

The complaint

Mr V 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 were misrepresented to him by the supplier.

What happened

In or around April 2018, Mr V 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 V decided to purchase the system and finance it through a 10-year fixed sum loan agreement with Shawbrook. The system was subsequently installed.

In or around April 2020, Mr V's made a claim under section 75 of the Act to Shawbrook. He 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 Mr V to enter into the contract with P. He has made the following points:

- He was told the system would be self-funding; and
- the monthly payments would be more than covered by the savings; and
- there is a significant shortfall in the projected performance vs the actual performance; and
- he would not have purchased the system if he'd understood there would be a significant shortfall against his loan repayments.

Shawbrook didn't provide a final response to Mr V's complaint but did give him the rights to refer his complaint to this service. They also subsequently offered to pay compensation of £200 to reflect the delay in investigating his complaint.

One of our investigators looked into what had happened. During the course of their investigation, Mr V also made this service aware of further installation issues not included within his original complaint. Our investigator confirmed to Mr V that this service wouldn't be able to consider any complaint issues or points that hadn't already been raised and considered by P or Shawbrook.

Having considered all the information and evidence provided our investigator didn't think that P had told Mr V his loan repayments would be covered by the financial benefits of the system. But she did agree the system wasn't performing as expected. Our investigator also found discrepancies within the assumptions used by P resulting in the financial benefits being overstated to Mr V. She also found that one of the extra features supplied by P wasn't providing the returns they suggested.

Our investigator thought Shawbrook should calculate and pay to Mr V an amount to reflect her findings together with the compensation they'd already offered. Shawbrook haven't responded to investigator's view. So, Mr V's complaint 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 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 consumers for goods or services bought using credit.

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

Mr V 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 Mr V and Shawbrook. These include the credit agreement and solar quote, titled 'Your Personal Solar Quotation'. I've considered these, along with Mr V'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 V, 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 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 V'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 interest to be charged, total amount payable, the term of the loan and the contractual monthly repayments. The loan agreement also clearly sets out the cash price of the goods.

I'm satisfied that Mr V was told that the cost of the system was £15,887.55. The quote sets this out clearly. This is also supported by the credit agreement which sets out that the cash price of the system was £15,887.55 and the monthly payment was £188.22. The total amount of credit is £15,787.55 after payment of a deposit of £100. It goes on to show that the total amount payable would be £22,686.40.

Having considered all the evidence, including Mr V's recollections, I'm satisfied he was told there would be a monthly loan repayment due. The quote makes this clear, as set out in the table below. Overall, I'm satisfied that the two documents, the quote and the credit agreement, made it clear that although the cost of the system was £15,887.55, it would cost Mr V more than this as he had decided to pay for it with an interest bearing loan.

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

FIT payments

The system analysis page of the quote sets out the estimated income Mr V 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	£	102
Generation tariff in year 1	£	126.28
Export tariff in year 1	£	82.49
Total income in year 1	£	208.77

Feed in tariff over 20 years

Assumed rate of RPI	3.04	%
Average generation tariff	£	0.056
Average export tariff	£	0.074
Average annual income	£	305.04

I think that the first of these tables is clear that Mr V could expect to receive a total FIT income in year one of £208.77, which results in an average monthly income of £17.40. As outlined above, I'm satisfied that the credit agreement and the quote set out that there would be a monthly loan repayment due of £188.22. So, I can't reasonably conclude that Mr V was told the monthly loan repayments would be covered by the FIT payment alone.

Energy savings

The quote goes on to look at the electricity savings Mr V could expect from the system. The expected year one electricity saving is £383.02 and, when taking into account the optional extra's chosen by Mr V, the combined income and savings in year one are shown as £1,170.03. These are shown in a table entitled '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 120/180 months as this is the length of the loan that Mr V entered into with Shawbrook. This table shows the loan as repayable in 120 monthly payments of £190.71. For each year of the 10-year loan it shows the expected grand total return from the system. It then averages that figure over 12 months and subtracts the quoted monthly loan repayment of £190.71, to give an average difference between the monthly return from the system and the monthly loan repayment in each year.

120 payments of £190.71 p/m at 7.9%

Yr	Acc. grand total	Est. monthly return	Average monthly repayment diff.
1	£1,170.03	£97.50	£-93.21
2	£1,242.55	£103.55	£-87.16
3	£1,319.83	£109.99	£-80.72
4	£1,402.18	£116.85	£-73.86
5	£1,489.95	£124.16	£-66.55
6	£1,583.51	£131.96	£-58.75
7	£1,683.23	£140.27	£-50.44
8	£1,789.56	£149.13	£-41.58
9	£1,902.92	£158.58	£-32.13
10	£2,023.79	£168.65	£-22.06

I think the quote clearly sets out the income Mr V 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 and any additional savings, wouldn't be sufficient to cover the monthly loan repayments. This also supports my finding above that Mr V wasn't told that the FIT payment would cover the loan repayment. I've carefully thought about Mr V'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.

Self-funding

I'll now consider whether P told Mr V 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 and on balance I'm also satisfied that the salesperson referred to the table at the meeting.

As a result, I consider the salesperson didn't 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 that there would be a difference between the expected income and the monthly loan repayments.

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

Page 12 of the quote has a table detailing the performance over 25 years. This shows that by year 14 the overall benefits that Mr V could expect to receive would have exceeded the total amount payable under the loan agreement.

Estimated performance over 25 years

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	Smart Radiator Valves	Room Thermostat				
100.0%	1	£126.28	£82.49	£383.02	£244.80	£0.00	£126.00	£102.14	£0.00	£47.70	£57.60	£1,170.03	£1,170.03	£97.50	7.36%
100.0%	2	£130.12	£85.00	£409.07	£261.45	£0.00	£134.57	£109.08	£0.00	£51.31	£61.96	£1,242.56	£2,412.59	£103.55	7.82%
100.0%	3	£134.07	£87.58	£436.88	£279.22	£0.00	£143.72	£116.50	£0.00	£55.20	£66.65	£1,319.82	£3,732.41	£109.99	8.31%
99.6%	4	£137.60	£89.88	£464.72	£298.21	£0.00	£153.49	£124.42	£0.00	£59.37	£71.70	£1,399.39	£5,131.80	£116.62	8.81%
99.2%	5	£141.21	£92.25	£494.33	£318.49	£0.00	£163.93	£132.89	£0.00	£63.87	£77.12	£1,484.09	£6,615.89	£123.67	9.34%
98.8%	6	£144.92	£94.66	£525.81	£340.15	£0.00	£175.08	£141.92	£0.00	£68.70	£82.96	£1,574.20	£8,190.09	£131.18	9.91%
98.4%	7	£148.72	£97.15	£559.30	£363.28	£0.00	£186.98	£151.57	£0.00	£73.90	£89.24	£1,670.14	£9,860.23	£139.18	10.51%
98.0%	8	£152.62	£99.70	£594.90	£387.98	£0.00	£199.70	£161.88	£0.00	£79.50	£96.00	£1,772.27	£11,632.50	£147.69	11.16%
97.6%	9	£156.62	£102.30	£632.76	£414.36	£0.00	£213.28	£172.89	£0.00	£85.52	£103.26	£1,880.99	£13,513.50	£156.75	11.84%
97.2%	10	£160.71	£104.99	£673.02	£442.54	£0.00	£227.78	£184.64	£0.00	£91.99	£111.08	£1,996.75	£15,510.24	£166.40	12.57%
96.8%	11	£164.92	£107.73	£715.63	£472.63	£0.00	£243.27	£197.20	£0.00	£98.95	£119.49	£2,120.01	£17,630.26	£176.67	13.34%
96.4%	12	£169.23	£110.54	£761.35	£504.77	£0.00	£259.81	£210.61	£0.00	£106.44	£128.54	£2,251.29	£19,881.55	£187.61	14.17%
96.0%	13	£173.65	£113.43	£809.74	£539.10	£0.00	£277.48	£224.93	£0.00	£114.50	£138.27	£2,391.11	£22,272.66	£199.26	15.05%
95.6%	14	£178.18	£116.39	£861.20	£575.75	£0.00	£296.34	£240.23	£0.00	£123.17	£148.73	£2,540.00	£24,812.65	£211.67	15.99%
95.2%	15	£182.83	£119.43	£915.92	£614.91	£0.00	£316.50	£256.56	£0.00	£132.49	£159.99	£2,698.63	£27,511.28	£224.89	16.99%
94.8%	16	£187.60	£122.55	£974.09	£656.72	£0.00	£338.02	£274.01	£0.00	£142.52	£172.10	£2,867.61	£30,378.89	£238.97	18.05%
94.4%	17	£192.49	£125.74	£1,035.94	£701.38	£0.00	£361.00	£0.00	£0.00	£153.31	£185.13	£2,754.99	£33,133.88	£229.58	17.34%
94.0%	18	£197.49	£129.01	£1,101.69	£749.07	£0.00	£385.55	£0.00	£0.00	£164.92	£199.15	£2,926.89	£36,060.76	£243.91	18.42%
93.6%	19	£202.63	£132.37	£1,171.60	£800.01	£0.00	£411.77	£0.00	£0.00	£177.40	£214.22	£3,110.00	£39,170.77	£259.17	19.58%
93.2%	20	£207.90	£135.81	£1,245.93	£854.41	£0.00	£439.77	£0.00	£0.00	£190.83	£230.44	£3,305.09	£42,475.86	£275.42	20.80%
91.2%	21-25	£0.00	£0.00	£7,519.27	£5,226.69	£0.00	£2,690.21	£0.00	£0.00	£1,194.00	£331.90	£4,099.06	£60,547.85	£301.20	22.75%
Repair/Replace							£-1,250.00								
Totals		£3,289.80	£2,149.00	£22,286.38	£15,045.92	£0.00	£6,494.25	£2,801.47	£0.00	£3,275.59	£3,955.44	£59,297.85	£59,297.85	Ave. ROI:	14.93%

As I've set out above, I'm satisfied that P told Mr V the system would pay for itself by year 14, 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 V. The MCS certificate and quote sets out that the system is expected to produce 3,280 kWh a year.

I have looked at Mr V's FIT statements and can see that his system, on average, has generated 2,745 kWh from initial installation to March 2021. This is less than estimated by P at the point of sale, so I agree Mr V's system isn't performing as expected.

Mr V confirmed that P arranged and completed an inspection of the system in January 2022. He recalled the inspector told him *"the solar system itself and battery were working as designed. But the hot water system was completely dead, he commented that it probably wouldn't be used anyway because the system is unlikely to generate enough electricity to cover usage and battery charging but couldn't identify any faults"*.

Shawbrook also confirmed the inspection had not identified any system faults. So, they requested a full breakdown of all FIT payments calculated and received since the system was installed at Mr V's home to consider the under-performance assessment further. This information was provided to Shawbrook. But they've made no further comments or observations.

Assumptions

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 are fair and reasonable.

P used Office of National Statistics (ONS) data between 2007 and August 2018 to calculate the EPR 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 partly explains why he 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 has been correspondingly lower.

As I have explained, the assumptions used by P were based on information available from the ONS covering 2007 to August 2018. 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 V could've expected to receive from the system. However, our investigator did identify that the EPR and RPI figures were overstated by P. This means that P's quote inflated the estimated savings, income and benefits generated by the proposed system. Our investigator and Shawbrook both agreed a refund needs to be made totalling £278.66 to reflect this. So, I shall include this within my final decision.

Independent report

Mr V arranged an Energy Performance Validation Scheme (EPVS) report to consider the estimates P included within their quote at the point of sale. The report was completed in

October 2020 by an approved specialist in home energy certification. I consider the report to be credible in terms of its source, detail and completeness.

Generally, the report concludes the estimates made by P and included in their quote were reasonable. But it did highlight an issue with P's estimates for the hot water controller they supplied. The report identified that Mr V's *"self-consumption, including battery storage, will mean that there should be no excess generation to divert to the cistern"*. So, it's unlikely that the savings estimated by the hot water controller could be achieved. This appears to support Mr V's recollection of what he was told by P's inspector in January 2022.

Our investigator asked Shawbrook to consider the report findings and provide their comments. But Shawbrook haven't responded.

Putting things right

Having carefully considered the evidence provided by all parties in this complaint, I'm satisfied P didn't suggest to Mr V the system would be self-funding. But I am persuaded the system is underperforming against the estimates P included in their solar quote. And, as a result, Mr V isn't receiving the financial benefits he was told he would. I'm also satisfied that the savings associated with the hot water controller are also not being achieved. My decision will also reflect the discrepancy found between the EPR/RPI rates P used in the quote.

As I've already mentioned, under section 75, Shawbrook have equal liability for any misrepresentation by P here. So, my decision will reflect their responsibility for Mr V's losses. Shawbrook and/or P may consider it beneficial to clean, adjust or make improvements to the system installed at Mr V's home in order to achieve the quoted financial benefits. This would be acceptable subject to any subsequent improvement in performance being proven.

My final decision

My final decision is that I uphold Mr V's complaint.

I require Shawbrook Bank Limited to:

- reimburse Mr V for the discrepancy between the quoted EPR/RPI rates and the actual EPR/RPI rates for the same period; and
- reimburse Mr V an amount equivalent to the benefits P told him he'd receive from the hot water controller installed, over the full loan term; and
- calculate and refund to Mr V the difference between the financial benefits quoted and those received and estimated to receive over the full term of the loan.
- Pay Mr V £200 compensation to reflect the delays in completing their investigation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 22 September 2022.

Dave Morgan
Ombudsman