

The complaint

Mr M 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 M is represented by a claims management company (“CMC”).

Background

In or around June 2017, Mr M 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 M decided to purchase the system and finance it through a 15 year fixed sum loan agreement with Shawbrook. The system was subsequently installed.

In 2020 another CMC made a claim to Shawbrook on Mr M’s behalf under section 75 of the Act. That 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 M to enter into the contract with P. The CMC said the following misrepresentations had been made:

- the system would generate free electricity;
- the system would be self-funding; and
- the feed in tariff (FIT) and savings on his electricity bills would provide enough income to cover the finance agreement repayments costs.

Mr M also says that he was never told that it was his responsibility to register his new system for FIT payments. He thought P would do it. Consequently, his system has never been registered and he has not received any FIT payments, meaning that he has made even less money than he expected.

In February 2021 Mr M instructed the CMC which currently represents him in this complaint.

In August 2021 Shawbrook issued a final response and explained that it didn’t agree the system had been misrepresented to Mr M or that there were any other reasons for the claim to be upheld. However it still offered £200 compensation for its delay in responding to the complaint.

One of our adjudicators looked into what had happened. Having considered all the information and evidence provided, our adjudicator didn’t think that P had misrepresented the system to Mr M and found no reason to uphold the complaint.

The CMC didn’t agree with the adjudicator’s view for the following reasons:

- the adjudicator had placed too much reliance on one particular document, the quote which P had emailed to Mr M after the sales meeting, which Mr M does not recall signing;
- that quote was contradicted by some figures in another document, the Customer Assessment Sheet, which had been produced at the meeting and left with Mr M;

- Mr M had therefore based his decision to buy the system on the Customer Assessment Sheet, as the quote had been sent to him after he had given the salesman his decision;
- It was unfair to base the outcome of this complaint primarily on the quote, which was “a retrospective document” which Mr M had not been taken through;
- the Customer Assessment Sheet was “a plethora of figures and scribbles” that bore no resemblance to the quote;
- the CMC reiterated that Mr M had received no FIT payments (and consequently no FIT statements either, contrary to a sentence in the adjudicator’s opinion), and so the system would never pay for itself during the loan period;
- even with FIT payments, the system would still take 17 years to break even, and Mr M would not have bought it if he had known that;
- there had been no significant savings on Mr M’s electricity bills;
- some months before the sale, P had been subject to disciplinary proceedings by the Renewable Energy Consumer Code (RECC), of which P had later ceased to be a member;
- P’s estimates of the system’s future performance had been so wrong that they could not have been reasonable.

The CMC asked for an ombudsman to review this case.

My findings

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

What happened?

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

Mr M says that during a sales meeting he was 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 the credit agreement, the solar quote, titled "Your Personal Solar Quotation", the Customer Assessment Sheet, and a four page booklet about registering for FIT payments. I've considered these, along with Mr M's testimony and recollection of the sales meeting, to decide on balance what is most likely to have happened.

The credit agreement sets out the amount being borrowed (*i.e.* the cash price of the system), the interest to be charged, the total amount payable, the term of the loan and the contractual monthly repayments.

The quote is 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 M, explaining any benefits of the system, prior to him agreeing to enter into the contract.

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 (notwithstanding the RECC proceedings). So, I've taken this into account, along with Mr M's version of events, when considering if there have been any untrue statements of fact.

The Customer Assessment Sheet is a four page document with some handwritten figures on it added by the salesman during the meeting. This appears to be the document which Mr M says was left with him at the end of the meeting. It is not possible to derive any meaningful conclusions about what it was supposed to say, except for the following matters. Firstly, the most conspicuous figure on this document, £32,943, appears on the quote on page 3 as the total estimated FIT income and savings after 25 years. Secondly, another figure on the sheet, 4.14p, appears on the quote as £0.0414 as the "current generation tariff" on page 8. Thirdly, the figure 3.428 on the sheet corresponds to 3.43 on the same page of the quote, representing the system size in kWh. Fourthly, I think the figure £616 on the sheet clearly refers to the figure £616.63 which, as I shall discuss later (on page 5 of this decision), appears in the quote in a section titled "Putting it all together," and is the estimated total FIT income and savings for the first year. There are some other figures which I cannot identify, but I am not persuaded that the Customer Assessment Sheet really contradicts the quote, as the CMC alleges. So I remain persuaded that the quote was a key document in the sale.

The FIT booklet is also four pages long; the first two pages contain instructions for registering for FIT payments. It has P's logo on it, but it has been provided to this service by both parties, so I'm satisfied that it was given to Mr M by P at the point of sale or shortly afterwards.

FIT registration

Mr M says he wasn't told that it was his responsibility to register for FIT payments. I cannot accept that. The FIT booklet made this very clear. On the first page it says:

"Upon receiving your payment we will endeavor to issue you with all of your completion documents via email within 10 days of your payment being received, your documents will only be released once your balance is cleared. You will require these documents to apply for your Feed in Tariff (please ensure that you check your Junk mail as well as your Inbox for these documents and you scroll through all of the

attachments). Along with your documents a partly filled out Feed in Tariff application form will also be sent." [Emphasis omitted.]

Further down the same page it says:

"Please note: It is the customers responsibility to apply for their feed-in-tariff.

Please ensure that you make your application as soon as possible as you will not be entitled to receive payments until your application has been received. Please note that tariff providers do not backdate payments if your application is delayed."

On the next page it says:

"Once your installation is completed, and we have received your final payment, will be able to issue your Completion Documents so you can apply for the Feed in Tariff." [Emphasis omitted.]

Further down that page it says:

"It is the customers responsibility to apply for their feed in tariff as unfortunately we are unable to do this on your behalf due to The Data Protection Act. However should you require any assistance with the application process we will be happy to help you with this.

A partly filled application form will be sent along with your documents. You will need to complete page 2 with your bank details, page 4 with your meter reading and page 6 with your signature, the rest of the form will be filled out by ourselves.

Please send your completed application form by recorded delivery to..."

It goes on to give an address, and then says that the form can be sent by email instead. It then lists the documents that have to be sent with the application, and concludes with the following words:

"It is important that you make your application as soon as possible from the ate (*sic*) of installation to enable you to start receiving feed in payments,"

As I've said above, I'm satisfied that this booklet was provided to Mr M in time for him to register. I think this booklet makes it very clear that it was up to him to register his system for FIT payments. For that reason, I do not uphold Mr M's complaint about that issue. (But for completeness, I will add that the quotation also makes this clear in the section entitled "Feed in Tariff (FIT)" on page 16.)

FIT payments

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

The system analysis page of the quote sets out the estimated income Mr M 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

Current electricity spend per month	£	40
Generation tariff in year 1	£	100.03
Export tariff in year 1	£	60.77
Total income in year 1	£	160.80

Feed in tariff over 20 years

Assumed rate of RPI	3.04	%
Average generation tariff	£	0.061
Average export tariff	£	0.074
Average annual income	£	236.79

I think that the first of these tables is clear that Mr M could expect to receive a total FIT income in year one of £160.80, which results in an average monthly income of £13.40. I'm satisfied that the same document set out that there would be a monthly loan repayment due of £94.56. Mr M appears to have signed immediately below that. As a result, I'm not able to conclude that Mr M was told that the monthly loan repayments would be covered by the FIT payments.

The quote goes on to look at the electricity savings Mr M could expect from the system. The expected year one electricity savings is £192.02 and, when taking into account the optional extras chosen by Mr M, the combined income and savings in year one is shown as £616.63. 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 Mr M entered into with Shawbrook. This table shows the loan as repayable in 180 monthly payments of £94.56. (This is incorrect; the loan agreement gives the correct monthly figure of £92.42, but the difference – £2.14 – is too small to affect the following observations.) 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 £94.56, to give an average difference between the monthly return from the system and the monthly loan repayment in each year. This gives a negative figure for the first 11 years, meaning that the system would take nearly 12 years to begin to make enough money to cover the loan payments.

180 payments of £94.56 p/m

Yr	Acc. grand total	Est. monthly return	Average monthly repayment diff.
1	£616.63	£51.39	£-43.17
2	£653.91	£54.49	£-40.07
3	£693.67	£57.81	£-36.75
4	£736.07	£61.34	£-33.22
5	£781.30	£65.11	£-29.45
6	£829.57	£69.13	£-25.43
7	£881.07	£73.42	£-21.14
8	£936.05	£78.00	£-16.56
9	£994.74	£82.89	£-11.67
10	£1,057.41	£88.12	£-6.44
11	£1,124.34	£93.69	£-0.87
12	£1,195.82	£99.65	£5.09
13	£1,272.19	£106.02	£11.46
14	£1,353.79	£112.82	£18.26
15	£1,440.99	£120.08	£25.52

I think the quote clearly sets out the income Mr M could expect to receive from the system, by way of FIT payments and savings, 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 and any additional savings would not be immediately sufficient to cover the monthly loan repayments. This supports my finding above that Mr M wasn't told that the FIT payments would cover the loan repayments. I've carefully thought about Mr M'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 he was told that the monthly loan repayments would be covered by the FIT income and savings on his bills.

Self-funding

I'll now consider whether P told Mr M that the system would be self-funding from the outset. In doing so I'll again weigh all the available evidence to decide what is 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 (notwithstanding the £2.14

discrepancy in the monthly payments). That section of the quote has been signed by Mr M, so I'm satisfied that P did enough to bring it to his attention. On balance I'm also satisfied that the salesperson referred to the table at the meeting.

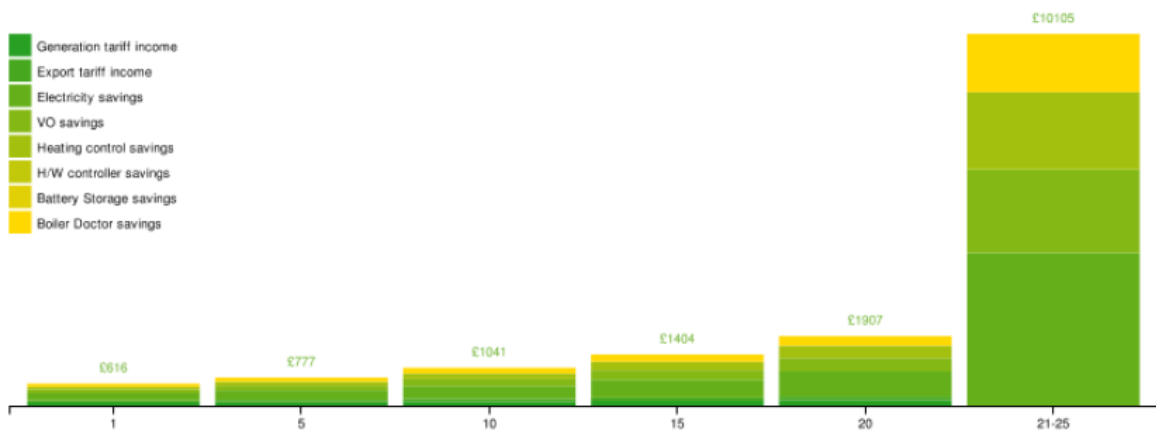
As a result, I consider the salesperson did not make a representation that the system would be self-funding from the outset. Rather, I find that the salesperson went through the quote at the meeting which sets out there would be a difference between the expected income and the monthly loan repayments.

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.

That said, I do accept that Mr M was told by P that the system would be self-funding over a certain period of time.

The "Key Facts" page of the quote has a graph detailing the estimated performance over 25 years. This shows that it would take 11 years for the overall benefits that Mr M could expect to receive to match the cash price of the system.

Performance Visualisation



Your estimated payback time is



I think the 11-year estimated payback time is clear and prominent, being in large print on page 2, and so I don't consider that it needed further explaining.

A later page of the quote has a table detailing the estimated performance of the system over 25 years. This shows that by the end of year 17 the overall benefits that Mr M could expect to receive would have exceeded the total amount payable under the loan agreement, £16,635.

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	£100.03	£60.77	£192.02	£96.00	£76.61	£0.00	£0.00	£91.20	£616.63	£616.63	£51.39	6.97%
94.8%	16	£148.60	£90.28	£522.32	£275.46	£243.01	£0.00	£0.00	£212.76	£1,492.43	£15,864.94	£124.37	16.86%
94.4%	17	£152.47	£92.63	£557.98	£295.51	£262.45	£0.00	£0.00	£225.12	£1,586.17	£17,451.11	£132.18	17.92%

As I've set out above, I'm satisfied that P told Mr M that the system would pay for its cash price in between 11 and 12 years, and for the loan in about 17 years, as supported by the graph and the table above, which were 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, then that could 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 Mr M. The quote sets out that the system is expected to produce 2,416 kWh a year.

I have seen a photo of Mr M's meter reading (which was 8,781 kWh) and can see that his system, on average, has generated 2,227 kWh a year. This is slightly less (92%) than estimated by P at the point of sale, so I'm satisfied that the system is performing as expected, in terms of kWh.

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 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, and I think this explains why Mr M hasn't been receiving the financial returns he 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 have been correspondingly lower.

As I have explained, the assumptions used by P were based on the information available from the ONS at the time. 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 Mr M could have 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 Mr M entered into the contract, or that the panels are not working properly.

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

My final decision

My final decision is that I do not uphold this complaint.

I leave it to Mr M to decide whether to accept Shawbrook's offer of £200 compensation for its delay in responding to his complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 7 June 2022.

Richard Wood
Ombudsman