

## **Complaint**

Mr and Mrs M 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 were misrepresented to them by the supplier.

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

## **Background**

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

In December 2020, the CMC made a claim on Mr and Mrs M’s behalf under section 75 of the Act to Shawbrook. The CMC said that 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 M to enter into the contract with P. The CMC said the following misrepresentations had been made:

- the system would be self-funding; and
- the feed in tariff (FIT) and savings on energy bills would provide enough income to cover the finance agreement repayments costs; and
- the system should be producing more energy than it was and was therefore underperforming.

Shawbrook didn’t agree the system had been misrepresented to Mr and Mrs M or that there were any other reasons for the claim to be upheld. But it did offer £200 compensation for delays in complaint handling.

One of our investigators looked into what had happened. Having considered all the information and evidence provided, our investigator didn’t think that P had led Mr and Mrs M to believe the system would be immediately self-funding. But they did think the system had underperformed compared to P’s estimates from the point of sale in terms of power generation. They added that the estimates regarding the annual generation, and the corresponding FIT payments and electricity savings would have induced Mr and Mrs M into entering the contract. So, they felt this aspect of the complaint should be upheld.

Shawbrook didn’t agree to our investigators view of the complaint. Shawbrook wanted to carry out an inspection to see whether there was a fault with the system. Our investigator felt Shawbrook had been given ample opportunity to complete its investigation and it had not done so. In the interests of bringing matters to a close, they recommended Shawbrook offer redress to compensate Mr and Mrs M for the losses they had suffered.

As an agreement couldn’t be reached, the case has been passed to me for review.

## **My findings**

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 Mr and Mrs M 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 M 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 M 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 - what I think most likely happened, given the evidence that is available and the wider surrounding circumstances.

Mr and Mrs M 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 both the CMC and Shawbrook. These include the credit agreement and solar quote, titled 'Your Personal Solar Quotation'. I've considered these, along with the consumers 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 consumers' 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.

The loan agreement clearly sets out the cash price of the goods.

I'm satisfied that Mr and Mrs M were told that the cost of the system was £7,995. 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 £7,995. The total amount of credit is £7,895 (after deducting a deposit of £100) and goes on to show that the total amount payable would be £15,545.

The quote also set out that the expected monthly loan repayment was £84.36. But I note Mr and Mrs M deferred their payments for a few months which is reflected in their credit agreement and their monthly payment is also marginally different at £85.75 – but I don't think these differences make the quote mis-leading.

Having considered all the evidence, including the consumers' 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 £7,995, it would cost Mr and Mrs M more than this as they had decided to pay for it with an interest bearing loan.

Mr and Mrs M have said that they were told their monthly loan repayments would be covered, or 'self-funded' by the FIT payments and savings on energy bills. I've considered the quote that was provided by P as well as the consumers' 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 M 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

Generation tariff in year 1	£	81.81
Export tariff in year 1	£	45.19
Total income in year 1	£	127.00

#### Feed in tariff over 20 years

Assumed rate of RPI	3.04	%
Average generation tariff	£	0.070
Average export tariff	£	0.077
Average annual income	£	202.19

I think that the first of these tables is clear that Mr and Mrs M could expect to receive a total FIT income in year one of £127, which results in an average monthly income of £10.58.

The quote goes on to look at the electricity savings Mr and Mrs M could expect from the system. The expected year one electricity savings is £217.61 and, when taking into account the optional extra's chosen by Mr and Mrs M the combined income and savings in year one is shown as £476.61. This is shown in a table titled 'Putting it all together'.

As outlined above, I'm satisfied that the quote set out that there would be an expected monthly loan repayment due of £84.36. 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 payments and savings.

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 this is the length of the loan that Mr and Mrs M entered into with Shawbrook. This table shows the loan as repayable in 180 monthly payments of £84.36. 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 £84.36, to give an average difference between the monthly return from the system and the monthly loan repayment in each year.

180 payments of £84.36 p/m			
Yr	Acc. grand total	Est. monthly return	Average monthly repayment diff.
1	£476.61	£39.72	£-44.11
2	£513.69	£42.81	£-41.02
3	£554.05	£46.17	£-37.66
4	£598.00	£49.83	£-34.00
5	£645.87	£53.82	£-30.01
6	£698.04	£58.17	£-25.66
7	£754.90	£62.91	£-20.92
8	£816.90	£68.08	£-15.75
9	£884.51	£73.71	£-10.12
10	£958.27	£79.86	£-3.97
11	£1,038.76	£86.56	£2.73
12	£1,126.61	£93.88	£10.05
13	£1,222.51	£101.88	£18.05
14	£1,327.24	£110.60	£26.77
15	£1,441.61	£120.13	£36.30

I think the quote clearly sets out the income Mr and Mrs M could expect to receive from the system, by way of FIT payments, as well as their expected contractual monthly loan repayments. The table 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 immediately sufficient to cover the monthly loan repayments. This supports my finding above that the consumers weren't told that the FIT payment and savings would cover the loan repayment. I've carefully thought about the consumers' 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 energy savings.

I'll now consider whether P told Mr and Mrs M 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 Mr and Mrs M 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 30 years. This shows that by year 17 the overall benefits that Mr and Mrs M could expect to receive would have exceeded the total amount payable under the loan agreement.

#### Estimated performance over 30 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	£81.81	£45.19	£217.61	£0.00	£0.00	£0.00	£0.00	£132.00	£476.61	£476.61	£39.72	5.96%
100.0%	2	£84.30	£46.56	£239.20	£0.00	£0.00	£0.00	£0.00	£143.63	£513.69	£990.30	£42.81	6.43%
100.0%	3	£86.86	£47.98	£262.93	£0.00	£0.00	£0.00	£0.00	£156.28	£554.05	£1,544.35	£46.17	6.93%
99.6%	4	£89.14	£49.24	£287.85	£0.00	£0.00	£0.00	£0.00	£169.37	£595.61	£2,139.96	£49.63	7.45%
99.2%	5	£91.48	£50.53	£315.14	£0.00	£0.00	£0.00	£0.00	£183.55	£640.70	£2,780.66	£53.39	8.02%
98.8%	6	£93.88	£51.86	£345.00	£0.00	£0.00	£0.00	£0.00	£198.91	£689.66	£3,470.32	£57.47	8.63%
98.4%	7	£96.34	£53.22	£377.69	£0.00	£0.00	£0.00	£0.00	£215.56	£742.82	£4,213.15	£61.90	9.29%
98.0%	8	£98.87	£54.62	£413.47	£0.00	£0.00	£0.00	£0.00	£233.60	£800.56	£5,013.71	£66.71	10.02%
97.6%	9	£101.46	£56.04	£452.63	£0.00	£0.00	£0.00	£0.00	£253.15	£863.28	£5,876.99	£71.94	10.79%
97.2%	10	£104.12	£57.51	£495.49	£0.00	£0.00	£0.00	£0.00	£274.32	£931.44	£6,808.43	£77.62	11.65%
96.8%	11	£106.84	£59.02	£542.40	£0.00	£0.00	£0.00	£0.00	£297.26	£1,005.52	£7,813.95	£83.79	12.57%
96.4%	12	£109.64	£60.56	£593.75	£0.00	£0.00	£0.00	£0.00	£322.11	£1,086.05	£8,900.00	£90.50	13.58%
96.0%	13	£112.50	£62.14	£649.94	£0.00	£0.00	£0.00	£0.00	£349.04	£1,173.61	£10,073.61	£97.80	14.68%
95.6%	14	£115.44	£63.77	£711.44	£0.00	£0.00	£0.00	£0.00	£378.20	£1,268.84	£11,342.45	£105.73	15.87%
95.2%	15	£118.45	£65.43	£778.74	£0.00	£0.00	£0.00	£0.00	£409.80	£1,372.41	£12,714.86	£114.36	17.16%
94.8%	16	£121.53	£67.14	£852.38	£0.00	£0.00	£0.00	£0.00	£444.03	£1,485.09	£14,199.95	£123.76	18.57%
94.4%	17	£124.70	£68.88	£932.99	£0.00	£0.00	£0.00	£0.00	£481.11	£1,607.69	£15,807.64	£133.97	20.11%
94.0%	18	£127.94	£70.68	£1,021.20	£0.00	£0.00	£0.00	£0.00	£521.28	£1,741.11	£17,548.75	£145.09	21.78%
93.6%	19	£131.27	£72.51	£1,117.72	£0.00	£0.00	£0.00	£0.00	£564.79	£1,886.31	£19,435.06	£157.19	23.6%
93.2%	20	£134.69	£74.40	£1,223.35	£0.00	£0.00	£0.00	£0.00	£611.92	£2,044.37	£21,479.43	£170.36	25.57%
92.8%	25	£0.00	£0.00	£1,954.65	£0.00	£0.00	£0.00	£0.00	£929.34	£2,883.98	£24,363.41	£240.33	36.07%
92.4%	30	£0.00	£0.00	£3,123.03	£0.00	£0.00	£0.00	£0.00	£1,411.37	£4,534.40	£28,897.81	£377.87	56.72%
Totals		£2,131.28	£1,177.29	£16,908.59	£0.00	£0.00	£0.00	£0.00	£8,660.63	£28,897.81	£28,897.81	Ave. ROI:	12.05%

As I've set out above, I'm satisfied that P told Mr and Mrs M that the system would pay for itself by year 17, 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.

This then leads me to consider the performance of the system.

#### Underperformance

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 and Mrs M. The quote estimates system is expected to produce 1863.50 kWh a year.

I have looked at Mr and Mrs M FIT statements and meter reading, and can see that their system, on average, has generated 1577.34 kWh. This is significantly less than estimated by P at the point of sale, so I'm satisfied that the system isn't performing as expected. It is unclear why the system has underperformed, but Shawbrook has had sufficient time since the complaint was made to identify the underperformance and inspect the system. Yet it has not done so.

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 Mr and Mrs M into entering into the contract. Because of this, I think that Shawbrook didn't treat Mr and Mrs M fairly and they have lost out because of this. And this means that Shawbrook should put things right.

### **Putting things right**

In this case, I think fair compensation is trying to make sure that Mr and Mrs M do not 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.

I can see in this case the MCS certificate and the solar quotation document have slightly different estimates. But as the system was sold on the basis of the quote, I think Shawbrook should ensure Mr and Mrs M receive what was promised via the sales paperwork.

So, I think to put things right Shawbrook should:

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

The finance agreement in question was due to end in 2031. To ensure that Mr and Mrs M don't lose out going forward, Shawbrook should then:

- 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 c) above
- e) pay Mr and Mrs M the difference between the revised amounts calculated in d) above and the "total income savings" set out in the sales paperwork.

I can see Shawbrook has offered £200 compensation for the trouble and upset caused. I think that's a fair offer and Shawbrook should pay it as offered.

### **My final decision**

My final decision is that I uphold Mr and Mrs M's complaint in part. 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 M and Mrs M to

accept or reject my decision before 8 December 2022.

Asma Begum  
**Ombudsman**