

The complaint

Mr and Mrs G complain that Shawbrook Bank Limited ("Shawbrook") has rejected the claim they made under sections 75 and 140A of the Consumer Credit Act 1974 ("the Act") in relation to a solar panel system they say was misrepresented to them by the supplier.

Mr and Mrs G are represented by a claims management company ("the CMC").

Background

In or around May 2018, Mr and Mrs G were 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, Mr and Mrs G decided to purchase the system and finance it through a ten year fixed sum loan agreement with Shawbrook. One of the optional extras, a rechargeable battery, was financed with another Shawbrook loan, also for ten years. The system was subsequently installed.

In February 2021 the CMC made a claim to Shawbrook on Mr and Mrs G'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 and Mrs G 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 their electricity bills would provide enough income to cover the monthly loan payments.

Shawbrook it didn't agree the system had been misrepresented to Mr and Mrs G or that there were any other reasons for the claim to be upheld.

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 and Mrs G 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 weight on the quotation document the salesman had shown Mr and Mrs G in the sales meeting;
- the quote was lengthy, confusing, and misleading, and negative information was in such small print as to be illegible;
- the quote contained vast amounts of technical information which was likely to confuse the average consumer;
- Mr and Mrs G had never had the opportunity to read all of it during the meeting;
- It was not logical that consumers would purchase a system that would take longer than ten years to make a return on their investment.

As an agreement couldn't be reached, the case was passed to me for review. I wrote a provisional decision which read as follows.

What I've provisionally 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 sections 56, 75 and 140A of the Act.

Section 75 provides protection for consumers for goods or services bought using credit. As Mr and Mrs G paid for the system with two fixed sum loan agreements, Shawbrook agrees that section 75 applies to this transaction. This means that Mr and Mrs G 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 Mr and Mrs G and P, as the supplier, are deemed to have been conducted by P as an agent of Shawbrook.

Section 140A is about unequal relationships between the parties to a credit agreement. In this case, the CMC relies on the alleged misrepresentation of the system. (In its complaint to our service, the CMC added that an unfair relationship had also arisen from P's and Shawbrook's failure to check that Mr and Mrs G could afford the loans. But since that point was not raised with Shawbrook first, I cannot consider that issue under the FCA's rules which set out our service's jurisdiction.)

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?

Where 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 and Mrs G say 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 parties. These include the credit agreement and solar quote, titled "Your Personal Solar Quotation". I've considered these, along with Mr and Mrs G'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 and Mrs G, explaining any benefits of the system, prior to them agreeing to enter into the contract. Shawbrook has also said that P would have sent a copy to Mr and Mrs G after the meeting.

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. I also accept that a copy was sent to them afterwards, to read in their own time. So, I've taken this into account, along with Mr and Mrs G's version of events, when considering if there have been any untrue statements of fact.

Although the quote is detailed, I think that it still sets out the important information in a clear and accessible manner. I'm satisfied that the relevant figures were presented in a reasonably sized font. But if Mr and Mrs G were unable to see them properly on the salesman's laptop, they could have just said so, and the salesman would have been able to zoom in on the document. And given my finding above that a copy was sent to them to consider in their own time, they had the opportunity to read it if they desired, and to enlarge it if necessary (although I think the figures are already clearly legible at their normal size). So I don't accept that P effectively withheld that information from them by making it difficult to read.

Nevertheless, I do agree that this document is still confusing, for the reasons that I have set out below. It is also misleading.

FIT payments and savings

Mr and Mrs G have said that they were told their monthly loan repayments would be covered, or "self-funded" by the FIT payments and the savings on their energy bills. I've considered the quote that was provided by P as well as Mr and Mrs G's recollections of their meeting with P's representative to decide what is most likely to have been said.

The quote has a section headed "Repayments" with three tables showing repayments over 60 months, 120 months and 180 months. I've focused on the table for 120 months as this is the length of each of the two loans that Mr and Mrs G entered into with Shawbrook. This table shows the main loan, for the basic system, as repayable in 120 monthly payments of £68.62. (I think this figure is incorrect by 10p, as I shall show below, but I think this difference is too small to be misleading.)

The first obvious flaw with this table is that, although it is supposed to illustrate a ten year loan, it actually shows 15 years, which implies that a serious error has been made. (The 60 months table does this too.)

120 payments of £68.62 p/m at 7.9%

Yr	Acc. grand total	Est. monthly return	Average monthly repayment diff.
1	£587.65	£48.97	£-19.65
2	£605.59	£50.47	£-18.15
3	£874.49	£72.87	£4.25
4	£892.64	£74.39	£5.77
5	£911.70	£75.98	£7.36
6	£931.73	£77.64	£9.02
7	£952.78	£79.40	£10.78
8	£974.91	£81.24	£12.62
9	£998.18	£83.18	£14.56
10	£1,022.65	£85.22	£16.60
11	£1,048.40	£87.37	£18.75
12	£1,075.50	£89.62	£21.00
13	£1,104.02	£92.00	£23.38
14	£1,134.05	£94.50	£25.88
15	£1,165.68	£97.14	£28.52

The second serious flaw is that this table doesn't include the second loan, for the battery, which cost another £37.89 a month. The total which Mr and Mrs G were paying Shawbrook by direct debit was £106.61 (which is 10p more than the sum of the two monthly loan repayments).

I think that omission is very significant, as I will show.

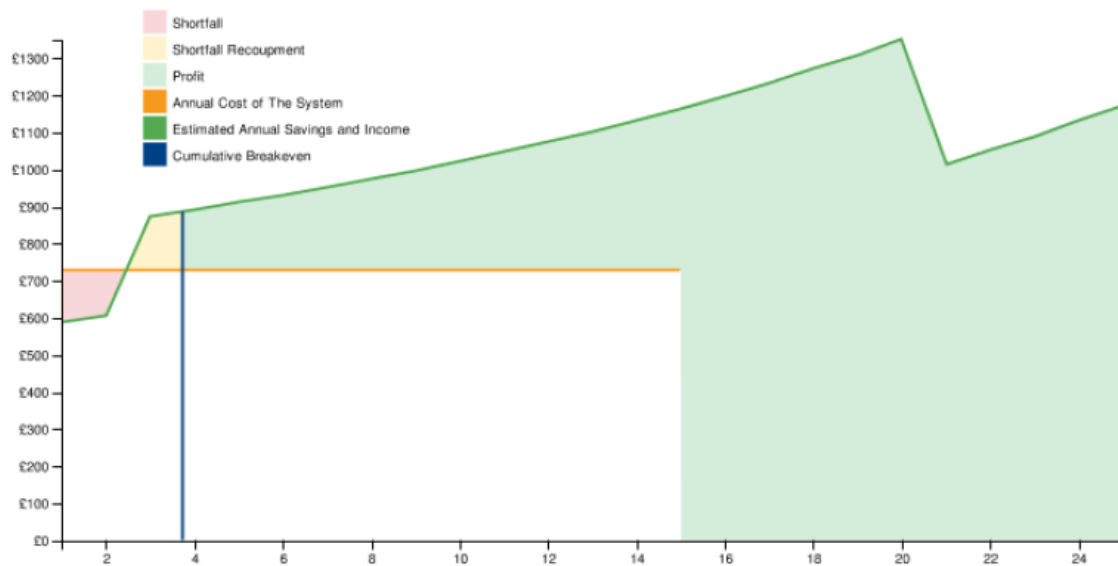
The table above shows the expected grand total return from the system for each year of the loan. (I am ignoring for the purposes of this paragraph the fact that the table shows 15 years instead of 10.) It then averages that figure over 12 months, and subtracts the monthly loan repayment on the first loan of **£68.62**, 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 *two* years of the loan, meaning that the system would begin to make enough money to cover the loan payments from year three.

However, if both loans had been included – that is, 120 payments of **£106.61** – then it can clearly be seen that the additional £37.99 exceeds the positive figures in years 3 to 15 of the table, meaning that actually the system could never have made enough money to cover the two loan repayments.

For that reason, I think the quote fails to clearly compare the income Mr and Mrs G could expect to receive from the system, by way of FIT payments and savings, with their expected contractual monthly loan repayments. The quote clearly indicated that the system would

cover their loan repayments and then, shortly after that, begin to turn a profit in year 3, as shown in this graph on page 6 of the quote:

Your Average Annual Returns Over **25** Years With RPI and Increase in Electricity Costs against the monthly cost of the system



The annual average returns are based on the total return averaged over 360 months. This graph incorporates the cost of the system (and any finance charges)

I think that the omission of the second loan was misleading, and that this resulted in the quote showing calculations which were untrue, in that the quote suggested that the system would be more lucrative than was in fact the case. I further find that this induced Mr and Mrs G into entering a contract when they probably would not have done otherwise, and so a misrepresentation was made.

Redress

Having thought about everything, I currently think that it would be fair and reasonable in all the circumstances of Mr and Mrs G's complaint for Shawbrook to put things right by recalculating the original loan based on the known and assumed savings and income to Mr and Mrs G from the solar panels over the ten year term of the loans so they pay no more than that, and they keep the solar panel system, and any future benefits once the loans have ended.

If the calculation shows that Mr and Mrs G are paying (or have paid) more than they should have, then Shawbrook needs to reimburse them accordingly. Should the calculation show that the misrepresentation has not caused a financial loss, then the calculation must be shared with them by way of explanation. (This might yet happen, since I have looked at Mr and Mrs G's meter reading and I can see that their system has, on average, generated roughly double the amount of energy that was estimated in the quote.)

If the calculation does show there is a loss, then where the loan is ongoing, I require Shawbrook to restructure the loan. Shawbrook must recalculate the loan to put Mr and Mrs G in a position where the solar panel system is cost-neutral over the ten year loan term.

Normally, by recalculating the loan this way, Mr and Mrs G's monthly repayments would reduce, meaning that they would have paid more each month than they should have done, resulting in an overpayment balance. And as they would have been deprived of the monthly

overpayment, I would expect a business to add simple interest at 8% a year from the date of the overpayment to the date of settlement. So I think the fairest resolution would be to let Mr and Mrs G have the following options as to how they would like their overpayments to be used:

- a) the overpayments are used to reduce the outstanding balance of the loan and they continue to make their current monthly payment resulting in the loan finishing early,
- b) the overpayments are used to reduce the outstanding balance of the loan and they pay a new monthly payment until the end of the loan term,
- c) the overpayments are returned to Mr and Mrs G and they continue to make their current monthly payment resulting in their loan finishing early, or
- d) the overpayments are returned to Mr and Mrs G and they pay a new monthly payment until the end of the loan term.

If Mr and Mrs G accept my decision, they should indicate on the acceptance form which will accompany my final decision which option they wish to accept.

If Mr and Mrs G have settled the loan, Shawbrook must pay them the difference between what they paid in total and what the loan should have been under the restructure above, with interest at 8% a year.

If Mr and Mrs G have settled the loan by refinancing, they should supply evidence of the refinance to Shawbrook, and then Shawbrook must:

1. Refund the extra Mr and Mrs G paid each month with the Shawbrook loan.
2. Add simple interest from the date of each payment until Mr and Mrs G receive their refund.
3. Refund the extra Mr and Mrs G paid with the refinanced loan.
4. Add simple interest from the date of each payment until Mr and Mrs G receive their refund.
5. Pay Mr and Mrs G the difference between the amount now owed and the amount they would have owed if the system had been self-funding.

I'm satisfied that there was sufficient information available at the time that Mr and Mrs G first contacted Shawbrook that means the claim should have been upheld. I will direct that Shawbrook must pay £100 compensation for the trouble and upset caused.

Responses to my provisional decision

Shawbrook accepted that this complaint should be upheld. It asked for Mr and Mrs G's FIT statements so that it could calculate the redress due. They provided the FIT data from the FIT provider's mobile phone app, which was forwarded to Shawbrook on 1 August, five weeks ago. Shawbrook has not replied since then. So there is no reason for me to depart from my provisional findings, and I confirm them here.

My final decision

My decision is that I uphold this complaint. I order Shawbrook Bank Limited to put things right in the way I have set out above (under the sub-heading "Redress").

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G and Mrs G to accept or reject my decision before 5 October 2022.

Richard Wood
Ombudsman