

The complaint

Mr and Mrs D complain that Shawbrook Bank Limited (“Shawbrook”) rejected the claim they made under sections 56 and 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.

What happened

In or around April 2016, Mr and Mrs D 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 D decided to purchase the system and finance it through a 15 year fixed sum loan agreement with Shawbrook. The system was subsequently installed.

In July 2020 Mr and Mrs D made a claim to Shawbrook under the Act. They said that P had told them that the income and savings from the system would be enough to cover its cost, but this had turned out to be untrue, and it was this misrepresentation that had induced Mr and Mrs D to enter into the contract with P. Also, the system is underperforming.

Shawbrook issued a final response and explained that it didn’t agree the system had been misrepresented to Mr and Mrs D or that there were any other reasons for the claim to be upheld. However it offered £200 compensation for its delay in responding to the complaint.

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 and Mrs D, as the sales documentation had made it clear that it would take 18 years for the system to pay for itself. But she agreed that the system was generating significantly less energy than had been estimated at the point of sale. So she upheld this complaint, and recommended that Shawbrook pay Mr and Mrs D the difference between the estimated and actual income and savings, with interest, and another £200 for their trouble.

Shawbrook did not agree. It provided further evidence to show that P had offered to upgrade the solar panels free of charge, and that Mr and Mrs D had declined that offer. It added that this offer was still open.

As an agreement couldn’t be reached, the case was passed to me for review. I wrote a provisional decision which read as follows.

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.

Having done so, I am not minded to uphold it. I will explain why.

Evidence

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 and Mrs D say that during a sales meeting they were told that the system would be entirely self-financing and come at no additional cost to them.

There are several documents that have been provided by both parties. These include the solar quote, titled “Your Personal Solar Quotation”. I’ve considered these, along with Mr and Mrs D’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 and Mrs D, explaining any benefits of the system, prior to them 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 Mr and Mrs D’s version of events, when considering if there have been any untrue statements of fact.

FIT payments and savings

Mr and Mrs D have said that they were told their monthly loan repayments would be covered, or “self-funded” by the FIT payments and the savings on their energy bills. I’ve considered the quote that was provided by P as well as Mr and Mrs D’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 Mr and Mrs D could expect to receive by way of FIT payments and savings from the system. The combined income and savings in year one are shown as £499.04. This is shown in a table titled “Putting it all together”.

Putting it all together

Total income & savings in year 1

| | |
|---|--------|
| £ | 499.04 |
|---|--------|

This results in an average monthly income of £41.59. I’m satisfied that the quote also set out that there would be a monthly loan repayment due of £83.59. As a result, I’m not able to conclude that Mr and Mrs D were told that the monthly loan repayments would be covered by the FIT payments and savings. There would still be more to pay each month.

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 and Mrs D entered into with Shawbrook. This table shows the loan as repayable in 180 monthly payments of £83.59. (This is incorrect; the loan agreement gives the correct monthly figure of £84.97, but the difference – £1.38 – 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 twelve years of the loan, meaning that the system would not begin to make enough money to cover the loan payments until year 13. Until then, they would have to make up the shortfall from their own pocket.

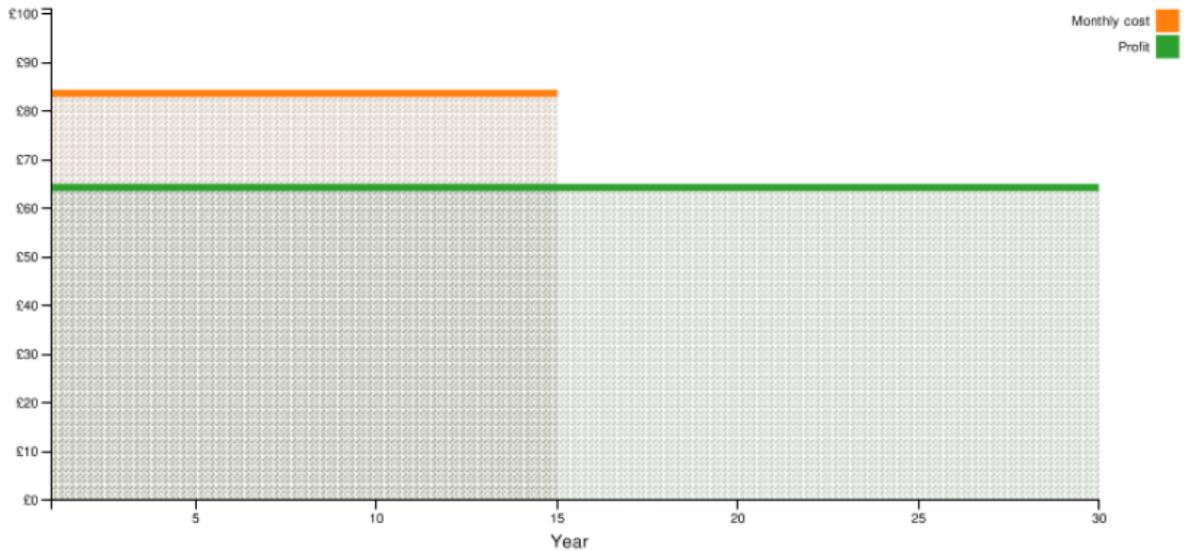
180 payments of £83.59 p/m

| Yr | Acc. grand total | Est. monthly return | Average monthly repayment diff. |
|----|------------------|---------------------|---------------------------------|
| 1 | £499.04 | £41.59 | £-42.00 |
| 2 | £530.43 | £44.20 | £-39.39 |
| 3 | £563.90 | £46.99 | £-36.60 |
| 4 | £599.61 | £49.97 | £-33.62 |
| 5 | £637.71 | £53.14 | £-30.45 |
| 6 | £678.36 | £56.53 | £-27.06 |
| 7 | £721.75 | £60.15 | £-23.44 |
| 8 | £768.04 | £64.00 | £-19.59 |
| 9 | £817.46 | £68.12 | £-15.47 |
| 10 | £870.22 | £72.52 | £-11.07 |
| 11 | £926.54 | £77.21 | £-6.38 |
| 12 | £986.68 | £82.22 | £-1.37 |
| 13 | £1,050.90 | £87.58 | £3.99 |
| 14 | £1,119.49 | £93.29 | £9.70 |
| 15 | £1,192.75 | £99.40 | £15.81 |

So I think the quote clearly sets out the income Mr and Mrs D could expect to receive from the system by way of FIT payments and savings, as well as their 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 they could expect to receive by way of FIT income and any additional savings would not be enough to cover the monthly loan repayments during the loan. I've carefully thought about Mr and Mrs D'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 they were told that the monthly loan repayments would be covered by the FIT income and savings.

I am reinforced in my view by this graph, which was also in the quote and which plainly showed that the system would not be enough to cover the loan payments.

Your Average Monthly Returns Over 30 Years With RPI and Increase in Electricity Costs against the monthly cost of the system



The monthly average returns are based on the total return averaged over 360 months. This graph incorporates the cost of the system (and any finance charges)

That said, I do accept that Mr and Mrs D were 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 12 years for the overall benefits that Mr and Mrs D could expect to receive to match the cash price of the system.

Your estimated payback time is



The estimated payback time is based on cash purchase. Note: The payback time will fluctuate dependant on any finance taken against the system.

I think the 12-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 timescale 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 30 years. This too shows that during year 12 the overall benefits that Mr and Mrs D could expect to receive would reach the cash price of the system, £7,822. (To save space I have only shown here the rows for years 1, 7 and 8.)

Estimated performance over 30 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 | Boiler doctor | | | | |
| 100.0% | 1 | £48.51 | £27.57 | £131.12 | £115.20 | £80.64 | £0.00 | £0.00 | £96.00 | £499.04 | £499.04 | £41.59 | 6.38% |
| 98.4% | 7 | £57.13 | £32.47 | £192.76 | £169.36 | £125.92 | £0.00 | £0.00 | £132.56 | £710.20 | £4,203.61 | £59.19 | 9.08% |
| 98.0% | 8 | £58.62 | £33.32 | £205.26 | £180.34 | £135.44 | £0.00 | £0.00 | £139.70 | £752.68 | £4,956.29 | £62.72 | 9.62% |

The same table shows that the total amount payable under the loan agreement, £15,294, would be reached by the end of year 18.

| | | | | | | | | | | | | | |
|-------|----|--------|--------|---------|---------|---------|-------|-------|---------|-----------|------------|---------|--------|
| 94.0% | 18 | £75.87 | £43.12 | £384.41 | £337.74 | £280.47 | £0.00 | £0.00 | £235.70 | £1,357.30 | £15,503.60 | £113.11 | 17.35% |
|-------|----|--------|--------|---------|---------|---------|-------|-------|---------|-----------|------------|---------|--------|

So I'm satisfied that P told Mr and Mrs D that the system would pay for its cash price in 12 years, and for the loan within 18 years.

Under-performance

The MCS certificate and quote set out that the system is expected to produce 1,122 kWh a year. I have looked at Mr and Mrs D's FIT statements and can see that their system, on average, has generated 850 kWh a year. This is only about 76% of what was estimated by P at the point of sale, so I'm satisfied that the system is not performing as well as it should. That is a breach of contract by P.

However, that does not mean that Mr and Mrs D are entitled to return the system for a full refund. Under the Consumer Rights Act 2015 P is entitled to one attempt at repairing the system first. I think it is fair and reasonable that I should take that into account in deciding whether to hold Shawbrook liable under section 75 for P's breach of contract.

I have seen evidence, in the form of P's contact notes, that P offered to upgrade the panels for free in September 2021, and also to pay Mr and Mrs D the full loss of savings and income up to then. Mr and Mrs D declined. But I think that was a reasonable offer, since it might have fixed the problem, and they would not have been left out of pocket. So for that reason, I don't think it would be right for me to require Shawbrook to pay the compensation my colleague recommended instead.

That offer is still open. I recommend that Mr and Mrs D take it, and that they do not press for a final decision in this case until the upgrade has taken place and enough time has passed to see if the system is generating enough energy. That solution might be enough to fairly resolve this complaint. But if it fails, our service will then still be in a position to require Shawbrook to do something else instead. That will not be possible if a final decision has already been issued by then.

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 and Mrs D to enter into the contract for the system, and I have found no other reason to uphold this complaint.

I leave it to Mr and Mrs D to decide whether to accept Shawbrook's offer of £200 compensation for its delay in responding to their complaint.

Developments since my provisional decision

Following my provisional decision in October 2022, Mr and Mrs D agreed to have their panels upgraded. After a delay of about five months, this was finally done in March 2023. Their 250W panels were replaced with 400W panels.

Mr D has provided me with two meter readings from the upgraded panels: 6,212.38 kWh on 1 June, and 6,344.27 kWh on 14 June; the difference is 131.89 kWh over 13 days. That works out at a daily rate of 10.145 kWh. If the panels generated that much all year round, that would come to 3,703 kWh a year, but of course they can't do that, because these readings were taken during a summer heatwave. In other seasons, the panels will obviously

generate less than that. But even taking that into account, it still seems likely to me that the average generation over a year will still significantly exceed the 1,122 kWh a year that was promised in the quote. So I am satisfied that the upgrade has solved the problem.

It still remains for Shawbrook to pay compensation to Mr and Mrs D for the under-performance of the original panels.

Compensation

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mr and Mrs D's complaint for Shawbrook to put things right by making sure that Mr and Mrs D don't suffer a financial loss. In my view that would mean that the solar panel system should generate roughly what was promised in the quote.

So Shawbrook must:

- a) calculate the difference between what the original panels generated as income (through the FIT and savings) for Mr and Mrs D up to 23 March 2023 and what the sales paperwork set out as being the annual "total income savings", and
- b) add simple interest to that amount at the rate of 8% a year, and pay the total to Mr and Mrs D.

Shawbrook has already offered to pay £125.94 for the under-performance; this seems a little lower than what I would have expected, so I direct Shawbrook to show its working to Mr and Mrs D.

I also direct Shawbrook to pay £100 compensation for the inconvenience caused (in addition to its earlier offer of £200).

My final decision

For the reasons I've explained, I'm upholding this complaint in part. I order Shawbrook Bank Limited to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D and Mr D to accept or reject my decision before 12 July 2023.

Richard Wood
Ombudsman