

The complaint

Mr and Mrs G 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 say was misrepresented to them by the supplier.

Mr and Mrs G is represented by a claims management company (“the CMC”).

What happened

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

In January 2020, the CMC made a claim on Mr and Mrs G’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 G to enter into the contract with P. The CMC said the following misrepresentations had been made:

- The system would be self-funded by virtue of the feed in tariff (FIT) payments and electricity cost savings; and
- the cost of the system would break-even within seven years; and
- the FIT payments would be received on a monthly basis.

Shawbrook didn’t issue a final response, so the CMC referred Mr and Mrs G’s complaint to this service to consider.

One of our investigators looked into what had happened. Having considered all the information and evidence provided, our investigator thought that the FIT payments and electricity cost savings generated were significantly lower than those estimated by P. And as a consequence, thought that P had misrepresented the system to Mr and Mrs G. Our investigator thought that as section 75 of the Act applied, Shawbrook should recalculate Mr and Mrs G’s original loan to ensure the cost of the system installed would be cost neutral over the 15-year term of the loan.

Shawbrook responded to our investigator’s findings. They said:

- They would ask P to inspect the system installed but suggest Mr and Mrs G had never previously raised concerns about underperformance with P; and
- Mrs and Mrs G’s original complaint to P states they thought the FIT payments would “cover or contribute” and “in some cases pay extra”, which is contrary to their argument they were “told it would be self-funding”.
- it is equally likely (and if not more likely) Mr and Mrs G were told that their FIT payments would contribute towards their monthly repayments as this is supported by the sales documentation.

The CMC didn't formally respond to our investigator's view but did provide the following further comments:

- Our clients would like to include that their latest FIT payment was £39.65 which is less than half a month's finance payment, and although this is a winter payment it still falls well short of what they were told would be a self-funding scheme; and
- our client...believes they were pressured into buying finance with the solar panels as a mere vehicle for the finance.

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 Mr and Mrs G 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 G could claim against Shawbrook, the creditor, for any misrepresentation or breach of contract by P in the same way they 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 and Mrs G 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?

Where there's 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 and Mrs G say 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 the CMC. These include the credit agreement and solar quote, entitled 'Your Personal Solar Quotation'. I've considered these, along with Mr and Mrs G's testimony and recollection of the sales meeting, to decide on balance what is most likely to have happened.

The Solar Quote

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 and Mrs G, explaining any benefits of the system, prior to the consumer agreeing to enter into the contract.

I've also noted that the CMCs letter of complaint to Shawbrook appears to support that the quote formed a central part of the sales process. The letter of complaint says:

"Our clients were left with a 'Personal Solar Quotation'..."

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 and Mrs G'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 Mr and Mrs G were told that the cost of the system was £8,150. The quote sets this out clearly. This is supported by the credit agreement, although this sets out that the cash price of the system was £8,100. I don't consider the small difference to be material in this case. The monthly payment was £89.98. The total amount of credit was £8,100 and it goes on to show that the total amount payable would be £15,835.40.

Having considered all the evidence, including Mr and Mrs G's recollections, I'm satisfied they were told there would be a monthly loan repayment due. The quote makes this clear and is set out in a table on page 10 of the quote under the heading "Repayments". Overall, I'm satisfied that the two documents, the quote and the credit agreement, made it clear that although the cost of the system to be financed was £8,100, it would cost Mr and Mrs G more than this as they had decided to pay for it with an interest bearing loan.

Self-funding

I've considered whether P told Mr and Mrs G that the system would be self-funding from the outset. In doing so I'll 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 entitled "Repayments" on page 10 of the solar quote which sets out the estimated average monthly income from the system, and the effect on that income when 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 and Mrs G were 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 system's performance over 20 years. This suggests that the overall benefits that Mr and Mrs G could expect to receive would have exceeded the total amount payable under the loan agreement by the early part of year 16.

Estimated performance over 20 years

Panel degradation	Yr	Income		Energy saving optional extras *					Total income savings	Acc. grand total	Est. monthly return	Ann. ROI
		Generation Tariff	Export Tariff	Elec. savings	VO savings	Heating control	H/W controller	Battery storage				
100.0%	1	£416.37	£80.97	£239.98	£0.00	£0.00	£0.00	£0.00	£737.32	£737.32	£61.44	9.05%
100.0%	2	£429.78	£83.58	£260.09	£0.00	£0.00	£0.00	£0.00	£773.44	£1,510.76	£64.45	9.49%
100.0%	3	£443.62	£86.27	£281.89	£0.00	£0.00	£0.00	£0.00	£811.77	£2,322.53	£67.65	9.96%
99.6%	4	£456.07	£88.69	£304.29	£0.00	£0.00	£0.00	£0.00	£849.04	£3,171.57	£70.76	10.42%
99.2%	5	£468.86	£91.17	£328.46	£0.00	£0.00	£0.00	£0.00	£888.50	£4,060.07	£74.04	10.9%
98.8%	6	£482.01	£93.73	£354.55	£0.00	£0.00	£0.00	£0.00	£930.29	£4,990.37	£77.53	11.41%
98.4%	7	£495.51	£96.36	£382.71	£0.00	£0.00	£0.00	£0.00	£974.58	£5,964.95	£81.22	11.96%
98.0%	8	£509.39	£99.06	£413.09	£0.00	£0.00	£0.00	£0.00	£1,021.54	£6,986.49	£85.13	12.53%
97.6%	9	£523.65	£101.84	£445.88	£0.00	£0.00	£0.00	£0.00	£1,071.36	£8,057.86	£89.28	13.15%
97.2%	10	£538.29	£104.68	£481.27	£0.00	£0.00	£0.00	£0.00	£1,124.24	£9,182.10	£93.69	13.79%
96.8%	11	£553.34	£107.60	£519.45	£0.00	£0.00	£0.00	£0.00	£1,180.40	£10,362.50	£98.37	14.48%
96.4%	12	£568.80	£110.61	£560.65	£0.00	£0.00	£0.00	£0.00	£1,240.06	£11,602.56	£103.34	15.21%
96.0%	13	£584.68	£113.70	£605.12	£0.00	£0.00	£0.00	£0.00	£1,303.49	£12,906.05	£108.62	15.99%
95.6%	14	£600.99	£116.87	£653.09	£0.00	£0.00	£0.00	£0.00	£1,370.95	£14,277.00	£114.24	16.83%
95.2%	15	£617.74	£120.13	£704.85	£0.00	£0.00	£0.00	£0.00	£1,442.74	£15,719.74	£120.23	17.7%
94.8%	16	£634.96	£123.48	£760.71	£0.00	£0.00	£0.00	£0.00	£1,519.15	£17,238.89	£126.60	18.64%
94.4%	17	£652.63	£126.92	£820.98	£0.00	£0.00	£0.00	£0.00	£1,600.53	£18,839.42	£133.38	19.64%
94.0%	18	£670.80	£130.44	£886.01	£0.00	£0.00	£0.00	£0.00	£1,687.25	£20,526.67	£140.61	20.7%
93.6%	19	£689.46	£134.07	£956.17	£0.00	£0.00	£0.00	£0.00	£1,779.70	£22,306.37	£148.31	21.84%
93.2%	20	£708.61	£137.81	£1,031.87	£0.00	£0.00	£0.00	£0.00	£1,878.28	£24,184.65	£156.52	23.05%
Totals		£11,045.57	£2,148.00	£10,991.10	£0.00	£0.00	£0.00	£0.00	£24,184.65	£24,184.65	Ave. ROI:	14.84%

As I've set out above, I'm satisfied that P told Mr and Mrs G that the system would pay for itself early in year 16. 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 them to enter into the contract, and they 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 and Mrs G. The MCS certificate and quote sets out that the system is expected to produce 3,339 kWh a year. I've looked at Mr and Mrs G's FIT statements and can see that their system, on average, has generated 2,547 kWh a year. This is significantly less than estimated by P at the point of sale, so I'm persuaded that the system doesn't appear to be performing as expected.

When our investigator highlighted this to Shawbrook, they undertook to arrange for P to inspect the system in order to establish why it wasn't performing as intended. The CMC subsequently confirmed that the system was inspected on 15 July 2022. But despite further requests, Shawbrook haven't responded with the findings from that inspection.

Summary

Having carefully considered the evidence provided by all parties in this complaint, I'm persuaded that the system installed at Mr and Mrs G's home isn't performing at the level suggested by P in their sales presentation and as detailed within the solar quote. And as this amounts to a misrepresentation, I believe that any redress should reflect this.

Putting things right

The role of this service is to help settle disputes between consumers and businesses providing financial services fairly and reasonably with minimum formality. In cases like this one, determining fair compensation isn't an exact science. My role is to arrive at a fair and reasonable outcome taking account of the particular circumstances.

I appreciate that traditionally the parties are put back into the position they would have been in if there had been no misrepresentation. However, here, I don't think it would be fair or proportionate to require the removal of the solar panels from Mr and Mrs G's home. Rather, I think the fair outcome here is to put Mr and Mrs G in a position where the panels are self-funding over the original term of the loan. By allowing Mr and Mrs G to keep the panels, I am satisfied that they will likely benefit from lower electricity bills and FIT payments going forward (i.e. after the term of the loan has finished).

I'm satisfied that Mr and Mrs G were misled into thinking that the solar panels would ultimately be self-funding and so on that basis I need to decide fair compensation. When thinking about that question, I think it's fair to take account of the electricity generated by the solar panel units.

On the one hand Mr and Mrs G have to pay their loan and for any electricity used in addition to that generated by the system. And on the other, they can off-set those payments by the FIT payments and the savings associated with the electricity generated by the system. It would be unfair to ignore the electricity generated and used by Mr and Mrs G when calculating fair compensation.

Shawbrook have previously submitted a methodology to this service to calculate the total benefits of the system. It's based upon the actual performance and estimated future performance of Mr and Mrs G's system. The proposed approach to put things right for Mr and Mrs G is to make the system self-funding over the original term of the loan. Once the loan has been repaid, Mr and Mrs G are highly likely to enjoy significant benefit from the system by way of savings and the FIT income going forward. In addition, Mr and Mrs G have the flexibility to be paid a lump sum to cover any overpayments together with interest.

By making the system self-funding, Mr and Mrs G's monthly repayments will reduce, meaning that they would've previously been paying more each month, resulting in an overpayment. And as Mr and Mrs G would have been deprived of the monthly overpayment I would expect Shawbrook to add 8% simple interest from the date of the overpayment to the date of settlement.

In a case like this, I think the fairest resolution would be to let Mr and Mrs G have the following selection of options as to how they would like their overpayments to be used:

- (a) any overpayments are used to reduce the outstanding balance of the loan and they continue to make their current monthly payment resulting in the loan finishing early,
- (b) any overpayments are used to reduce the outstanding balance of the loan and they pay a new, lower monthly payment until the end of the loan term,
- (c) any overpayments are returned to Mr and Mrs G and they continue to make their current monthly payment resulting in their loan finishing early, or

(d) any overpayments are returned to Mr and Mrs G and they pay a new, lower monthly payment until the end of the loan term.

I am satisfied that there was sufficient information available at the time that Mr and Mrs G first contacted Shawbrook that means that their claim should have been upheld. The fact that this did not happen undoubtedly caused them trouble and upset and consequently I'll make an award of £100 to cover this.

My final decision

My final decision is that Mr and Mrs G's complaint should be upheld. In full and final settlement of it, Shawbrook Bank Limited should:

- (a) allow Mr and Mrs G to keep the solar panels; and
- (b) estimate the potential savings and incomes to Mr and Mrs G from the panels over the 15-year term of the loan and rework it so they pay no more than this. Where possible, it should use Mr and Mrs G's electricity bills and FIT statements to do this; and
- (c) add 8% simple interest* to any overpayment made from the date the overpayment was made to the date of settlement; and
- (d) allow Mr and Mrs G to decide, using the four options given above, how their overpayments should be used; and
- (e) pay Mr and Mrs G £100 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 Mr and Mrs G how much it's taken off. It should also give Mr and Mrs G a certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G and Mrs G to accept or reject my decision before 13 October 2022.

Dave Morgan
Ombudsman