

## **The complaint**

Mr T complains that Shawbrook Bank Limited (“Shawbrook”) has rejected the claim he made under sections 56 and 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 T is represented by a claims management company (“the CMC”).

## **Background**

In or around December 2015, Mr T and his wife 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 his home. After being visited by a representative of P, Mr T and his wife decided to purchase the system together. The purchase was financed through a 15 year fixed sum loan agreement with Shawbrook, signed by Mr T alone. The system was installed in January 2016.

In May 2021 the CMC made a claim to Shawbrook on Mr T’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 T 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 in that it would pay for itself within ten years;
- the feed in tariff (FIT) and savings on his electricity bills would provide enough income to cover the monthly loan payments;
- the salesman had said that she would register the system for FIT payments, but she had not done so, and the deadline to register had subsequently been missed; and
- the system would not require maintenance (but in fact the inverter would have to be replaced during the system’s 25-year lifespan, at a cost of £1,000).

Shawbrook didn’t agree the system had been misrepresented to Mr T 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 T and found no reason to uphold the complaint.

The CMC didn’t agree with the adjudicator’s view. It argued that since the system had not been registered for FIT payments, the adjudicator had been wrong to take into account what P’s quote had said about the estimated income from FIT payments.

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.

Having done so, I do not uphold it. I will explain why.

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

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.

### Key documents

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 T 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 parties. These include the credit agreement, the solar quote, titled "Your Personal Solar Quotation", an email from Ofgem to the CMC confirming that Mr T's system was never registered for FIT payments, and two emails from P to Mr T in January 2016 about registering for the FIT scheme. I've considered these, along with Mr T'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 T, explaining any benefits of the system, prior to him agreeing to enter into the contract. Mr T has signed it on page 22.

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 T's version of events, when considering if there have been any untrue statements of fact.

### FIT registration

The 2016 emails are from an email domain associated with P and come from a person with the same name as the saleswoman's name on P's quote. I accept that they are from the saleswoman. Her first email says:

"As for your FIT application, as soon as I have your completion documents after your system is installed, I can get these completed for you."

Mr T replied to ask (among other things):

"...we are keen to do the paperwork for the government rebate" [I take this to mean the FIT payments] "either Monday or Tuesday next week as ... I understand there is a cut off for these applications."

P replied:

"I will come out on Monday and ... get the paperwork for the fit application all sorted. ... I will check my appointments and will let you know tomorrow a firm time for Monday."

If taken in isolation, then I can see how this email exchange could be ambiguous enough for Mr T to think that P's saleswoman was going to register the system for him. However, I think it should be read with what the quote says. The quote says, in a section titled "Feed in Tariff (FIT)" on pages 14 to 15:

"We provide all the paperwork and we can fill in the required information you need from us. You can claim the Feed in Tariff from any of the 6 major suppliers ...

All you have to do is fill out the form with the relevant information including the MCS number and the system is ready to be registered to start claiming your FIT. If you have any issues with this documentation we will be more than happy to help you complete it. It is the customer's responsibility to provide their personal details and bank details to the energy company."

I think the quote makes it clear that while P might assist with the paperwork, it was the customer's responsibility to complete and submit it. So on balance, I think that the saleswoman would have given advice consistent with this information at the Monday appointment. For that reason I am not satisfied that the failure to register the system for FIT payments was P's error.

### FIT payments and savings

Mr T 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 energy bills. I've considered the quote that was provided by P as well as Mr T'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 T 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

Generation tariff in year 1

£ 414.31

Export tariff in year 1

£ 83.52

Total income in year 1

£ 497.83

I think that the first of these tables is clear that Mr T could expect to receive a total FIT income in year one of £497.83. The quote goes on to look at the electricity savings Mr T could expect from the system. The expected year one electricity savings are £240.02 and the combined income and savings in year one is shown as £737.85. This is shown in a table titled "Putting it all together".

### Putting it all together

Total income & savings in year 1

£ 737.85

This total results in an average monthly income of £61.49. I'm satisfied that the same document set out that there would be a monthly loan repayment due of £85.46. As a result, I'm not able to conclude that Mr T was told that the monthly loan repayments would be covered by the FIT payments and savings.

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 T entered into with Shawbrook. This table shows the loan as repayable in 180 monthly payments of £85.46. (This is incorrect; the loan agreement gives the correct monthly figure of £86.97, but the difference – £1.41 – 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, 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 seven years of the loan, meaning that the system would not begin to make enough money to cover the loan payments until year eight.

### 180 payments of £85.46 p/m

Yr	Acc. grand total	Est. monthly return	Average monthly repayment diff.
1	£737.85	£61.49	£-23.42
2	£773.85	£64.49	£-20.42
3	£812.03	£67.67	£-17.24
4	£852.56	£71.05	£-13.86
5	£895.60	£74.63	£-10.28
6	£941.33	£78.44	£-6.47
7	£989.96	£82.50	£-2.41
8	£1,041.69	£86.81	£1.90
9	£1,096.75	£91.40	£6.49
10	£1,155.38	£96.28	£11.37
11	£1,217.87	£101.49	£16.58
12	£1,284.48	£107.04	£22.13
13	£1,355.54	£112.96	£28.05
14	£1,431.37	£119.28	£34.37
15	£1,512.35	£126.03	£41.12

I think the quote clearly sets out the income Mr T 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 and savings 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. I've carefully thought about Mr T'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.

#### Self-funding

I'll now consider whether P told Mr T 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 £1.41

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 that there would be a difference between the expected income and the monthly loan repayments.

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

The "Key Facts" page of the quote states in large font that it would take nine years for the overall benefits that Mr T could expect to receive to match the cash price of the system.

Your estimated payback time is



I think the nine-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. This figure also appears in the "Putting it all together" section.

A later page of the quote has a table detailing the estimated performance of the system over 20 years. This too shows that during year 9 the overall benefits that Mr T could expect to receive would reach the cash price of the system, £7,998.

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				
100.0%	1	£414.31	£83.52	£240.02	£0.00	£0.00	£0.00	£0.00	£737.85	£737.85	£61.49	9.23%
97.6%	9	£520.25	£104.88	£445.30	£0.00	£0.00	£0.00	£0.00	£1,070.43	£8,056.75	£89.21	13.38%

So I'm satisfied that P told Mr T that the system would pay for its cash price in nine years. 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. So I've gone on to consider the performance of the system and whether this is in line with the contract between P and Mr T.

### Performance

The MCS certificate and quote set out that the system is expected to produce 3,444 kWh a year. I have looked at Mr T's meter reading and can see that his system, on average, has generated 1,939 kWh a year. This is obviously much less than estimated by P at the point of sale (56.3%), but I think that this can be attributed entirely to the lack of FIT payments, which were expected to make up about 67% of the total estimated financial returns from the system. When only the savings on Mr T's electricity bills are taken into account, the system is actually performing much better than expected. There is no evidence that these were misrepresented to him.

### The inverter

I don't think it is likely that the salesman would have told Mr T that the system would require no maintenance over its estimated lifespan of 25 years. It is possible that the salesman did

not tell him during the meeting that the inverter would need to be replaced, but that is not the same thing as a misrepresentation.

I note that the quote says, in a section titled "Inverter":

"The Inverter is the one part of PV system that has a higher chance of failure and may require your attention within the 25 years."

I also note that the quote says on page 4 that there is a lifetime warranty on the inverter, so Mr T may not have to pay for a new one even if it does have to be replaced.

### 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 T 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.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 21 September 2022.

Richard Wood  
**Ombudsman**