

The complaint

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

Background

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

In May 2020 the CMC made a claim to Shawbrook on Mr H's behalf under section 75 of the Act. 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 H 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.

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

In November 2020 the CMC brought this complaint to our service on Mr H's behalf. 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 H and found no reason to uphold the complaint.

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

- the tables in the sales documentation were confusing and were not explained to Mr H;
- one of those tables shows that the system would be self-funding after ten years;
- P had used the wrong figures to calculate Mr H's savings on his electricity bills. The CMC said it would soon provide Mr H's electricity bills as evidence of this.

As an agreement couldn't be reached, the case has been passed to me for review.

My findings

I've considered all the available evidence and arguments to decide what's fair and

reasonable in the circumstances of this complaint.

The third bullet point above is a new complaint point that has not been raised before. Under the rules which set out our service's jurisdiction, I cannot consider it until Shawbrook has had eight weeks to consider it (or if Shawbrook waives that right). But the CMC and Mr H have had two years to raise that, and so I have decided not to wait. I have therefore not considered that issue.

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 H paid for the system with a fixed sum loan agreement, Shawbrook agrees that section 75 applies to this transaction. This means that Mr H 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 H 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 H 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 and solar quote, titled "Your Bespoke Quote". I've considered these, along with Mr H's testimony and recollection of the sales meeting, to decide on balance what is most likely to have happened.

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 H, 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. So, I've taken this into account, along with Mr H's version of events, when considering if there have been any untrue statements of fact.

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

Cost vs benefit comparison

Mr H has said that he was told his monthly loan repayments would be covered, or “self-funded” by the FIT payments and the savings on his electricity bills. I’ve considered the quote that was provided by P as well as Mr H’s recollections of his meeting with P’s representative to decide what is most likely to have been said.

A page of the quote titled “What will you earn and save per year?” has a table which sets out the estimated income Mr H could expect to receive by way of FIT payments from the system (among other things). This is set out year by year over 20 years. The FIT scheme only provides payments for a 20-year period. The table also shows the total estimated savings that Mr H would make on his electricity bills over 25 years (being the estimated lifespan of the system). The first row is as follows:

Panel degradation	Yr	Feed in tariff		Elec. savings	Total income savings	Acc. grand total	Est. monthly return
		Generation	Export				
100.00%	1	£142.34	£86.49	£295.95	£524.78	£524.78	£43.73

I think that the first row of this table is clear that Mr H could expect to receive total FIT income and savings in year one of £524.78, which results in an average monthly income of £43.73, as set out in the table. I’m satisfied that the same document set out that there would be a monthly loan repayment due of £84.79. As a result, I’m not able to conclude that Mr H was told that the monthly loan repayments would be covered by the financial returns from the panels.

There’s another section headed “Finance repayments” with three tables showing repayments over 60 months, 120 months and 180 months. I’ve focused on the table for 60 months as this is the length of the loan that Mr H entered into with Shawbrook, but I have also shown below the table for 120 months in order to compare the tables.

The 60 months table shows the loan as repayable in 60 monthly payments of £84.79. (This is incorrect; the loan agreement gives the correct monthly figure of £84.01, but the difference – 78p – is too small to affect the following observations.) For each year of the five 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 £84.79, 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 every year of the loan, meaning that the system would never make enough money to cover the loan payments.

As can be seen in the tables below, the negative figures are highlighted in red, and positive figures (which only appear in the other tables) are highlighted in green. Mr H has said that the tables in the quote were confusing and were not explained to him. But I think that they are presented in a way which is clear and easy to follow.

60 payments of £84.79 p/m				120 payments of £52.64 p/m			
Yr	Acc. grand total	Income FiT + savings	Potential monthly repayment diff.	Yr	Acc. grand total	Income FiT + savings	Potential monthly repayment diff.
1	£524.78	£43.73	£-41.06	1	£524.78	£43.73	£-8.91
2	£551.07	£45.92	£-38.87	2	£551.07	£45.92	£-6.72
3	£578.89	£48.24	£-36.55	3	£578.89	£48.24	£-4.40
4	£608.36	£50.70	£-34.09	4	£608.36	£50.70	£-1.94
5	£639.56	£53.30	£-31.49	5	£639.56	£53.30	£0.66
				6	£672.61	£56.05	£3.41
				7	£707.63	£58.97	£6.33
				8	£744.75	£62.06	£9.42
				9	£784.10	£65.34	£12.70
				10	£825.82	£68.82	£16.18

I think the quote clearly sets out the income Mr H 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 H wasn't told that the FIT payments and savings would cover the loan repayments. I've carefully thought about Mr H'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 alone.

Self-funding

I'll now consider whether P told Mr H 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 78p discrepancy in the monthly payments). 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 H was told by P that the system would be self-funding over a certain period of time.

As I mentioned before, the "What will you earn and save per year?" page of the quote has a table detailing the estimated performance over 25 years. This shows that it would take eight years for the overall benefits that Mr H could expect to receive to match the cash price of the system, £5,000. Again, this is highlighted in colour, with the first seven years in red and the subsequent years in green. I think this is clear.

Panel degradation	Yr	Feed in tariff		Elec. savings	Total income savings	Acc. grand total	Est. monthly return	Ann. ROI
		Generation	Export					
100.00%	1	£142.34	£86.49	£295.95	£524.78	£524.78	£43.73	10.50%
99.60%	2	£146.08	£88.76	£316.23	£551.07	£1,075.85	£45.92	11.02%
99.20%	3	£149.92	£91.09	£337.88	£578.89	£1,654.74	£48.24	11.58%
98.80%	4	£153.85	£93.48	£361.02	£608.36	£2,263.10	£50.70	12.17%
98.40%	5	£157.89	£95.94	£385.73	£639.56	£2,902.66	£53.30	12.79%
98.00%	6	£162.03	£98.45	£412.13	£672.61	£3,575.27	£56.05	13.45%
97.60%	7	£166.27	£101.03	£440.33	£707.63	£4,282.90	£58.97	14.15%
97.20%	8	£170.62	£103.67	£470.45	£744.75	£5,027.65	£62.06	14.89%
96.80%	9	£175.09	£106.39	£502.62	£784.10	£5,811.75	£65.34	15.68%
96.40%	10	£179.66	£109.17	£536.99	£825.82	£6,637.56	£68.82	16.52%
96.00%	11	£184.36	£112.02	£573.69	£870.07	£7,507.63	£72.51	17.40%
95.60%	12	£189.17	£114.94	£612.89	£917.00	£8,424.63	£76.42	18.34%
95.20%	13	£194.10	£117.94	£654.76	£966.80	£9,391.44	£80.57	19.34%
94.80%	14	£199.16	£121.02	£699.47	£1,019.65	£10,411.09	£84.97	20.39%
94.40%	15	£204.35	£124.17	£747.23	£1,075.75	£11,486.84	£89.65	21.52%
94.00%	16	£209.67	£127.40	£798.23	£1,135.31	£12,622.15	£94.61	22.71%
93.60%	17	£215.13	£130.72	£852.70	£1,198.54	£13,820.69	£99.88	23.97%
93.20%	18	£220.72	£134.12	£910.86	£1,265.70	£15,086.39	£105.47	25.31%
92.80%	19	£226.45	£137.60	£972.98	£1,337.03	£16,423.43	£111.42	26.74%
92.40%	20	£232.33	£141.17	£1,039.31	£1,412.82	£17,836.24	£117.73	28.26%
90.40%	21-25	£0.00	£0.00	£6,360.21	£6,360.21	£24,196.45	£106.00	25.44%
Totals		£3,679.19	£2,235.59	£18,281.67	£24,196.45	£24,196.45	Ave. ROI:	19.36%

This also shows that by during year 10 the overall benefits that Mr H could expect to receive would reach the total amount payable under the loan agreement, £6,040.60.

As I've set out above, I'm satisfied that P told Mr H that the system would pay for its cash price in 8 years, and for the loan in about 10 years, as supported by the table above, which was 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 H. The MCS certificate and quote set out that the system is expected to produce 3,523 kWh a year.

I have looked at Mr H's FIT statements and can see that his system, on average, has generated 3,464 kWh a year. This is only slightly less than estimated by P at the point of sale, 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 to calculate the utility price and RPI inflation. (This is not set out in Mr H's quote, but I have seen evidence that this is what it did in other cases, and I infer that P did it here too.) 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 (2017), and I think this explains why Mr H 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 H 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 H entered into the contract.

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 H 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 H 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 H to accept or reject my decision before 8 June 2022.

Richard Wood
Ombudsman