating Control	H/W Controller			
1	£448.71	£74.42	£387.85	£222.86	£48.87	£0.00	£171.68	£1,384.31	£1,384.31	£113.69
2	£462.18	£76.55	£437.64	£241.80	£52.02	£0.00	£188.76	£1,458.05	£2,823.36	£121.59
3	£476.05	£78.55	£481.48	£262.35	£55.39	£0.00	£207.64	£1,581.77	£4,385.13	£130.15
4	£490.33	£81.32	£529.54	£284.65	£58.89	£0.00	£228.43	£1,673.22	£6,058.35	£139.44
5	£505.04	£83.76	£582.48	£308.66	£62.83	£0.00	£251.24	£1,794.21	£7,852.56	£149.52
6	£520.19	£86.27	£640.74	£335.10	£66.34	£0.00	£276.36	£1,925.61	£9,778.17	£160.47
7	£535.80	£88.86	£704.81	£363.58	£71.35	£0.00	£304.00	£2,068.40	£11,846.57	£172.37
8	£551.87	£91.53	£775.29	£394.48	£76.37	£0.00	£334.40	£2,223.65	£14,079.22	£185.38
9	£568.43	£94.38	£852.62	£428.02	£81.12	£0.00	£367.54	£2,392.51	£16,462.72	£198.38
10	£585.48	£97.11	£938.10	£464.40	£86.52	£0.00	£404.62	£2,576.24	£18,838.96	£214.69
11	£593.34	£100.02	£1,031.31	£503.68	£92.32	£0.00	£445.09	£2,775.25	£21,615.21	£231.35
12	£621.13	£103.02	£1,135.10	£546.71	£98.53	£0.00	£488.59	£2,984.08	£24,609.29	£248.51
13	£636.76	£106.11	£1,248.61	£593.18	£105.18	£0.00	£538.55	£3,231.39	£28,840.68	£268.28
14	£658.85	£109.29	£1,373.47	£643.60	£112.31	£0.00	£592.41	£3,490.03	£31,838.70	£288.54
15	£678.72	£112.57	£1,510.82	£698.30	£119.88	£0.00	£651.65	£3,772.02	£35,362.73	£314.54
16	£698.08	£115.95	£1,661.80	£757.66	£128.18	£0.00	£716.82	£4,079.57	£39,382.29	£338.95
17	£728.05	£119.45	£1,825.85	£822.06	£136.97	£0.00	£788.50	£4,415.89	£43,797.38	£367.92
18	£741.65	£123.81	£2,010.80	£891.85	£146.41	£0.00	£867.35	£4,781.25	£48,578.63	£398.44
19	£753.98	£128.70	£2,211.88	£967.75	£156.55	£0.00	£954.08	£5,180.87	£53,759.80	£431.75
20	£766.82	£130.50	£2,433.15	£1,050.31	£167.43	£0.00	£1,048.48	£5,617.44	£59,377.84	£468.12
Total	£12,857.18	£1,998.75	£22,786.66	£19,781.16	£1,822.89	£0.00	£9,828.39	£59,377.84	£59,377.84	

  

Size of System	3.02
Cost of System	£7,185.00
Electricity per month	£133.00
Current Generation Tariff	£0.144
Current Export Tariff	£0.048

I think this table is clear that Mr J could expect to receive a total FIT income in year one of £523.13, which results in an average monthly income of £43.59. As outlined above, I'm

satisfied that the loan statement and the tables set out that there would be a repayment due of £78.21. As a result, I'm not able to conclude that the Mr J was told that the monthly loan repayments would be covered by the FIT payments alone.

This table above also looks at the electricity savings Mr J could expect from the system. The expected year one electricity saving is £397.85 and, when taking into account the optional extra's chosen by Mr J, the combined income and savings in year one is shown as £1,364.31, which results in an average monthly total of £113.69

There's a section headed "PSP Scheme Repayment Options" 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 Mr J entered into with Shawbrook. This table shows the loan as repayable in 180 monthly payments of £78.22. 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 £78.22, to give an average difference between the monthly return from the system and the monthly loan repayment in each year.

180 months			
			repayment pm
			£78.22
Yr	Accumulated Grand Total	est. return MONTHLY	
1	£1,364.31	£113.69	£35.48
2	£1,459.05	£121.59	£43.37
3	£1,561.77	£130.15	£51.93
4	£1,673.22	£139.44	£61.22
5	£1,794.21	£149.52	£71.30
6	£1,925.61	£160.47	£82.25
7	£2,068.40	£172.37	£94.15
8	£2,223.65	£185.30	£107.09
9	£2,392.51	£199.38	£121.16
10	£2,576.24	£214.69	£136.47
11	£2,776.25	£231.35	£153.14
12	£2,994.08	£249.51	£171.29
13	£3,231.39	£269.28	£191.07
14	£3,490.03	£290.84	£212.62
15	£3,772.02	£314.34	£236.12

I think this table clearly sets out the income Mr J could expect to receive from the system, by way of FIT payments, as well as his 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 he could expect to receive by way of FIT income, would not be sufficient to cover the monthly loan repayments alone. This supports my finding above that the Mr J wasn't told that the FIT payment would cover the loan repayment. I've carefully thought about Mr J's version of events. However, as I've found that the quote did form a central part of the sales process which the salesperson went through at the meeting, I don't think I can reasonably find that Mr J was told that the monthly loan repayments would be covered by the FIT income alone.

I'll now consider whether P told Mr J that the system would be self-funding from the outset. In doing so I'll again weigh all the available evidence to decide what's most likely to have happened.

Bearing in mind my finding on the central role the quote played in the sales meeting, 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 and on balance I'm also satisfied that the salesperson referred to the table at the meeting.

As a result, I consider the salesperson did make a representation that the system would be self-funding from the outset. I find that the salesperson went through the quote at the meeting which included this table setting out that there would be a surplus of the expected income and savings above the monthly loan repayments.

As I've set out above, I'm satisfied that P told Mr J that the system would pay for itself, and this is supported by the table above included in the quote. If that were an untrue statement of fact, and I'm satisfied that this was what induced him to enter into the contract, and he subsequently suffered a loss, that would amount to a misrepresentation.

### System Performance

I've gone on to consider the performance of the system and whether this is in line with the contract between P and Mr J. The MCS certificate sets out that the system is expected to produce 3,029.52 kWh a year. This figure is also confirmed in a letter P sent to Mr J in September 2015.

I have looked at Mr J's FIT statements and can see that his system, on average, has generated 2,507.44 kWh. This is less than was estimated by P at the point of sale, so I think the system hasn't been performing as expected.

Shawbrook have confirmed that Mr J contacted P in 2015 to express concerns that the system they installed at his home wasn't performing. I've been provided with a letter sent by P to Mr J in September 2015. In it they confirm that the meter reading provided by Mr J suggested a loss of generation of 2,708.44 kWh. They said this entitled Mr J to a payment of £58.81 to compensate for the recorded loss of generation against the guaranteed first year's modelled FIT generation that had been calculated.

Shawbrook have suggested that the shortfall in year one of 2,708.44 kWh should be added to the latest generation figure in order to calculate a more accurate average annual figure. This is on the basis that P have already compensated Mr J for the first year's shortfall. So, I've considered whether the performance of the system installed has shown any improvement during the period after P compensated him. Since then, it appears that Mr J's system has been generating, on average, less than 2,400 kWh each year. So, while I accept that P paid an amount in compensation in respect of the underperformance in year one, I can't find any evidence that P took steps to remedy that thereafter. So, it appears Mr J's system continued to underperform.

I've also considered the amount of compensation paid by P in September 2015. At the time, Mr J benefitted from a generation tariff of 14.28 p/kWh. And with 50% of the generation deemed to be export, that element attracted a further tariff of 4.77 p/kWh. These figures are slightly less than P used in the System Performance and Returns table above. In their letter, P agreed there was a generation shortfall of 2,708.44 kWh. So, using these tariffs, I would expect P to have paid compensation of £389.47 generation and £64.60 export, totalling £454.07. This being the shortfall P agreed against what Mr J should've received, had the system been performing as expected.

### Assumptions used

In cases such as this, I would usually consider the assumptions used by P, including the self-consumption rate, expected annual increase in utility prices (EPR) and expected annual RPI inflation increase. But neither Shawbrook nor the CMC have been able to provide a full copy of the solar quote So I'm not able to comment on whether P's method for calculating these was fair and reasonable.

Further, in calculating the expected electricity savings, I would expect P to have obtained details of Mr J's existing electricity usage, prior to the system being installed. This information would be used to help model the savings detailed within the solar quote. But as I've stated, a copy of the quote hasn't been provided, so I'm unable to comment specifically on this aspect.

### Ongoing system underperformance

Shawbrook have said that the CMC contacted P again in March 2021, after referral to this service. They had concerns about a fault within the system P had installed. Shawbrook say that P established the cause of the problem. But they also say that P were subsequently informed that the issue had resolved itself although a replacement component was still fitted in April 2021. It's suggested that this would resolve ongoing generation problems.

While I accept that P may have now addressed the generation issues, I've not been provided with an evidence to demonstrate that Mr J's system is now performing as expected. I'm also not satisfied that P addressed the system's underperformance when Mr J contacted them in 2015. While they paid compensation, I've seen no evidence that the underperformance issues were resolved.

### Summary

Having carefully considered the evidence provided by all parties in this complaint, I'm satisfied that Mr J was told by P that the system installed at his home would pay for itself from the outset. The tables provided by both the CMC and Shawbrook confirm this. I'm also satisfied that the system hasn't performed as expected prior to Mr C's claim.

### **Putting things right**

The role of this service is to help settle disputes between Mr J's and businesses providing financial services fairly and reasonably with minimum formality. In cases like this one, determining fair compensation isn't an exact science. My role is to arrive at a fair and reasonable outcome taking account of the particular circumstances.

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mr J's complaint for Shawbrook to put things right by recalculating the original loan based on the known and assumed savings and income to Mr J from the solar panels over the 15-year term of the loan so he pays no more than that, and he keeps the solar panel system, and any future benefits once the loan has ended.

In the event the calculation shows that Mr J is paying (or has paid) more than he should've, Shawbrook needs to reimburse Mr J accordingly. Should the calculation show that the misrepresentation has not caused a financial loss, then the calculation should be shared with Mr J and the CMC by way of explanation.

If the calculation shows there is a loss, then where the loan is ongoing, I require Shawbrook to restructure Mr J's loan. It should recalculate the loan to put Mr J in a position where the solar panel system is cost neutral over the 15-year loan term.

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

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

In the event Mr J has settled his loan, Shawbrook should pay him the difference between what he paid in total and what the loan should have been under the restructure above, with 8% interest.

In the event Mr J has settled the loan by refinancing, Mr J should supply evidence of the refinance to Shawbrook, and Shawbrook should:

1. refund the extra Mr J paid each month with the Shawbrook loan;
2. add simple interest from the date of each payment until Mr J receives his refund;
3. refund the extra Mr J paid with the refinanced loan;
4. add simple interest from the date of each payment until Mr J receives his refund;
5. pay Mr J the difference between the amount now owed and the amount he would've owed if the system had been self-funding.

I'm satisfied that there was sufficient information available at the time that Mr J first contacted Shawbrook that means the claim should have been upheld. So, I direct that Shawbrook should pay £200 compensation for the trouble and upset caused.

### **My final decision**

My final decision is that Mr J's complaint should be upheld. In full and final settlement of it, Shawbrook Bank Limited should:

- allow Mr J to keep the solar panels,
- estimate the potential savings and incomes to Mr J from the panels over the 15-year term of the loan and rework it so he pays no more than this. Where possible, they should use Mr J'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 date of settlement,
- allow Mr J to decide, using the four options given above, how his overpayments should be used; and
- pay Mr J £200 for the trouble and upset caused.

\*If Shawbrook Bank Limited considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr J how much it's taken off. It should also give Mr J 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 J to accept or reject my decision before 16 August 2022.

Dave Morgan  
**Ombudsman**