

The complaint

Mr W complains that Shawbrook Bank Limited declined his claim under section 75 of the Consumer Credit Act 1974 ("the Act") relating to his purchase of solar panels.

What happened

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

In 2020 Mr W made a claim to Shawbrook under section 75 of the Act. He said that P had misrepresented the system's performance to him, in that it was generating less energy than the installer said it would at the point of sale, and it was this misrepresentation that had induced him to enter into the contract with P. He also complained that the system did not make enough money to offset his monthly loan repayments. After receiving no satisfactory response from Shawbrook, Mr W brought this complaint to our service. He asked for the loan to be cancelled and for the system to be removed.

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 told Mr W that the system would cover his loan payments. But he did think that the system was not performing as it should, and so on that basis he upheld this complaint. He didn't think that removing the panels would be proportionate; instead he recommended that Shawbrook pay Mr W the difference between what he had received and what he should have received from the system, with interest, and thereafter pay him the difference between what he is expected to receive and what he was told he would receive at the point of sale, until the end of the loan term.

Mr W didn't accept that opinion. He still wanted the system to be removed altogether as he had lost confidence in it. So this case was referred to me for an ombudsman's decision.

Meanwhile, it was arranged that P would inspect the system to see what was wrong with it. This inspection was carried out in October 2022, and there was another one in December. This confirmed that the system was not generating as much energy as it should, but did not establish why. P recommended that all panels and cables should be individually tested, and potentially replaced depending on the findings, and optimisers may need to be set up. This work would require scaffolding. I decided to wait for this work to be done before issuing a decision.

The recommended work was begun on 20 March. The weight of the scaffolding on Mr W's first floor roof broke some of the tiles. The damaged area was covered with tarpaulin to prevent water ingress until it can be repaired (which can't happen until the scaffolding comes down). The work took longer than expected: Mr W had been told that it should not take more than a week, but after three weeks – during which time the scaffolding was blocking Mr W's patio doors – P told him on 17 April that it was not possible to upgrade the panels after all.

So the next day I issued a provisional decision in this case. (The scaffolding was taken down on 20 April.)

My provisional decision 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.

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Introduction

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 and 75 of the Act.

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

Shawbrook has provided the pack it says the installer provided to Mr W at the time of the sale which is entitled "Your Personal Solar Quotation". I'm satisfied that this quote was a central part of the sales presentation. I think this document is also relevant when considering if there have been any untrue statements of fact and is particularly helpful when considering Mr W's recollections of the sales process.

Benefits and performance of the system

I think that Mr W was told that the system would pay for its cash price over a 10 year period – not that it would be self-funding from the start. Therefore, I cannot agree that the installer misrepresented the panels as being capable of paying for Mr W's loan payments in full.

The quote has a table setting out the system's estimated performance over 25 years. Based on this, I'm satisfied that the installer told Mr W that the system would pay for itself by year 13, as the accumulated grand total of income and savings would by that time have exceeded the total cost of the system (including the finance costs). If that turns out not to be true and if I'm satisfied that this induced Mr W into entering the contract and he suffered a loss, then that could amount to a misrepresentation.

Mr W has provided his feed-in tariff ("FIT") statements. These show that the system generated 3,546 kWh between installation and 20 September 2021. This works out as an

average of 1,243 kWh a year. But in a number of places in the quote the installer has estimated that Mr W's system would generate 2,091 kWh of electricity a year; this figure also appears in the MCS certificate.¹ So it can be seen from the FIT statements that the system has significantly underperformed compared to the installer's estimates from the point of sale – it has generated about 59% of what he was promised.

I'm satisfied that the estimated generation and the subsequent FIT payment and electricity savings would have induced Mr W into entering the contract. The generation and therefore income are significantly lower than he was promised so he has suffered a loss.

Under sections 23 and 24 of the Consumer Rights Act 2015, P was entitled to one attempt to fix the problem. But this has to be done "within a reasonable time and without significant inconvenience to the consumer." I think it is clear that this has not been achieved.

Furthermore, I think that the new information provided yesterday by P, to the effect that the system cannot be improved, is frankly astonishing. It seems implausible to me. But if it is true, then it should have been determined by the inspection in October. And it would mean that the two inspections which took place in October and December were not carried out competently, and everything that has happened since October has been a waste of everyone's time. I will award additional compensation for that, and for the damage to Mr W's roof.

So for all of these reasons, I will uphold this complaint.

Putting things right

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mr W's complaint for Shawbrook to put things right by making sure that Mr W doesn'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 panels have generated as income (through the FIT and savings) for Mr W 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 W.

To ensure that Mr W doesn't lose out going forward, Shawbrook must 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 paragraph c) above, and
- e) pay Mr W the difference between the revised amounts calculated in paragraph d) above and the "total income savings" set out in the sales paperwork.

¹ At Mr W's request, the panels were installed on the north-facing roof, which reduces their efficiency, but the figure of 2,091 kWh a year takes this into account.

P has already agreed to repair the damage caused to Mr W's roof, but to avoid any misunderstandings, I will order Shawbrook to arrange for this damage to be repaired at no cost to Mr W.

I will also direct Shawbrook to pay Mr W £1,000 compensation for the significant inconvenience caused.

My provisional decision

So my provisional decision is that I intend to uphold this complaint. Subject to any further representations I receive from the parties by [3 May 2023], I intend to order Shawbrook Bank Limited to put things right in the way I've set out above.

I now invite Mr W and Shawbrook to let me have any further comments before 3 May 2013, after which I will issue my final decision.

Responses to my provisional decision

Shawbrook has not responded to my provisional decision, nor requested more time in which to do so.

Mr W made the following representations:

- Rather than calculating the total income savings in step d) until the conclusion of the finance agreement, I should tell Shawbrook to calculate it until 25 years after the finance agreement started, so that Mr W effectively receives the same income as he was promised over 25 years (instead of 10), being the period over which the quote made representations about the projected performance of the system.
- Alternatively, Shawbrook should calculate the savings until 13 years after the finance agreement started, being the period over which the system would pay for the finance agreement.
- Additionally, P had not honoured its warranty, which was a breach of contract for which additional compensation should be awarded.
- The roof has now been repaired, but the replacement tiles do not match, and so P has agreed that this repair is temporary and that it will carry out a permanent repair using matching tiles. Meanwhile, some of the new scaffolding which was erected to effect the repair has been left behind at Mr W's property.
- The award of £1,000 compensation should be higher, to reflect the additional work needed to restore the roof to its original state (and also for the time Mr W had spent chasing P and Shawbrook about the system).

My findings

I can readily appreciate the reasons why Mr W has requested that the compensation is calculated over a period of 25 years, or at least 13, instead of 10. However, I remain of the view that 10 years is fair. I will explain why.

The reason I have not substituted 25 years is because my aim is not to make P's misrepresentation true, but just to make sure that Mr W incurs no financial loss. That can be achieved by calculating the compensation over a period of either 10 or 13 years.

I think there is a stronger case for substituting 13 years, as it was estimated that it would take that long for the income from the system to pay for the cost of the finance. I gave serious consideration to this request. However, the approach the investigator and I have followed is the standard approach the Financial Ombudsman Service usually takes in cases

like this one. We have a duty to be generally consistent in the way we approach similar cases, so I can't reasonably depart from that without a reason specific to Mr W's case. The calculation I outlined in my provisional decision means that once the loan is over with nothing left to pay, Mr W will start to receive the full income from the system, which will eventually mean that it will cover the cost of the loan.

I will not award extra compensation for P's breach of warranty, as I think the £1,000 already fairly reflects Mr W's time and inconvenience overall. But I agree that Mr W has been further inconvenienced by the fact that although the roof is now waterproof again, the replacement tiles do not match and are intended to be a temporary fix, meaning that the roof has still not yet been restored to its original state. Another visit will have to be made, and scaffolding will have to be erected again for the work to be carried out. So I will increase the compensation to £1,500 to take that into account, as well as requiring Shawbrook to restore the roof to its original state.

My final decision

My decision is that I uphold this complaint. I order Shawbrook Bank Limited to take the following steps:

- a) calculate the difference between what the panels have generated as income (through the FIT and savings) for Mr W 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 W.

To ensure that Mr W doesn't lose out going forward, Shawbrook Bank Limited must 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 paragraph c) above, and
- e) pay Mr W the difference between the revised amounts calculated in paragraph d) above and the "total income savings" set out in the sales paperwork.

Shawbrook Bank Limited must also:

- f) pay Mr W £1,500 for his inconvenience, and
- g) arrange for Mr W's roof to be restored to its former condition (that is to say, the condition it was in prior to 20 March 2023), at no cost to him, by replacing the recently installed mismatching tiles with tiles that closely match the roof. Once that has been done, all scaffolding must be removed from the premises.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 7 June 2023.

Richard Wood
Ombudsman