

The complaint

Mr and Mrs C complain that Shawbrook Bank Limited (“Shawbrook”) has rejected the claim they made under sections 56, 75 and 140A of the Consumer Credit Act 1974 (“the Act”) in relation to a solar panel system they say was misrepresented to them by the supplier.

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

Background

In or around April 2016, Mr and Mrs C 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 C 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 2021 the CMC made a claim to Shawbrook on Mr and Mrs C’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 and Mrs C to enter into the contract with P. The CMC said the following misrepresentations had been made:

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

Shawbrook issued a final response and explained that it didn’t agree that the claim should 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 Mrs C and found no reason to uphold the complaint.

The CMC didn’t agree with the adjudicator’s view. It said:

- the solar quote had a table showing the estimated benefits that Mr and Mrs C could expect to receive from the system over 30 years, but this was misleading as the lifespan of the panels is only 20 years;
- another table showed the estimated payback time (when the system would break even) based on the cash price of the system, without taking into account the cost of the finance;
- the quote had calculated the electricity savings based on a current unit price of electricity of 15.57 p/kWh, when Mr and Mrs C’s bills showed they had actually been paying 10.985 p/kWh in 2015;
- that calculation had significantly inflated the estimated benefits from the system by thousands of pounds;
- the system would not actually pay for itself within its lifespan;
- the quote did not go into enough depth to compare the cost of the system with its

- benefits;
- P pays its sales representatives commission for each sale (£500 to £750), creating an incentive for its salesmen to lie; and
- P had never told Mr and Mrs C that they needed to register for FIT payments, and so they had never received any FIT income.

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 do not uphold it. I will explain why.

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, 75 and 140A of the Act.

Section 75 provides protection for consumers for goods or services bought using credit. As Mr and Mrs C 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 C 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 C and P, as the supplier, are deemed to have been conducted by P as an agent of Shawbrook.

Section 140A is about unequal relationships between the parties to a credit agreement. In this case, the CMC relies on the alleged misrepresentation of the system. The CMC has also alleged that P paid Shawbrook commission or gave Shawbrook some other financial remuneration. Shawbrook denies that this happened in this case, and I have seen no evidence that it did, and so I do not accept it. The CMC also says that P only paid its salesmen for sales, and not for sales meetings where there was no sale. However, I don't think that would give rise to an unfair relationship, unless this actually led to the system being misrepresented.

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 – 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 and Mrs C 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 parties. These include the credit agreement and solar quote, titled "Your Personal Solar Quotation". I've considered these, along with Mr and Mrs C'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 Mr and Mrs C, explaining any benefits of the system, prior to them agreeing to enter into the contract. They both signed it on page 24.

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 Mr and Mrs C's version of events, when considering if there have been any untrue statements of fact.

The credit agreement sets out the amount being borrowed (*i.e.* the cash price of the system), the interest to be charged, the total amount payable, the term of the loan and the contractual monthly repayments.

FIT registration

On pages 16 and 17 of the quote, under the heading "Feed in Tariff (FIT)", it explains that although P provides the registration paperwork, fills in the information that Mr and Mrs C would need P to provide, and offers to help them with the process, it is the customers' responsibility to submit the application. It states:

"It is the customer's responsibility to provide their personal details and bank details to the energy company."

That was standard industry practice. On balance, I think it is unlikely that P's salesman told them that P would complete the whole process for them. So I do not uphold this complaint point.

FIT payments and savings

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

£	79.03
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Export tariff in year 1

£	44.91
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Total income in year 1

£	123.94
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I think that the first of these tables is clear that Mr and Mrs C could expect to receive a total FIT income in year one of £123.94. The quote goes on to look at the electricity savings Mr and Mrs C could expect from the system. The expected year one electricity savings are £213.63 and, when taking into account the optional extras chosen by Mr and Mrs C, the combined income and savings in year one are shown as £580.83. This is shown in a table titled "Putting it all together".

Putting it all together

Total income & savings in year 1

£	580.83
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This results in an average monthly income of £48.40. I'm satisfied that the same document set out that there would be a monthly loan repayment due of £81.63. As a result, I'm not able to conclude that Mr and Mrs C were 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 as this is the length of the loan that Mr and Mrs C entered into with Shawbrook. This table shows the loan as repayable in 180 monthly payments of £81.63. 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, to give an average difference between the monthly return from the system and the monthly loan repayment in each year. This gives a negative figure for the first nine years of the loan, meaning that the system would not begin to make enough money to cover the loan payments until year ten.

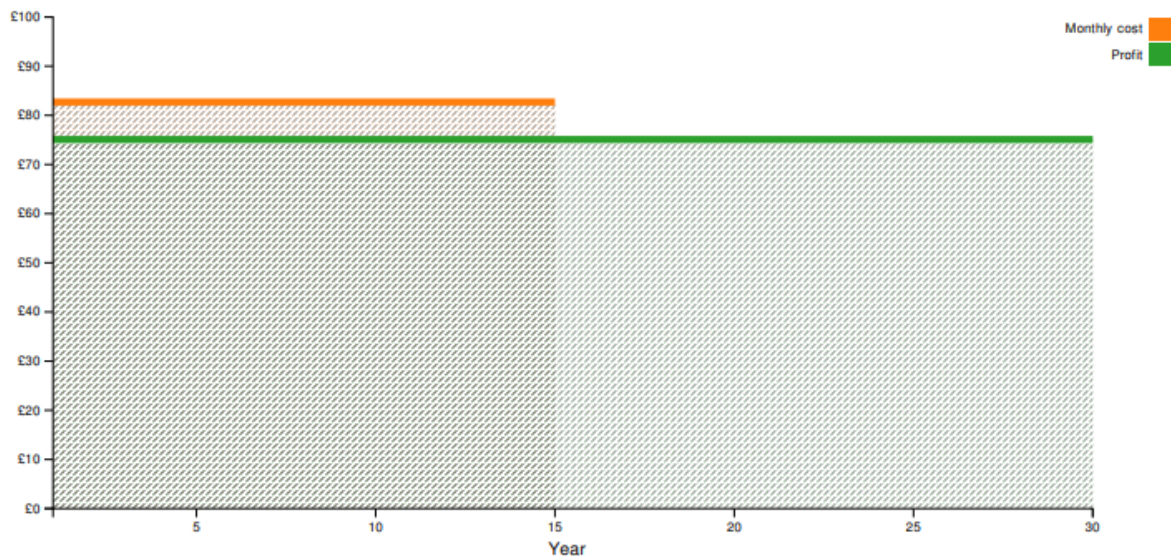
180 payments of £81.63 p/m

Yr	Acc. grand total	Est. monthly return	Average monthly repayment diff.
1	£580.83	£48.40	£-33.23
2	£617.39	£51.45	£-30.18
3	£656.43	£54.70	£-26.93
4	£698.12	£58.18	£-23.45
5	£742.65	£61.89	£-19.74
6	£790.22	£65.85	£-15.78
7	£841.05	£70.09	£-11.54
8	£895.36	£74.61	£-7.02
9	£953.40	£79.45	£-2.18
10	£1,015.45	£84.62	£2.99
11	£1,081.77	£90.15	£8.52
12	£1,152.68	£96.06	£14.43
13	£1,228.50	£102.38	£20.75
14	£1,309.58	£109.13	£27.50
15	£1,396.31	£116.36	£34.73

I think the quote clearly sets out the income Mr and Mrs C could expect to receive from the system, by way of FIT payments and savings, as well as their expected contractual monthly loan repayments. Whilst I accept that the table doesn't simply compare the FIT income and savings to the monthly loan repayments, it 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. I've carefully thought about Mr and Mrs C'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 they were told that the monthly loan repayments would be covered by the FIT income and savings.

I am reinforced in my view by this graph in the quote, which plainly showed that the system would not be enough to cover the loan payments. (This graph includes the cost of the loan.)

Your Average Monthly Returns Over 30 Years With RPI and Increase in Electricity Costs against the monthly cost of the system



The monthly average returns are based on the total return averaged over 360 months. This graph incorporates the cost of the system (and any finance charges)

Self-funding

I'll now consider whether P told Mr and Mrs C 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. 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 C were told by P that the system would be self-funding over a certain period of time.

The "Key Facts" page of the quote states in large font that it would take 11 years for the overall benefits that Mr and Mrs C could expect to receive to match the cash price of the system.

Your estimated payback time is



I think the 11-year estimated payback time is clear and prominent, being in large print on page 2. The CMC has criticised this part of the quote because the payback time only refers to the cash price and not the total cost including the loan interest, and the small print under the green graphic which explains this is very small. It says this small print could easily be

overlooked, making the 11-year timescale misleading. However, this same figure also appears in the “Putting it all together” section, immediately below two other figures which are prominently labelled “(does not include finance charge)”. So I think that would have made it clear that the payback time was based on the cash price.

Total income & savings over 30 years	£	27029.23
Less cost of system (does not include finance charge)	£	7740.00
Estimated profit from scheme (does not include finance charge)	£	19289.23
Estimated payback time	11	years

(Even if I took a different view about that, 11 years is still longer than the loan term, so this reinforces my view in the previous section that the salesman did not say that the system would pay for itself during the ten years of the loan.)

A later page of the quote has a table detailing the estimated performance of the system over 30 years. This too shows that it would take 11 years for the overall benefits that Mr and Mrs C could expect to receive to reach the cash price of the system, and 16 years to reach the total amount payable under the loan agreement (£14,793.40). These figures are not affected by the figures for subsequent years, so even if the system would not have lasted for 30 years these payback figures would not be affected.¹ (I have here reproduced only the rows for years 1, 10, 11, 15 and 16.)

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	£79.03	£44.91	£213.63	£134.40	£108.86	£0.00	£0.00	£0.00	£580.83	£580.83	£48.40	7.5%
97.2%	10	£100.58	£57.15	£379.20	£238.56	£211.53	£0.00	£0.00	£0.00	£987.02	£7,690.01	£82.25	12.75%
96.8%	11	£103.21	£58.65	£403.76	£254.02	£227.51	£0.00	£0.00	£0.00	£1,047.15	£8,737.16	£87.27	13.53%
95.2%	15	£114.42	£65.02	£518.94	£326.49	£304.40	£0.00	£0.00	£0.00	£1,329.29	£13,608.95	£110.77	17.17%
94.8%	16	£117.41	£66.72	£552.53	£347.61	£327.38	£0.00	£0.00	£0.00	£1,411.64	£15,020.59	£117.64	18.24%

The MCS certificate and quote set out that the system was expected to produce 1,829 kWh a year. That didn't translate into the expected financial returns because the system was not registered for FIT payments. But I have seen no evidence to suggest that the system is not performing properly, or that the expected financial returns would not have materialised if the system had been registered. So I cannot say that the payback timescales set out above were untrue.

¹ I think that Mr and Mrs C are more likely to have been influenced by the expected benefit in the first two decades than by what they stood to get in the third.

Benefit calculation

The CMC has pointed out that the estimated savings on Mr and Mrs C's electricity bills were calculated based on a unit price of electricity of 15.57 p/kWh, when Mr and Mrs C's bills showed they had actually been paying 10.985 p/kWh in the year before the sale. It argues that P should have ascertained the correct rate from their utility bills.

Although I think that is a reasonable point, it appears to have been the industry standard at the time to take an average rate based on data from the Office of National Statistics (ONS) and to use that, instead of asking consumers for their rates on a case by case basis; ONS figures were also used to predict the likely inflation rate and increases in electricity prices over the coming years. (This meant that unpredictable changes in fixed rates for individual customers could be eliminated and the predictions about income in later years would be based on national averages.) Under our rules, I am supposed to take into account good industry practice at the relevant time,² and I think that P followed that, and showed its working in the quote.

Summary

Having carefully considered the evidence provided by all parties in this complaint, I'm satisfied that there were no untrue statements of fact made by P that induced Mr and Mrs C to enter into the contract for the system, and I have found no other reason to uphold this complaint.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C and Mr C to accept or reject my decision before 19 January 2023.

Richard Wood
Ombudsman

² DISP 3.6.4R(2) in the *FCA Handbook*.