

The complaint

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

Mrs K was initially represented by a claims management company ("the CMC").

What happened

In or around August 2017, Mrs K 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 her home. After being visited by a representative of P, 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 November 2021 the CMC made a claim on 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 Mrs K to enter into the contract with P. The CMC said the following misrepresentations had been made:

- the Feed in Tariff ("FIT") and electricity savings would generate a combined benefit that would be more than enough to pay the costs of purchasing the system as well as the finance costs: and
- Mrs K was told that she would make significant savings on her electricity bills; and
- since the installation of the system, Mrs K has discovered it isn't working as promised – the system is underperforming; and
- Mrs K was told P would register the FIT account on her behalf.

Shawbrook issued a final response and explained that it didn't agree the system had been misrepresented to Mrs K or that there were any other reasons for the claim to be upheld.

One of our investigators looked into what had happened. Having considered all the information and evidence provided our investigator thought that the system installed by P was underperforming against what they'd told Mrs K in their quote and contract. Our investigator thought Mrs K should be able to keep the system. He also thought Shawbrook should recalculate the original loan over its 15-year term, based upon the known and assumed savings and income to Mrs K so that she pays no more than that.

The CMC told this service they were no longer representing Mrs K. And Mrs K hasn't responded to our investigators findings. Shawbrook have also not responded to our investigator's findings.

As an agreement couldn't be reached, the case 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 Mrs K paid for the system with a fixed sum loan agreement, Shawbrook agrees that section 75 applies to this transaction. This means that Mrs K could claim against Shawbrook, the creditor, for any misrepresentation or breach of contract by P in the same way she 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 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.

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.

The consumer 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 the CMC and Shawbrook. These include the credit agreement and solar quote, entitled 'Your Personal Solar Quotation'. I've considered these, along with the Mrs K'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've discussed this in detail with Mrs K, explaining any benefits of the system, prior to Mrs K agreeing to enter into the contract.

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 the Mrs K'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. It also clearly sets out the cash price of the goods.

On balance I'm satisfied that Mrs K was told that the cost of the system was £9,553.95. 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 £9,553.95. The monthly payment was £98.72. The total amount of credit is £9,453.95 after payment of a deposit of £100. And it goes on to show that the total amount payable would be £17,869.60.

Having considered all the evidence, including the consumer's recollections, I'm satisfied that they were told that 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 £9,553.95,

it would cost Mrs K more than this as she had decided to pay for it with an interest bearing loan.

FIT Payments

Mrs K has said that she was told her 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 as well as the Mrs K's recollections of their 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 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	£	50
Generation tariff in year 1	£	60.93
Export tariff in year 1	£	37.65
Total income in year 1	£	98.58
Feed in tariff over 20 years		
Assumed rate of RPI	3.04	%
Average generation tariff	£	0.060
Average export tariff	£	0.074
Average annual income	£	145.22

I think that the first of these tables is clear that Mrs K could expect to receive a total FIT income in year one of £98.58, which results in an average monthly income of £8.22. 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 £98.72. As a result, I'm not able to conclude that the consumer was told that the monthly loan repayments would be covered by the FIT payment alone.

The quote goes on to look at the electricity savings Mrs K could expect from the system. The expected year one electricity savings is £174.83 and, when taking into account the optional extra's chosen by Mrs K, the combined income and savings in year one is shown as £453.41. 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 Mrs K entered into with Shawbrook. This table shows the loan as repayable in 180 monthly payments of £101.02. 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 quoted monthly loan repayment of £101.02, to give an average difference between the monthly return from the system and the monthly loan repayment in each year.

180 payments of £101.02 p/m

Yr	Acc. grand total	Est. monthly return	Average monthly repayment diff.
1	£453.41	£37.78	£-63.24
2	£481.36	£40.11	£-60.91
3	£511.16	£42.60	£-58.42
4	£542.95	£45.25	£-55.77
5	£576.86	£48.07	£-52.95
6	£613.03	£51.09	£-49.93
7	£651.64	£54.30	£-46.72
8	£692.84	£57.74	£-43.28
9	£736.81	£61.40	£-39.62
10	£783.75	£65.31	£-35.71
11	£833.87	£69.49	£-31.53
12	£887.39	£73.95	£-27.07
13	£944.54	£78.71	£-22.31
14	£1,005.57	£83.80	£-17.22
15	£1,070.77	£89.23	£-11.79

I think the quote clearly sets out the income Mrs K could expect to receive from the system, by way of FIT payments, as well as her 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 she could expect to receive by way of FIT income and any additional savings, would not be sufficient to cover the monthly loan repayments. This also supports my finding above that the consumer wasn't told that the FIT payment would cover the loan repayment. I've carefully thought about the consumer'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 she was told that the monthly loan repayments would be covered by the FIT income alone.

Self-funding

I'll now consider whether P told Mrs K 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 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 Mrs K was told by P that the system would be self-funding over a certain duration of time.

Page 23 of the quote has a table detailing the performance over 25 years. This shows that by between years 21 and 25 the overall benefits that Mrs K 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				
100.0%	1	£60.93	£37.65	£174.83	£120.00	£0.00	£0.00	£0.00	£60.00	£453.41	£453.41	£37.78	4.75%
100.0%	2	£62.78	£38.79	£187.56	£128.74	£0.00	£0.00	£0.00	£63.49	£481.36	£934.77	£40.11	5.04%
100.0%	3	£64.69	£39.97	£201.21	£138.11	£0.00	£0.00	£0.00	£67.17	£511.15	£1,445.92	£42.60	5.35%
99.6%	4	£66.39	£41.03	£215.00	£148.16	£0.00	£0.00	£0.00	£71.08	£541.66	£1,987.58	£45.14	5.67%
99.2%	5	£68.13	£42.10	£229.72	£158.95	£0.00	£0.00	£0.00	£75.21	£574.11	£2,561.68	£47.84	6.01%
98.8%	6	£69.92	£43.21	£245.45	£170.52	£0.00	£0.00	£0.00	£79.58	£608.67	£3,170.36	£50.72	6.37%
98.4%	7	£71.75	£44.34	£262.26	£182.93	£0.00	£0.00	£0.00	£84.20	£645.48	£3,815.84	£53.79	6.76%
98.0%	8	£73.64	£45.50	£280.20	£196.25	£0.00	£0.00	£0.00	£89.09	£684.68	£4,500.52	£57.06	7.17%
97.6%	9	£75.56	£46.69	£299.38	£210.54	£0.00	£0.00	£0.00	£94.27	£726.44	£5,226.96	£60.54	7.60%
97.2%	10	£77.55	£47.92	£319.86	£225.87	£0.00	£0.00	£0.00	£99.75	£770.94	£5,997.90	£64.25	8.07%
96.8%	11	£79.57	£49.17	£341.72	£242.31	£0.00	£0.00	£0.00	£105.54	£818.32	£6,816.22	£68.19	8.57%
96.4%	12	£81.65	£50.46	£365.09	£259.95	£0.00	£0.00	£0.00	£111.67	£868.81	£7,685.03	£72.40	9.09%
96.0%	13	£83.79	£51.77	£390.04	£278.87	£0.00	£0.00	£0.00	£118.16	£922.63	£8,607.66	£76.89	9.66%
95.6%	14	£85.97	£53.12	£416.69	£299.17	£0.00	£0.00	£0.00	£125.03	£979.99	£9,587.65	£81.67	10.26%
95.2%	15	£88.21	£54.51	£445.16	£320.95	£0.00	£0.00	£0.00	£132.29	£1,041.12	£10,628.77	£86.76	10.90%
94.8%	16	£90.52	£55.93	£475.56	£344.32	£0.00	£0.00	£0.00	£139.98	£1,106.31	£11,735.08	£92.19	11.58%
94.4%	17	£92.87	£57.39	£508.03	£369.39	£0.00	£0.00	£0.00	£148.11	£1,175.79	£12,910.87	£97.98	12.31%
94.0%	18	£95.29	£58.88	£542.70	£396.28	£0.00	£0.00	£0.00	£156.71	£1,249.86	£14,160.73	£104.15	13.08%
93.6%	19	£97.77	£60.42	£579.74	£425.13	£0.00	£0.00	£0.00	£165.82	£1,328.88	£15,489.61	£110.74	13.91%
93.2%	20	£100.31	£61.99	£619.29	£456.08	£0.00	£0.00	£0.00	£175.45	£1,413.11	£16,902.73	£117.76	14.79%
91.2%	21-25	£0.00	£0.00	£3,790.23	£2,829.48	£0.00	£0.00	£0.00	£1,042.54	£7,662.25	£24,564.97	£127.70	16.04%
Repair/Replace									£-1,250.00				
Totals		£1,587.30	£980.84	£10,889.69	£7,902.00	£0.00	£0.00	£0.00	£1,955.14	£23,314.97	£23,314.97	Ave. ROI:	9.76%

As I've set out above, I'm satisfied that P told Mrs K that the system would pay for itself by between years 21 and 25 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 her to enter into the contract, and she 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 Mrs K. The MCS certificate and quote sets out that the system is expected to produce 1,497.14 kWh a year. And in turn would generate the income by way of FIT payments and savings in her energy bills.

I have looked at Mrs K's FIT statements and can see that her system, on average, has generated 797.40 kWh a year. This is substantially less than estimated by P at the point of sale.

I'm satisfied that the predicted generation, and the subsequent FIT payments and electricity savings, would've induced Mrs K into entering into the contract. And as the actual generation, and therefore the income, are significantly lower than she was promised, she has suffered a loss.

I note the CMC raised some additional points. But, while I've considered these, having already established there was most likely a misrepresentation at the point of sale, I don't think it's necessary to discuss these points in this decision.

I'll go on to explain what I think fair compensation should be.

Putting things right

Our role is to resolve individual disputes between consumers and businesses fairly, reasonably, quickly and informally. Determining fair compensation is not always an exact science and it is more difficult in a case like this where solar panels have been installed at the property.

I've considered if it's fair to unwind the credit agreement, remove the solar panels and give Mrs K a refund of all the payments made (less any financial benefit gained from the installation of the solar panels). But I think it may be disproportionate to do this when the panels appear to be working and generating green energy. I think there's an alternative that would put Mrs K in a fair position.

In this case, I think fair compensation is trying to make sure that Mrs K doesn't suffer a financial loss, which in my view would mean that the solar panel system should be cost neutral over the 15-year loan term. In summary, my aim is to make sure that total outgoings (including the monthly loan repayments) are equal to any income and savings that the panels generate.

So, I think to put things right Shawbrook should recalculate the original loan based on the known and assumed savings and income to Mrs K from the solar panels over the 15-year term of the loan, so she pays no more than that, and she keeps the solar panel system. This will put Mrs K in a cost neutral position over the loan term, meaning that she's not disadvantaged by the misrepresentation.

So, I think the fairest resolution would be to let Mrs K have the following options as to how she would like the overpayments to be used:

- a) the overpayments are used to reduce the outstanding balance of the loan and she continues to make her current monthly payment resulting in the loan finishing early,
- b) the overpayments are used to reduce the outstanding balance of the loan and she pays a new monthly payment until the end of the loan term,
- c) the overpayments are returned to Mrs K and she continues to make her current monthly payment resulting in the loan finishing early, or
- d) the overpayments are returned to Mrs K and she pays a new monthly payment until the end of the loan term.

It is likely that, by recalculating the loan this way, Mrs K's monthly repayments would reduce, meaning that she has paid more each month than she should have, resulting in an overpayment balance. If so, Mrs K has been deprived of the amount of the monthly overpayment. And so Shawbrook should pay Mrs K 8% simple interest*, per annum, on the amount of each overpayment from the date of the overpayment to the date of settlement.

I also think that Shawbrook should pay £100 compensation for the trouble and upset caused.

*If Shawbrook Bank Limited considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mrs K how much it's taken off. It should also give Mrs K a certificate.

My final decision

My final decision is that I uphold Mrs K's complaint. Shawbrook Bank Limited should put things right in the manner set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 27 October 2022.

Dave Morgan
Ombudsman