

The complaint

Mr T has complained that Shawbrook Bank Limited rejected his claim against it under Section 75 of the Consumer Credit Act 1974.

What happened

Mr T bought solar panels for his home in 2015. 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 Mr T into believing that the panels would be self-funding, which they weren't. Mr T also has concerns about the panels being overshadowed by a neighbouring property, which he thinks had led to them generating less electricity than expected.

Mr T's complaint was considered by one of our adjudicators. They thought that the benefits of the panels were mis-represented to Mr T 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 Mr T paid for the system with a fixed sum loan agreement, Shawbrook agrees that section 75 applies to this transaction. This means that Mr T could claim against Shawbrook, the creditor, for any misrepresentation or breach of contract by P, the supplier, in the same way he could have claimed against P. 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 T 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 him 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.

Mr T 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 the CMC and Shawbrook. These include the credit agreement and solar quote, titled 'Your Personal Solar Quotation'. I've considered these, along with Mr T'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 Mr T'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 Mr T was told that the cost of the system was £8,608.95. 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 £8,608.95, the monthly payment was £89.20, the total amount of credit is £8,408.95 and the total amount payable would be £16,056.00.

Having considered all the evidence, including Mr T'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 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 £8,608.95, it would cost Mr T more than this as he had decided to pay for it with an interest-bearing loan.

Mr T has said that he was told the 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 Mr T'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 T 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 provides payments for a 20-year period.

Feed in tariff - year 1

Current electricity spend per month

£ 70

Generation tariff in year 1

£ 104.04

Export tariff in year 1

£ 65.41

Total income in year 1

£ 169.45

Feed in tariff over 20 years

Assumed rate of RPI

3.04 %

Average generation tariff

£ 0.059

Average export tariff

£ 0.074

Average annual income

£ 249.69

6 x 11.69 in

I think that the first of these tables is clear that Mr T could expect to receive a total FIT income in year one of £169.45, which results in an average monthly income of £14.12. As outlined above, I'm satisfied that the credit agreement and the quote set out that there would be a monthly loan repayment due of £89.20.

The quote goes on to look at the electricity savings Mr T could expect from the system. The expected year one electricity savings is £303.72 and the combined income and savings in year one (including from other products provided with the system) is shown as £711.73. This is shown in a table titled 'Putting it all together'. As such it appears that Mr T was likely told that the system would generate benefits of £711.73 in the first year, much less than the annual loan repayments of £1,070.40.

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 because this is the length of the loan that Mr T entered into with Shawbrook. This table shows the loan as repayable in 180 monthly payments of £89.85. 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 £89.85, to give an average difference between the monthly return from the system and the monthly loan repayment in each year.

180 payments of £89.85 p/m

Yr	Acc. grand total	Est. monthly return	Average monthly repayment diff.
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1	£771.93	£59.31	£30.54
2	£754.60	£62.88	£-26.97
3	£800.27	£66.69	£-23.16
4	£848.91	£70.74	£-19.11
5	£900.73	£75.06	£-14.79
6	£955.95	£79.66	£-10.19
7	£1,014.80	£84.57	£-5.28
8	£1,077.52	£89.79	£-0.06
9	£1,144.39	£95.37	£5.52
10	£1,215.68	£101.31	£11.46
11	£1,291.69	£107.64	£17.79
12	£1,372.76	£114.40	£24.55
13	£1,459.22	£121.60	£31.75
14	£1,551.46	£129.29	£39.44
15	£1,649.85	£137.49	£47.64

I think the quote clearly sets out the income Mr T could expect to receive from the system, by way of FIT payments, as well as his 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 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. And that it would not be sufficient to do so until year 9.

I've carefully thought about Mr T'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 from the start.

I'll now consider whether P told Mr T that the system would be self-funding. 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 Mr T was 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 15 the overall benefits that Mr T could expect to receive would have exceeded the total amount payable under the loan agreement.

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	Boiler doctor				
100.0%	1	£104.04	£85.41	£303.72	£168.00	£70.56	£0.00	£0.00	£0.00	£711.73	£711.73	£59.31	8.27%
100.0%	2	£107.20	£67.40	£324.37	£179.42	£76.20	£0.00	£0.00	£0.00	£754.59	£1,466.32	£62.88	8.77%
100.0%	3	£110.46	£69.45	£346.43	£191.62	£82.30	£0.00	£0.00	£0.00	£800.26	£2,266.58	£66.69	9.30%
99.6%	4	£113.36	£71.27	£368.51	£204.66	£88.89	£0.00	£0.00	£0.00	£846.70	£3,113.28	£70.56	9.84%
99.2%	5	£116.34	£73.14	£391.99	£218.57	£96.00	£0.00	£0.00	£0.00	£896.04	£4,009.32	£74.67	10.41%
98.8%	6	£119.40	£75.07	£416.96	£233.43	£103.68	£0.00	£0.00	£0.00	£948.53	£4,957.85	£79.04	11.02%
98.4%	7	£122.53	£77.04	£443.50	£249.31	£111.97	£0.00	£0.00	£0.00	£1,004.34	£5,962.20	£83.70	11.67%
98.0%	8	£125.73	£79.05	£471.73	£266.26	£120.93	£0.00	£0.00	£0.00	£1,063.70	£7,025.90	£88.64	12.36%
97.6%	9	£129.03	£81.13	£501.76	£284.37	£130.60	£0.00	£0.00	£0.00	£1,126.88	£8,152.78	£93.91	13.09%
97.2%	10	£132.41	£83.24	£533.68	£303.70	£141.05	£0.00	£0.00	£0.00	£1,194.07	£9,346.86	£99.51	13.87%
96.8%	11	£135.88	£85.43	£567.63	£324.36	£152.33	£0.00	£0.00	£0.00	£1,265.62	£10,612.48	£105.47	14.70%
96.4%	12	£139.42	£87.66	£603.71	£346.41	£164.52	£0.00	£0.00	£0.00	£1,341.72	£11,954.20	£111.81	15.59%
96.0%	13	£143.07	£89.94	£642.10	£369.97	£177.68	£0.00	£0.00	£0.00	£1,422.76	£13,376.96	£118.56	16.53%
95.6%	14	£146.80	£92.29	£682.90	£395.13	£191.90	£0.00	£0.00	£0.00	£1,509.03	£14,885.99	£125.75	17.53%
95.2%	15	£150.63	£94.70	£726.29	£421.99	£207.25	£0.00	£0.00	£0.00	£1,600.67	£16,486.66	£133.41	18.60%
94.8%	16	£154.56	£97.17	£772.41	£450.69	£223.83	£0.00	£0.00	£0.00	£1,698.66	£18,185.52	£141.56	19.73%
94.4%	17	£158.58	£99.71	£821.46	£481.34	£241.73	£0.00	£0.00	£0.00	£1,802.82	£19,988.34	£150.23	20.94%
94.0%	18	£162.71	£102.30	£873.60	£514.07	£261.07	£0.00	£0.00	£0.00	£1,913.75	£21,902.09	£159.48	22.23%
93.6%	19	£166.94	£104.96	£929.04	£549.02	£281.96	£0.00	£0.00	£0.00	£2,031.92	£23,934.01	£169.33	23.60%
93.2%	20	£171.29	£107.69	£987.97	£586.36	£304.52	£0.00	£0.00	£0.00	£2,157.83	£26,091.84	£179.82	25.06%
91.2%	21-25	£0.00	£0.00	£5,962.50	£3,586.94	£1,929.39	£0.00	£0.00	£0.00	£11,478.83	£37,570.67	£191.31	26.67%
Repair/Replace						£-1,250.00							
Totals		£2,710.41	£1,704.05	£17,672.24	£10,325.62	£3,906.36	£0.00	£0.00	£0.00	£36,320.67	£36,320.67	Ave. ROI:	16.88%

As I've set out above, I'm satisfied that P told Mr T that the system would pay for itself by year 15, 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 him to enter into the contract, and he subsequently suffered a loss, that would amount to a misrepresentation.

Mr T was told that the system would generate 2,600 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 Mr T was told it would, which means he has not received the benefits set out in the quote.

The shading from the neighbouring property should've been taken into account when P calculated the expected performance of the system. So, the estimated annual electricity generation figure, and the calculations of the financial benefits of the system that followed on from that, should have been accurate within a reasonable margin of error.

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.

The situation has been confused by the supplier contacting Mr T and requesting dates for when it can fit new panels – without explaining why. But, as things stand, Shawbrook has had sufficient time to resolve the underperformance issue but 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 T into entering into the contract.

Putting things right

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mr T's complaint for Shawbrook to:

- a) Calculate the difference between what the panels have generated as income (through FIT and savings) for Mr T 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 T.
- c) If Shawbrook is able to resolve the underperformance issue, the calculation in a) should run until the date the underperformance issue is resolved. If it is not able to, then the calculation should run until the date of settlement.

The finance agreement in question ends in March 2015. If Shawbrook is unable to resolve the underperformance issue (so the system will generate 2,600 kWh of electricity per year going forward) by 31 December 2022 then, to ensure that Mr T doesn't lose out going forward, Shawbrook should:

- d) 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
- e) recalculate the "total income savings" for each year going forward until the conclusion of the finance agreement, having applied the percentage reduction identified in d) above.
- f) Pay Mr T the difference between the revised amounts calculated in e) above and the "total income savings" set out in the sales paperwork.

If Shawbrook has successfully resolved the underperformance issue by 31 December 2022, then it does not need to pay compensation beyond that set out in a), b) and c) above. However, this will not prevent Mr T from making a new complaint in future if there are further problems with the system's performance or any remedial work that was carried out to resolve the underperformance issue.

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

My final decision

For the reasons I've explained, I'm upholding Mr T'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 T to accept or reject my decision before 29 November 2022.

Phillip Lai-Fang
Ombudsman