

The complaint

Mrs S has complained that Shawbrook Bank Limited rejected her claim against it under Section 75 of the Consumer Credit Act 1974.

What happened

Mrs S bought solar panels for her home in 2017. The purchase was funded by a loan from Shawbrook, and that business is therefore liable for the acts and omissions of the supplier under the relevant legislation. In this case, that relates to the supplier misleading Mrs S into believing that the panels would be self-funding, which they weren't.

Mrs S's complaint was considered by one of our adjudicators. She thought that the benefits of the panels were mis-represented to Mrs S because they weren't generating as much electricity as was promised.

Shawbrook didn't respond by the deadline. So, the case was passed to an ombudsman.

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 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 Mrs S paid for the system with a fixed sum loan agreement, Shawbrook agrees that section 75 applies to this transaction. This means that Mrs S 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 S 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 her loss.

What happened?

If there is a dispute about what happened, I must decide what happened 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.

Mrs S says that during a sales meeting she was told that feed in tariff (FIT) would generate more than enough income to pay the cost of the purchasing the system.

There are several documents that have been provided by both the CMC and Shawbrook. These include the credit agreement and solar quote, titled 'Your Bespoke Quote'. I've considered these, along with Mrs S'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 have discussed this in detail with the consumer, explaining any benefits of the system, prior to the consumer 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 S's version of events when considering if there have been any untrue statements of fact.

The credit agreement sets out the cash price, the amount being borrowed, the interest to be charged, total amount payable, the term of the loan and the contractual monthly repayments.

On balance I'm satisfied that Mrs S was told that the cost of the £7,926.45. 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 £7,926.45. The monthly payment was £81.73. The total amount of credit is £7,826.45 and goes on to show that the total amount payable would be £14,811.40.

Having considered all the evidence, including Mrs S's recollections, I'm satisfied that she was 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 it was made clear in the documents that although the cost of the system was £7,926.45, it would cost Mrs S more than this as she had decided to pay for it with an interest-bearing loan.

Mrs S has said that she was told the system would generate more than enough income to pay the cost of the purchasing the system. I've considered the quote that was provided by P as well as the Mrs S's recollections of her meeting with P's representative to decide what is most likely to have been said.

There's a section headed "Finance repayments" with three tables showing repayments over 60 months, 120 months, and 180 months. I've focused on the table for 180 months because this is the length of the loan that Mrs S entered into with Shawbrook. This table shows the loan as repayable in 180 monthly payments of £83.63. 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 £83.63, to give an average difference between the monthly return from the system and the monthly loan repayment in each year.

Finance repayments

£100.00 deposit

60 payments of £165.90 p/m			
Yr	Acc. grand total	Income FIT + savings	Potential monthly repayment diff.
1	£490.80	£40.90	£-125.00
2	£518.46	£43.21	£-122.70
3	£547.83	£45.65	£-120.25
4	£579.03	£48.25	£-117.65
5	£612.19	£51.02	£-114.89

120 payments of £102.99 p/m			
Yr	Acc. grand total	Income FIT + savings	Potential monthly repayment diff.
1	£490.80	£40.90	£-62.09
2	£518.46	£43.21	£-59.79
3	£547.83	£45.65	£-57.34
4	£579.03	£48.25	£-54.74
5	£612.19	£51.02	£-51.98
6	£647.42	£53.95	£-49.04
7	£684.86	£57.07	£-45.92
8	£724.66	£60.39	£-42.61
9	£766.97	£63.91	£-39.08
10	£811.97	£67.66	£-35.33

180 payments of £83.63 p/m			
Yr	Acc. grand total	Income FIT + savings	Potential monthly repayment diff.
1	£490.80	£40.90	£-42.73
2	£518.46	£43.21	£-40.42
3	£547.83	£45.65	£-37.97
4	£579.03	£48.25	£-35.37
5	£612.19	£51.02	£-32.61
6	£647.42	£53.95	£-29.67
7	£684.86	£57.07	£-26.55
8	£724.66	£60.39	£-23.24
9	£766.97	£63.91	£-19.71
10	£811.97	£67.66	£-15.96
11	£859.81	£71.65	£-11.97
12	£910.70	£75.89	£-7.73
13	£964.82	£80.40	£-3.22
14	£1,022.40	£85.20	£1.57
15	£1,083.66	£90.31	£6.68

I think the quote clearly sets out the income and savings Mrs S could expect to receive from the system, 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 benefits she could expect to receive by way of FIT income and additional savings, would *not* be sufficient to cover the monthly loan repayments until at least year 14.

I've carefully thought about Mrs 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 she were told that the monthly loan repayments would be covered from the start.

I'll now consider whether P told Mrs S that the benefits of the system would cover the overall costs of the loan. 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 start. 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 S were told by P that the system would be self-funding over a certain duration of time.

The 'system performance and returns' page of the quote has a table detailing the performance over 25 years. This shows that by year 18 the overall benefits that Mrs S could expect to receive would have exceeded the total amount payable under the loan agreement.

WHAT WILL YOU EARN & SAVE PER YEAR?	Panel degradation	Yr	Feed in tariff		Elec. savings	Energy saving optional extras * VO savings	Total income savings	Acc. grand total	Est. monthly return	Ann. RO
			Generation	Export						
	100.00%	1	£90.63	£56.98	£244.19	£99.00	£490.80	£490.80	40.90	6.19%
	99.60%	2	£93.17	£58.58	£260.92	£105.78	£518.46	£1,009.26	43.20	6.54%
	99.20%	3	£95.79	£60.22	£278.79	£113.03	£547.83	£1,557.08	45.65	6.91%
	98.80%	4	£98.47	£61.91	£297.88	£120.77	£579.03	£2,136.12	48.25	7.31%
	98.40%	5	£101.23	£63.65	£318.27	£129.03	£612.19	£2,748.30	51.02	7.72%
	98.00%	6	£104.07	£65.43	£340.05	£137.87	£647.42	£3,395.72	53.95	8.17%
	97.60%	7	£106.98	£67.26	£363.32	£147.30	£684.86	£4,080.58	57.07	8.64%
	97.20%	8	£109.97	£69.14	£388.17	£157.37	£724.66	£4,805.24	60.39	9.14%
	96.80%	9	£113.05	£71.07	£414.72	£168.14	£766.97	£5,572.21	63.91	9.68%
	96.40%	10	£116.20	£73.06	£443.07	£179.63	£811.97	£6,384.18	67.66	10.24%
	96.00%	11	£119.45	£75.10	£473.35	£191.91	£859.81	£7,243.99	71.65	10.85%
	95.60%	12	£122.78	£77.19	£505.70	£205.02	£910.70	£8,154.68	75.89	11.49%
	95.20%	13	£126.20	£79.35	£540.24	£219.03	£964.82	£9,119.51	80.40	12.17%
	94.80%	14	£129.72	£81.56	£577.14	£233.98	£1,022.40	£10,141.91	85.20	12.90%
	94.40%	15	£133.33	£83.83	£616.54	£249.96	£1,083.66	£11,225.57	90.31	13.67%
	94.00%	16	£137.04	£86.16	£658.62	£267.02	£1,148.85	£12,374.42	95.74	14.49%
	93.60%	17	£140.85	£88.56	£703.56	£285.24	£1,218.22	£13,592.63	101.52	15.37%
	93.20%	18	£144.77	£91.02	£751.56	£304.70	£1,292.04	£14,884.68	107.67	16.30%
	92.80%	19	£148.79	£93.54	£802.81	£325.48	£1,370.62	£16,255.30	114.22	17.29%
	92.40%	20	£152.92	£96.14	£857.54	£347.67	£1,454.27	£17,709.57	121.19	18.35%
	90.40%	21-25	£0.00	£0.00	£5,247.84	£2,127.59	£7,375.43	£25,085.00	122.92	18.61%
	Totals		£2,385.43	£1,499.75	£15,084.31	£6,115.51	£25,085.00	£25,085.00	Ave. ROI:	12.66%

Ann ROI(Annual Return on Investment) is based on a cash purchase. The figure is the return per year against the amount paid. Depending on your usage and seasonal changes, the generation and export tariffs coupled with the electricity savings will vary. The Est. monthly return is a calculation of the Total income savings per year divided into 12 monthly amounts.

As I've set out above, I'm satisfied that P told Mrs S that the system would pay for itself by year 18, 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.

Mrs S was told that the system would generate 2,265 kWh of electricity per year. And the benefits shown in the quote were calculated based on that level of generation. The system has consistently generated significantly less than Mrs S was told it would, which means she has not received the benefits set out in the quote.

Based on FIT statements showing meter readings in December 2018, 2020, and 2021 (as close to the anniversary of installation as is available) the system has on average generated more than 10% less electricity than expected. I think this is beyond a reasonable margin of error relative to the figure of 2,265 kWh given to Mrs S at the time of sale.

Shawbrook has failed to address this issue in response to the investigator's assessment, despite the system having been inspected. As far as I can tell there was no reason given for why the system was underperforming (such as shading issues. That suggests that there is no fault that could be fixed to prevent future under-generation relative to what Mrs S was promised at the time of sale.

So, based on the evidence available to me, I think that P misrepresented the system's ability to generate electricity, and as a result the benefits it would produce relative to the cost of the loan. I think this misrepresentation induced Mrs S into entering into the contract. So, I think that Shawbrook didn't treat Mrs S fairly and she has lost out because of this. And this means that Shawbrook should put things right.

Putting things right

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mrs S's complaint for Shawbrook to.

- a) Calculate the difference between what the panels have generated as income (through FIT and savings) for Mrs S and what the sales paperwork set out as being the annual “total income savings”.
- b) Add 8% simple interest per year for the time Mrs S has been without that money, and pay the total to Mrs S.

If the loan agreement is ongoing, then to ensure that Mrs S doesn't lose out going forward, Shawbrook should:

- c) Calculate the average annual underperformance percentage so far, and assume that the panels will continue to underperform at that rate through to the conclusion of the finance agreement
- d) recalculate the “total income savings” for each year going forward (using reasonable assumptions about unit rates for FIT payments and electricity) until the conclusion of the finance agreement, having applied the percentage reduction identified in c) above.
- e) Pay Mrs S the difference between the revised amounts calculated in d) above and the “total income savings” set out in the sales paperwork.

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

My final decision

For the reasons I've explained, I'm upholding Mrs S's complaint. Shawbrook Bank Limited should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 6 December 2022.

Phillip Lai-Fang
Ombudsman