

The complaint

Mr S complains that Shawbrook Bank Limited ("Shawbrook") has rejected the claim he made under sections 56, 75 and 140A 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 S is represented by a claims management company ("the CMC").

Background

In or around September 2015, Mr S 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 S decided to purchase the system and finance it through a 15 year fixed sum loan agreement with Shawbrook. The system was subsequently installed.

In May 2021 the CMC made a claim to Shawbrook on Mr S'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 S 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;
- the feed in tariff (FIT) and savings on his electricity bills would provide enough income to cover the monthly loan payments; 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 £1,500).

Furthermore, P had registered Mr S's MCS certificate at the wrong address, which meant that he had not received any FIT payments. P had agreed to pay him the resulting loss, but after making only one payment of £393.07 they had not made any more payments, and had not dealt with this issue despite Mr S making numerous phone calls.

Shawbrook didn't agree the system had been misrepresented to Mr S 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 S and found no other reason to uphold the complaint.

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

- the adjudicator had given too much weight to P's quote;
- where a person is unaware that a representation is false, the fact that they could have found out it was false by taking reasonable care is not a defence in law, yet the adjudicator appeared to have put the onus on Mr S to discover that the system would not be self-funding by reading the quote;
- it was not credible to suggest that Mr S would have agreed to buy the system unless he had been told that it would pay for itself;

- as Mr S was an eye-witness to what happened at the sales meeting, and the salesman's direct testimony had not been obtained by Shawbrook, Mr S's evidence ought to be preferred.

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 S paid for the system with a fixed sum loan agreement, Shawbrook agrees that section 75 applies to this transaction. This means that Mr S 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 S 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, and also on the possibility that Shawbrook paid P commission or gave P some other financial incentive to broker the loan. Shawbrook denies that any commission was paid, and I have seen no evidence to the contrary, so I do not accept that it was.

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 S 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 MCS certificate, the credit agreement, and the solar quote, titled "Your Personal Solar Quotation". I've considered these, along with Mr S'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 S, explaining any benefits of the system, prior to him agreeing to enter into the contract. Mr S has signed it.

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 S's version of events, when considering if there have been any untrue statements of fact.

I agree with the CMC's analysis of the law, which I have summarised above. If the salesman did mislead Mr S about the system, then it would not be a defence for either P or Shawbrook to say that Mr S could have discovered any misrepresentations simply by reading the quote in his own time to find out the true position. Rather, the relevance of the quote is that I do not think it is likely, on the balance of probabilities, that the salesman made oral representations which he knew were contradicted by the quote at a meeting in which the quote played a central part.

Therefore, although I have not heard directly from the salesman, I do not accept the CMC's submission that Mr S's own evidence is the only evidence about what was said at the meeting. The quote is also evidence about that.

MCS registration

It is not in dispute that the MCS certificate was registered at the wrong address, and indeed I can see that for myself. This meant that Mr S has never received any FIT payments.

I have seen a letter from P to Mr S about this issue, dated 15 August 2016. This letter confirms that this was not Mr S's fault, but that it cannot be rectified by P due to data protection laws. Instead, Mr S had to cancel the FIT registration himself, and then re-register. P provided the relevant phone number to call to do this in the letter.

In the same letter, P said that it would annually pay Mr P the difference between the tariff he was supposed to have and the new tariff he would end up getting. It also made an advance payment of £393.07.

I think that offer was a fair and reasonable resolution to that problem. However, Mr S never re-registered his system for FIT payments. He has explained that he tried to, but he received no co-operation from the third party responsible, and P did not help him either. This means that P was not able to calculate how much more to pay him, since there was no new tariff for it to compare with the old.

I accept Mr S's explanation for why he did not re-register. But I don't think that P, or Shawbrook, are responsible for the third party's shortcomings. I also accept P's explanation for why it could not help him more than it did – it had already done what it could.

The CMC has argued that since P was responsible for this problem arising in the first place, Shawbrook should now compensate Mr S for this issue. But even if I told Shawbrook to do that, there is still not enough information for me to calculate how much compensation Mr S is

entitled to. And it is now too late for Mr S to register for FIT payments, as the FIT scheme was closed to new applicants in 2019.

While the error was certainly unfortunate, it was identified and a solution was offered in 2016. When Mr S was unable to re-register his system at the time, he abandoned the matter, and only instructed the CMC to bring up the matter again five years later, when in my view it was by then too late to do anything about it. If he had instructed the CMC to help him in early 2019, or ideally sooner, I am sure that the CMC (which is a solicitors' firm) would have been able to help him get the third party to re-register his system at the correct address. P would then have been in a position to easily calculate his loss and to reimburse him.

That is no longer possible. So I am afraid that, on the basis that Mr S has failed to mitigate his loss, I do not uphold this complaint point.

FIT payments and savings

Mr S 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 S'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 S 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	£	393.07
Export tariff in year 1	£	76.44
Total income in year 1	£	469.51

I think that the first of these tables is clear that Mr S could expect to receive a total FIT income in year one of £469.51. The quote goes on to look at the electricity savings Mr S could expect from the system. The expected year one electricity savings are £368.09 and, when taking into account the optional extras chosen by Mr S, the combined income and savings in year one is shown as £1,096.36. This is shown in a table titled "Putting it all together".

Putting it all together

Total income & savings in year 1	£	1096.36
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This results in an average monthly income of about £91. I'm satisfied that the same document set out that there would be a monthly loan repayment due of £105.14. As a result, I'm not able to conclude that Mr S 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 S entered into with Shawbrook. This table shows the loan as repayable in 180 monthly payments of £105.14. (This is incorrect; the loan agreement gives the correct monthly figure of £106.68, but the difference – £1.54 – 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 of £105.14, 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 not begin to make enough money to cover the loan payments until year three.

180 payments of £105.14 p/m

Yr	Acc. grand total	Est. monthly return	Average monthly repayment diff.
1	£1,130.27	£94.19	£-9.95
2	£1,200.76	£100.06	£-4.08
3	£1,276.37	£106.36	£2.22
4	£1,357.52	£113.13	£8.99
5	£1,444.64	£120.39	£16.25
6	£1,538.20	£128.18	£24.04
7	£1,638.71	£136.56	£32.42
8	£1,746.74	£145.56	£41.42
9	£1,862.87	£155.24	£51.10
10	£1,987.76	£165.65	£61.51
11	£2,122.11	£176.84	£72.70
12	£2,266.68	£188.89	£84.75
13	£2,422.30	£201.86	£97.72
14	£2,589.85	£215.82	£111.68
15	£2,770.30	£230.86	£126.72

I think the quote clearly sets out the income Mr S 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. (This supports my finding above that Mr S wasn't told that the FIT payments alone would cover the loan repayments.) I've carefully thought about Mr S'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 S 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 £1.54 discrepancy in the monthly payments). That section of the quote has been signed by Mr S, so I'm satisfied that P did enough to bring it to his attention. 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 S 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 eight years for the overall benefits that Mr S could expect to receive to match the cash price of the system.

Your estimated payback time is



I think the eight-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 eight the overall benefits that Mr S could expect to receive would reach the cash price of the system, £9,840.

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				
97.0%	1	£381.28	£74.15	£357.05	£161.67	£0.00	£122.22	£0.00	£1,096.36	£1,096.36	£91.36	11.15%
92.8%	7	£441.16	£85.79	£553.60	£250.66	£0.00	£189.50	£0.00	£1,520.72	£9,080.98	£126.73	15.45%
92.1%	8	£451.93	£87.89	£595.46	£269.62	£0.00	£203.84	£0.00	£1,608.75	£10,689.73	£134.06	16.35%

So I'm satisfied that P told Mr S that the system would pay for its cash price in eight 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 S.

Performance: energy generation

The quote sets out that the system is expected to produce 3,152 kWh a year. I have looked at Mr S's meter reading and can see that his system, on average, has generated 1,872 kWh a year. This is much less than estimated by P at the point of sale (59%), so I agree that the system is under-performing.

However, I do not know if that is because the system was misrepresented at the point of sale, or if it is because the system was defective at the point of sale (which would be a breach of contract), or if it is because the system subsequently developed a fault (which would not necessarily be Shawbrook's responsibility).

This issue was not raised with Shawbrook in the claim under section 75 in 2021, and so I do not think that Shawbrook can be faulted for not having upheld that claim on this basis. Shawbrook was only dealing with a complaint that Mr S was told that the system was supposed to be self-funding from the start, when it wasn't. And Shawbrook's answer was that the quote had made it clear all along that this would not be the case. Shawbrook didn't have to go further than that and investigate whether the system was generating as much energy as P had estimated.

So I think that the under-performance issue needs to be raised with Shawbrook in a new section 75 claim. That will enable Shawbrook to investigate the reason for the under-performance, and possibly to fix it. Then, if Mr S is still not satisfied, he may bring a new complaint to our service about Shawbrook's response. I am not in a position to deal with that issue now, except to say that Shawbrook did not mishandle Mr S's claim under section 75.

Performance: financial returns

However, I do think that Mr S's original section 75 claim did include a complaint to the effect that the system was not generating the estimated financial returns, and that the system had therefore been misrepresented on that basis. So I have considered whether the estimated financial returns were exaggerated, independently of the system's failure to generate as much energy as estimated.

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 between 2005 and 2014 to calculate the utility price 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 this explains why Mr S 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 S 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 S entered into the contract.

The inverter

I don't think it is likely that the salesman would have told Mr S 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 also 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."

So I don't uphold this complaint point.

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 S 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 S to accept or reject my decision before 19 October 2022.

Richard Wood
Ombudsman