

The complaint

Mr A and Mrs S complain that Shawbrook Bank Limited declined their claim under section 75 of the Consumer Credit Act 1974 (“the Act”) relating to their purchase of solar panels.

Mr A and Mrs S are represented in this case by a claims management company (“the CMC”).

Background

In or around August 2015, Mr A and Mrs S 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 A and Mrs S decided to purchase the system and finance it through a 15 year fixed sum loan agreement with Shawbrook. The system was subsequently installed.

In March 2021 the CMC made a claim to Shawbrook on Mr A and Mrs S’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 A and Mrs S to enter into the contract with P. The CMC said the following misrepresentations had been made:

- the system would generate free electricity which he could sell to the national grid;
- the system would be self-funding; and
- the feed in tariff (FIT) and savings on his electricity bills would provide enough income to cover the monthly loan payments.

Mr A and Mrs S also complains about the system’s performance, as they say it has been generating less energy than the installer said it would at the point of sale.

Shawbrook issued a final response and explained that it didn’t agree the system had been misrepresented to Mr A and Mrs S 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 A and Mrs S. But he did think that the system was not performing as it should, and so on that basis he upheld this complaint.

As Shawbrook did not substantively respond, 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 sections 56 and 75 of the Act.

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

The quote

Shawbrook has provided the pack it says the installer provided to Mr A and Mrs S 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 A and Mrs S's recollections of the sales process.

Benefits and performance of the system

I think that Mr A and Mrs S was told that the system would pay for its cash price over an 18 year period – not that it would be self-funding from the start. Therefore, I cannot agree that the installer misrepresented the panels as being self-funding from the start.

The quote has a table setting out the system's estimated performance over 20 years. Based on this, I'm satisfied that the installer told Mr A and Mrs S that the system would pay for itself by year 18, 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 A and Mrs S into entering the contract and they suffered a loss, then that could amount to a misrepresentation.

Mr A and Mrs S have provided their FIT statements. These show that the system generated 11,941 kWh between 11 September 2015 and 5 December 2021. This works out as an average of 1,914 kWh a year.

In a number of places in the quote the installer has estimated that Mr A and Mrs S's system would generate 2,702 kWh of electricity a year. 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 less than 71% of what was estimated.

I'm satisfied that the estimated generation and the subsequent FIT payment and electricity savings would have induced Mr A and Mrs S into entering the contract. The generation and

therefore income are significantly lower than they were promised so they have suffered a loss. The adjudicator asked Shawbrook to comment on the underperformance and to consider carrying out an inspection of the system to see if a reason for the underperformance could be identified and put right. Shawbrook said it would contact the installer and then respond, but unfortunately it has not responded to us since. As a result, I need to establish a reasonable way forward for this case without the benefit of any further evidence.

Putting things right

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mr A and Mrs S's complaint for Shawbrook to put things right by making sure that they 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 panels have generated as income (through the FIT and savings) for Mr A and Mrs S 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 A and Mrs S (either directly or via the CMC).

To ensure that Mr A and Mrs S don'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,
- e) pay Mr A and Mrs S the difference between the revised amounts calculated in paragraph d) above and the "total income savings" set out in the sales paperwork.

I also direct Shawbrook to pay £100 compensation for the inconvenience caused, in addition to the £200 it has already offered in its final response.

My final decision

My decision is that I'm upholding this complaint. 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 Mr A and Mrs S to accept or reject my decision before 5 December 2022. The CMC may respond on their behalf.

Richard Wood
Ombudsman