

## **The complaint**

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

## **Background**

In or around July 2017, Mr and Ms 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 and Ms 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 December 2020 the CMC made a claim to Shawbrook on Mr and Ms S’s behalf under sections 56 and 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 and Ms S to enter into the contract with P. The CMC said the following misrepresentations had been made:

- the system would pay for itself within the loan term;
- the feed in tariff (FIT) and savings on his electricity bills would provide enough income to cover the monthly loan payments; and
- the system would not require maintenance (but in fact the inverter would have to be replaced during the system’s 25-year lifespan, at a cost of £1,000).

Mr and Ms 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 and Ms S or that there were any other reasons for the claim to be upheld.

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 Ms S. But he did think that the system was not performing as it should, and so on that basis he upheld this complaint. P subsequently calculated that Mr and Ms S were due a refund of £158.49.

The CMC didn’t accept the adjudicator’s view but did not provide any further comments. So 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.

Having done so, I agree with our adjudicator's opinion and for broadly the same reasons.

### 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 and Ms S paid for the system with a fixed sum loan agreement, Shawbrook agrees that section 75 applies to this transaction. This means that Mr and Ms 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 and Ms S and P, as the supplier, are deemed to have been conducted by P as an agent of Shawbrook.

The CMC has also relied on section 140A, which is about unequal relationships between the parties to a credit agreement. In this case, the CMC relies on the alleged misrepresentation of the system.

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 and Ms 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 and Ms S's recollections of the sales process.

### Benefits and performance of the system

I think that Mr and Ms S were told that the system would pay for its cash price over a 12 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 25 years. Based on this, I'm satisfied that the installer told Mr and Ms S that the system would pay for the loan 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 and Ms S into entering the contract and they suffered a loss, then that could amount to a misrepresentation.

Mr and Ms S have provided their FIT statements. These show that the system generated 7,264 kWh between installation and September 2020 (and in that year they moved house). This works out as an average of 2,332 kWh a year.

In a number of places in the quote the installer has estimated that Mr and Ms S's system would generate 2,668 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 (about 87.4% of the estimate).

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

### **Putting things right**

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mr and Ms S's complaint for Shawbrook to put things right by making sure that Mr and Ms S 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.

P has already calculated Mr and Ms S's loss to be £158.49 and has shown its working. It assumed that Mr and Ms S would have consumed 50% of the energy generated by the panels. However, I am satisfied that in carrying out this calculation, it would be fair to assume that they actually consumed 37% of the electricity generated by the panels. This figure has been arrived at by the Financial Ombudsman Service after reviewing an expert's report on the subject. This report used information from the Energy Saving Trust to look at what a range of consumers would themselves consume depending on the length of time their household is occupied for during the day. The average across this research worked out at 37%, so it's a fair reflection of what an average consumer will consume. So I think it would be fair and reasonable to apply this figure in this case.

I therefore require Shawbrook to recalculate (or ask P to recalculate on its behalf) the loss to Mr and Ms S based on an assumed average consumption rate of 37% of the energy generated, and then to pay that amount instead.

I also think it would be fair to require Shawbrook to add simple interest to that amount at the rate of 8% a year, from 4 August 2017 to 14 September 2020.

I also direct Shawbrook to pay another £100 compensation for the inconvenience caused.

### **My final decision**

My decision is that I uphold this complaint in part. I order Shawbrook Bank Limited to put things right in the way I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S and Mr S to accept or reject my decision before 21 December 2022.

Richard Wood  
**Ombudsman**