

## **The complaint**

Mr and Mrs K complain that Shawbrook Bank Limited ("Shawbrook"), has rejected the claim they made under section 75 of the Consumer Credit Act 1974 ("the Act") in relation to a solar panel system they says were misrepresented to them by the supplier.

Mr and Mrs K is represented by a claims management company ("the CMC").

## **What happened**

In or around November 2016, Mr and Mrs K 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 K decided to purchase the system and finance it through a 15-year fixed sum loan agreement with Shawbrook. The system was subsequently installed.

In September 2019, the CMC made a claim on Mr and Mrs K'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 and Mrs K to enter into the contract with P. The CMC said the following misrepresentations had been made:

- Mr and Mrs K would receive free electricity through the day; and
- their council tax payments would decrease; and
- their house would be more energy efficient
- the system would be self-funded by virtue of significant savings on electricity bills and income from the feed in tariff (FIT); and
- they would save money on their electricity bills; and
- if they wished to move from the property in the future, they could remove the solar panels and move them to their new property; and
- the solar panels were not performing in the way that had been promised; and
- Shawbrook had failed to assess Mr and Mrs K's credit worthiness.

Shawbrook didn't issue a final response. But they've since explained to this service that they didn't agree the system had been misrepresented to Mr and Mrs K or that there were any other reasons for the claim to be upheld. But they have apologised for the time taken to issue their final response and offered £200 to reflect this.

One of our investigators looked into what had happened. Having considered all the information and evidence provided our investigator thought that P had misrepresented the system to Mr and Mrs K. Our investigator also thought Mr and Mrs K wouldn't have agreed to purchase the solar panel system if they P hadn't said they were able to transfer it to another property when moving.

Our investigator thought Shawbrook should refund all payments made, plus 8% simple interest from the date that Mr and Mrs K subsequently sold and moved from their property to the point they repaid their loan. Our investigator also suggested that Shawbrook pay compensation to Mr and Mrs K of £100.

The CMC agreed with our investigator's findings and recommendations.

Shawbrook disagreed with our investigator's view for the following reasons:

- The graphs and tables in pages 1 to 9 of the customer quote refer to the solar panel system as a standalone product and any savings do not include the finance costs. This is because the quote is completed before payment options are considered.
- Pages 10 and 11 of the quote show the average monthly returns over the various loan terms offered and provide a clear comparison of any expected shortfall.
- Page 12 of the quote clearly shows that Mr and Mrs K won't accumulate savings more than the total cost until sometime after year 17. So, it was not suggested that the system would pay for itself within the loan term.
- Mr and Mrs K sold their property in March 2018 but didn't complain about the system's transferability until September 2019 suggesting that transferability wasn't a key factor.
- P's system notes show no record of Mr and Mrs K contacting them to request transfer of the system.

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

I reached a different outcome to that of our investigator. Because of that, I issued a provisional decision on 11 May 2022 – giving both Mr and Mrs K and Shawbrook the opportunity to respond to my findings below, before I reached a final decision.

In my provisional decision, I said:

#### 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 section 56 and section 75 of the Act. Section 75 provides protection for consumers for goods or services bought using credit.*

*As Mr and Mrs K paid for the system with a fixed sum loan agreement, Shawbrook agrees that section 75 applies to this transaction. This means that Mr and Mrs K could claim against Shawbrook, the creditor, for any misrepresentation or breach of contract by P in the same way they could've 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 K, Mrs K 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.*

#### Key documents

*There are several documents that have been provided by both the CMC and Shawbrook. These include the credit agreement and solar quote, titled 'Your Personal Solar Quotation'. I've considered these in detail and whether they support the alleged representations made by P.*

*The quote is a detailed document that sets out key information about the system, the expected performance, financial benefits and technical information. I'm satisfied that it*

formed a central part of the sales process and is therefore relevant when considering if there have been any untrue statements of fact alongside Mr and Mrs K's recollection of the sale.

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.

### Cost of the system

I'm satisfied that the quote provided to Mr and Mrs K makes it clear that the cost of the system is £8,652. This is supported by the credit agreement which sets out that the cash price of the system was £8,652. The total amount of credit is £8,552 and goes on to show that the total amount payable would be £16,820.

And as the quote provided by P is clear that there would be a monthly loan repayment due, as set out in the table below, I'm satisfied that the two documents, the quote and the credit agreement, made it clear that although the cost of the system was £8,652, it would cost Mr and Mrs K more than this as they had decided to pay for it with an interest bearing loan.

### FIT payments

Mr and Mrs K have alleged that they were told their monthly loan repayments would be covered, or 'self-funded' by the FIT payments and electricity savings. I've considered the quote that was provided by P and considered whether this supports what Mr and Mrs K has said.

The system analysis page of the quote sets out the estimated income Mr and Mrs K 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	£	64
Generation tariff in year 1	£	108.22
Export tariff in year 1	£	63.56
Total income in year 1	£	171.78

#### Feed in tariff over 20 years

Assumed rate of RPI	3.04	%
Average generation tariff	£	0.061
Average export tariff	£	0.072
Average annual income	£	251.13

I think that the first of these tables is clear that Mr and Mrs K could expect to receive a total FIT income in year one of £171.78.

The quote goes on to look at the electricity savings Mr and Mrs K could expect from the system. The expected year one electricity savings is £302.33 and, when taking into account the optional extra's chose by Mr and Mrs K the combined income and savings in year one is shown as £589.31. 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 and Mrs K entered into with Shawbrook. This table shows the loan as repayable in 180 monthly payments of £91.38. 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 £91.38, to give an average difference between the monthly return from the system and the monthly loan repayment in each year.

#### 180 payments of £91.38 p/m

Yr	Acc. grand total	Est. monthly return	Average monthly repayment diff.
1	£589.31	£49.11	£-42.27
2	£624.93	£52.08	£-39.30
3	£662.92	£55.24	£-36.14
4	£703.45	£58.62	£-32.76
5	£746.69	£62.22	£-29.16
6	£792.84	£66.07	£-25.31
7	£842.10	£70.17	£-21.21
8	£894.68	£74.56	£-16.82
9	£950.83	£79.24	£-12.14
10	£1,010.80	£84.23	£-7.15
11	£1,074.85	£89.57	£-1.81
12	£1,143.27	£95.27	£3.89
13	£1,216.38	£101.37	£9.99
14	£1,294.50	£107.88	£16.50
15	£1,377.98	£114.83	£23.45

I think the quote clearly sets out the income Mr and Mrs K could expect to receive from the system, by way of FIT payments, as well as their 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 they could expect to receive by way of FIT income and any additional savings, would not be immediately sufficient to cover the monthly loan repayments.

#### Self-funding

I'll now consider whether P told Mr and Mrs K that the system would self-funding.

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.

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.

However, I do accept that Mr and Mrs K was told by P that the system would be self-funding over a duration of time.

Page 12 of the quote has a table detailing the performance over 25 years. This shows that by year 18 the overall benefits that Mr and Mrs K could expect to receive would have exceeded the total amount payable under the loan agreement.

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	£108.22	£63.56	£302.33	£115.20	£0.00	£0.00	£0.00	£0.00	£589.31	£589.31	£49.11	6.81%
100.0%	2	£111.51	£65.49	£324.34	£123.59	£0.00	£0.00	£0.00	£0.00	£624.93	£1,214.24	£52.08	7.22%
100.0%	3	£114.90	£67.48	£347.95	£132.58	£0.00	£0.00	£0.00	£0.00	£662.91	£1,877.15	£55.24	7.66%
99.6%	4	£117.92	£69.25	£371.79	£142.24	£0.00	£0.00	£0.00	£0.00	£701.20	£2,578.35	£58.43	8.10%
99.2%	5	£121.01	£71.08	£397.26	£152.59	£0.00	£0.00	£0.00	£0.00	£741.94	£3,320.28	£61.83	8.58%
98.8%	6	£124.19	£72.94	£424.45	£163.70	£0.00	£0.00	£0.00	£0.00	£785.29	£4,105.57	£65.44	9.08%
98.4%	7	£127.45	£74.85	£453.52	£175.62	£0.00	£0.00	£0.00	£0.00	£831.44	£4,937.01	£69.29	9.61%
98.0%	8	£130.79	£76.81	£484.55	£188.40	£0.00	£0.00	£0.00	£0.00	£880.55	£5,817.56	£73.38	10.18%
97.6%	9	£134.22	£78.83	£517.70	£202.12	£0.00	£0.00	£0.00	£0.00	£932.87	£6,750.43	£77.74	10.78%
97.2%	10	£137.73	£80.89	£553.12	£216.83	£0.00	£0.00	£0.00	£0.00	£988.57	£7,739.00	£82.38	11.43%
96.8%	11	£141.33	£83.01	£590.94	£232.62	£0.00	£0.00	£0.00	£0.00	£1,047.90	£8,786.90	£87.32	12.11%
96.4%	12	£145.02	£85.18	£631.34	£249.55	£0.00	£0.00	£0.00	£0.00	£1,111.10	£9,898.00	£92.59	12.84%
96.0%	13	£148.82	£87.40	£674.50	£267.72	£0.00	£0.00	£0.00	£0.00	£1,178.43	£11,076.43	£96.20	13.62%
95.6%	14	£152.70	£89.68	£720.58	£287.21	£0.00	£0.00	£0.00	£0.00	£1,250.18	£12,326.61	£104.18	14.45%
95.2%	15	£156.68	£92.02	£769.81	£308.12	£0.00	£0.00	£0.00	£0.00	£1,326.63	£13,653.24	£110.55	15.33%
94.8%	16	£160.77	£94.42	£822.38	£330.55	£0.00	£0.00	£0.00	£0.00	£1,408.12	£15,061.36	£117.34	16.28%
94.4%	17	£164.95	£96.88	£878.52	£354.61	£0.00	£0.00	£0.00	£0.00	£1,494.97	£16,556.33	£124.58	17.28%
94.0%	18	£169.26	£99.40	£938.49	£380.43	£0.00	£0.00	£0.00	£0.00	£1,587.58	£18,143.91	£132.30	18.35%
93.6%	19	£173.66	£102.00	£1,002.52	£408.12	£0.00	£0.00	£0.00	£0.00	£1,686.29	£19,830.20	£140.52	19.49%
93.2%	20	£178.17	£104.64	£1,070.91	£437.83	£0.00	£0.00	£0.00	£0.00	£1,791.56	£21,621.76	£149.30	20.71%
91.2%	21-25	£0.00	£0.00	£6,554.33	£2,716.30	£0.00	£0.00	£0.00	£0.00	£9,270.63	£30,892.40	£154.51	21.43%
Repair/Replace													
Totals		£2,819.30	£1,655.82	£18,831.34	£7,585.93	£0.00	£0.00	£0.00	£0.00	£30,892.40	£30,892.40	Ave. ROI:	14.28%

*As I've set out above, I'm satisfied that P told Mr and Mrs K that the system would pay for itself by year 18, as supported by the table above. If that were an untrue statement of fact, and I'm satisfied that this was what induced them to enter into the contract, and they subsequently suffered a loss, that would 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 and Mrs K. The MCS certificate and quote sets out that the system is expected to produce 2,589 kWh a year.*

*I have looked at Mr and Mrs K FIT statements and can see that their system, on average, has generated 2,871 kWh. This is slightly more 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 are 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 were lower than predicted by P at the point of sale and I think explain why they haven't been receiving the financial returns they 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 covering 2006 to 2015. 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 and Mrs K could've expected to receive from the system. So, while I can appreciate the returns may not have been as high as estimated at the point of sale, I'm not persuaded this was due to unreasonable assumptions being used by P at the time Mr and Mrs K entered into the contract.*

#### *Transferrable solar panels*

*Mr and Mrs K have suggested that they were told by P, in the event they decided to move from the property to another, the panels could be relocated to their new home. I've not been able to find any reference to this within either the solar quote or any other documentation provided.*

*Shawbrook have also confirmed that they have been provided with copies of all P's file notes in relation to Mr and Mrs K's system purchase and there is no reference to transferring the panels within them.*

*Our investigator asked if Mr and Mrs K could provide any evidence or call records to support their comment of having spoken to someone regarding the panels being moved. Unfortunately, they've not been able to provide anything.*

*I also understand that Mr and Mrs K sold their property in March 2018. However, I understand that this aspect wasn't raised as a complaint until 18 months later. Had the ability to transfer the panels been a contributor to Mr and Mrs K's decision to purchase system, I would've expected this to have been raised when they sold their property.*

*So, having considered all of this, I'm not persuaded that P did, in fact, suggest or agree that transfer of the panels was possible.*

#### *Credit Assessment*

*When considering Mr and Mrs K's application for credit, I understand Shawbrook completed their own internal credit assessments and considered information obtained from credit reference agencies when reaching their decision to lend. Having completed my investigation, I'm satisfied that there isn't any information to support the allegation that proportionate credit checks and assessments weren't completed here.*

#### *Sales pressure*

*Concerns have been raised that as part of P's sales process, pressure was exerted upon Mr and Mrs K to enter into the agreement to purchase the system. I'm aware of previous allegations which were investigated and addressed by Trading Standards. These relate to circumstances predating the sales process and purchase in Mr and Mrs K's case. This service has been provided with assurances that those concerns were addressed and remedied, in co-operation with Trading Standards, prior to P's sale to Mr and Mrs K.*

*I'm also satisfied that the quote formed a central part of the sales process and it would've been discussed with Mr and Mrs K. So, I've not been persuaded that the salesperson would've said something that would then have been contradicted by the quote. To support this, I'm satisfied that the Mr and Mrs K were sent the quote, had time to consider it and to raise any issues prior to installation.*

#### *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 and Mrs K*

*to enter into the contract for the system. So, I don't intend to uphold this aspect of their complaint.*

*However, Shawbrook didn't provide its final response to Mr and Mrs K's complaint until after it had been referred to this service. I believe that the fact Mr and Mrs K didn't receive a response to their complaint undoubtedly caused them trouble and upset. So, I'll be supporting Shawbrook's offer by making an award of £200 to cover this.*

### **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.

In my provisional decision, I asked both parties to respond with any new information or comments they wanted me to consider.

Shawbrook haven't added anything further.

The CMC didn't agree with my provisional decision. Included within their response, they said:

- when seeking savings and benefits, it's inconceivable that Mr and Mrs K would accept 15 years of finance with no benefit until three years after the finance had been discharged; and
- it's not reasonable to accept a shortfall between the finance payments and benefits which Mr and Mrs K would have to find before any benefit is received; and
- Mr and Mrs K wouldn't recover any funding shortfall within the lifetime of the solar panels; and
- it's not reasonable for Mr and Mrs K to be held responsible for identifying any discrepancies between what they were told and what the quote and documentation said; and
- Mr and Mrs K didn't receive a copy of the quote; and
- Mr and Mrs K's witness testimony of what they were told has been ignored.
- Mr and Mrs K didn't raise their complaint about their inability to transfer the solar system to a new property until they received legal advice.

I've considered all the comments and responses received from the CMC.

Where there's a dispute about what happened or what was said, I must decide on the balance of probabilities – that is, what I consider most likely happened, given the evidence that is available and the wider surrounding circumstances.

Shawbrook have provided evidence that shows P sent the quote to Mr & Mrs K by email in November 2016. The email address used is the same as that provided to this service. So, I'm satisfied they were sent the quote, had the opportunity to read it and raise any questions. They also had the opportunity to cancel the contract if, within the notice period, they changed their mind or were concerned that anything within the quote contradicted what they believe they'd been told during the sales presentation.

Having considered all the evidence, including the Mr & Mrs K's recollections, I'm satisfied that the quote and the finance agreement were clear about the costs associated with the supply and installation of the system. I'm also satisfied that the quote made it clear how long it would take to cover those costs from the financial benefits of the system. So, in the absence of any supporting evidence to the contrary from the time, I've not been provided with anything more here that persuades me that the system was misrepresented to Mr & Mrs K by P.

Regarding the transferability of the system to another property, I acknowledge the CMC's observations. While I've considered what Mr & Mrs K have said, it's not that I would've expected them to have complained sooner, but I would expect to find some evidence or testimony, around the time of the sale of their property, to show they'd asked for the panels to be moved. Having requested that from both Mr & Mrs K and P (via Shawbrook), I've not been provided with anything that demonstrates there'd been any communication on that subject.

So, having considered Mr & Mrs complaint further, I've not seen anything that persuades me to vary from my provisional decision.

### **My final decision**

For the reasons set out above, I uphold Mr and Mrs K's complaint. In full and final settlement of it, I require Shawbrook Bank Limited to pay Mr and Mrs K £200.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K and Mrs K to accept or reject my decision before 4 August 2022.

Dave Morgan  
**Ombudsman**