

The complaint

Mr H 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 H is represented by a claims management company ("the CMC").

Background

In or around January 2018, Mr H 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 H decided to purchase the system and finance it through a 15-year fixed sum loan agreement with Shawbrook. The system was subsequently installed.

In June 2020 the CMC made a claim to Shawbrook on Mr H'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 H to enter into the contract with P. The CMC said the following misrepresentations had been made:

- the total cost of the system was documented as £9,984.95 to mislead Mr H, as when the interest was added the total cost was actually £18,974.80;
- 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 £1,000).

Further, the CMC said that the system was underperforming, in that it was not generating as much energy as had been estimated at the point of sale. It added that the salesman had failed to explain that the system would deteriorate over time and become less efficient.

Shawbrook didn't agree the system had been misrepresented to Mr H 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 disagreed with most of the complaint points which had been raised. But she agreed that the system was significantly underperforming, and she thought that this meant that the estimated performance at the point of sale amounted to a misrepresentation. On that basis, and because at that time Shawbrook had not substantively responded to the underperformance issue, she upheld this complaint.

In response, Shawbrook did not dispute that the system was underperforming, but it asked for time to carry out an inspection of the system to find out why. But as the adjudicator thought that Shawbrook had already had enough time to deal with this issue, the case was passed to me for review, without waiting for the proposed inspection.

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 uphold it in part, for broadly the same reasons as the adjudicator. 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, 75 and 140A of the Act.

Section 75 provides protection for consumers for goods or services bought using credit. As Mr H paid for the system with a fixed sum loan agreement, Shawbrook agrees that section 75 applies to this transaction. This means that Mr H 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 H 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.

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 H 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 and solar quote, titled "Getting Started". I've considered these, along with Mr H'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 Mr H, explaining any benefits of the system, prior to him agreeing to enter into the contract. Mr H 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 H's version of events, when considering if there have been any untrue statements of fact.

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.

Cost of the system

On balance, I'm satisfied that Mr H was told that the overall cost of the system was more than its cash price. The credit agreement makes it clear that £9,984.95 is only the cash price. It sets out a clear breakdown of the deposit, the amount of credit provided, the total charge for credit, the monthly payments, and the total amount repayable, £18,974.80.

Having considered all the evidence, including Mr H's recollections, I'm satisfied that he 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 the two documents, the quote and the credit agreement, made it clear that it would cost Mr H more than the cash price as he had decided to pay for it with an interest-bearing loan.

The inverter

I don't think it is likely that the salesman would have told Mr H 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. So I don't uphold this complaint point.

FIT payments and savings

Mr H 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 H'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 H 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	£ 120
Generation tariff in year 1	£ 99.21
Export tariff in year 1	£ 63.49
Total income in year 1	£ 162.70

I think that the first of these tables is clear that Mr H could expect to receive a total FIT income in year one of £162.70. The quote goes on to look at the electricity savings Mr H

could expect from the system. The expected year one electricity savings are £294.80 and, when taking into account the optional extras chosen by Mr H, the combined income and savings in year one are shown as £966.30. This is shown in a table titled “Putting it all together”.

Putting it all together

**Total income & savings
in year 1**

£	966.30
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This results in an average monthly income of about £80.50. And I’m satisfied that the same document set out that there would be a monthly loan repayment due of £106.68. As a result, I’m not able to conclude that Mr H was told that the monthly loan repayments would be covered by the FIT payments and savings.

There’s another 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 H entered into with Shawbrook. This table shows the loan as repayable in 180 monthly payments of £106.68. (This is incorrect; the loan agreement gives the correct monthly figure of £104.86, but the difference – £1.82 – 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 five years of the loan, meaning that the system would not begin to make enough money to cover the loan payments until the sixth year.

180 payments of £106.68 p/m

Yr	Acc. grand total	Est. monthly return	Average monthly repayment diff.
1	£966.30	£80.52	£-26.16
2	£1,028.02	£85.67	£-21.01
3	£1,093.93	£91.16	£-15.52
4	£1,164.30	£97.02	£-9.66
5	£1,239.45	£103.29	£-3.39
6	£1,319.72	£109.98	£3.30
7	£1,405.47	£117.12	£10.44
8	£1,497.07	£124.76	£18.08
9	£1,594.94	£132.91	£26.23
10	£1,699.51	£141.63	£34.95
11	£1,811.27	£150.94	£44.26
12	£1,930.71	£160.89	£54.21
13	£2,058.38	£171.53	£64.85
14	£2,194.85	£182.90	£76.22
15	£2,340.75	£195.06	£88.38

I think the quote clearly sets out the income Mr H 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 H'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 and system depreciation

I'll now consider whether P told Mr H 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 £1.82 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 H was told by P that the system would be self-funding over a certain period of time. The "Putting it all together" section gives a payback time of nine years.

Estimated payback time

9

years

A later page of the quote has a table detailing the estimated performance of the system over 25 years. This too shows that during year nine the overall benefits that Mr H could expect to receive would reach the cash price of the system, £9,985.

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	Bolier doctor				
100.0%	1	£99.21	£63.49	£294.80	£288.00	£100.80	£0.00	£0.00	£120.00	£966.30	£966.30	£80.52	9.68%
98.0%	8	£119.90	£76.73	£457.89	£456.45	£172.75	£0.00	£0.00	£200.00	£1,483.72	£9,676.96	£123.64	14.86%
97.6%	9	£123.04	£78.74	£487.02	£487.49	£186.57	£0.00	£0.00	£215.13	£1,578.00	£11,254.96	£131.50	15.80%

This table also shows, in the first column (which is titled "Panel degradation"), how the panels will reduce in efficiency year on year. This is shown as a percentage which reduces each year, ending in year 25 at 91.2%. So I'm satisfied that the quote did take into account that the panels would deteriorate over time, and that this would have been factored into the table, and into the quote generally. I'm also satisfied that the quote made this clear to Mr H.

So I'm satisfied that P told Mr H 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.

The CMC says it is untrue because it will actually take 25 years for the system to pay for itself. 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 H.

Underperformance and proposed inspection

The MCS certificate and quote set out that the system is expected to produce 2,524 kWh a year. I have looked at Mr H's FIT statements and can see that his system, on average, has generated 2,113 kWh a year. This is much less than estimated by P at the point of sale (84%), so I'm satisfied that the system is underperforming.

This could be because the system was misrepresented to Mr H, but that is not the only possible explanation. It could also be because it was not installed properly, or is defective in some other way. If so, that would be a breach of contract, for which the usual remedy is to

give the supplier (or Shawbrook) one chance to repair it. Or it could be for some other reason – for example, Shawbrook has suggested that Mr H might have just turned the system off for a while, although I don't think that is likely.

An inspection would answer that question, so I have considered whether to wait for that to happen before issuing a decision in this case. But I have decided not to, because it has been over two years since Mr H first raised his section 75 claim, and Shawbrook has said that it will take some time to organise an inspection (which it did not offer to do until the adjudicator gave her opinion of this case earlier this month). I think that an inspection could, and should, have been arranged in 2020, so I do not propose to make Mr H wait any longer.

Putting things right

In this case, I think fair compensation means trying to make sure that Mr H doesn't suffer a financial loss, which in my view would mean that the solar panel system should generate roughly what was promised via the sales paperwork and MCS certificate. So to put things right I direct Shawbrook to:

- a) calculate the difference between what the panels have generated as income (through FIT and savings) for Mr H and what the sales paperwork set out as being the annual "total income savings"; and
- b) add 8% simple interest to that amount and pay the total to Mr H.

The finance agreement in question ends in March 2033. So to ensure that Mr H doesn't lose out going forward, Shawbrook must:

- 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 until the conclusion of the finance agreement, having applied the percentage reduction identified in paragraph c) above;
- e) pay Mr H the difference between the revised amounts calculated in d) above and the "total income savings" set out in the sales paperwork.

I also direct Shawbrook to pay Mr H £100 compensation for his inconvenience.

My final decision

My final decision is that I uphold this complaint in part. I order Shawbrook Bank Limited to put things right for Mr H in the way I have set out above.

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

Richard Wood
Ombudsman