

## The complaint

Mr R complains that Shawbrook Bank Limited (“Shawbrook”) has rejected the claim he made under sections 75 and 140A of the Consumer Credit Act 1974 (“the Act”) in relation to a solar panel system he says was misrepresented to him by the supplier.

Mr R is represented by a claims management company (“the CMC”).

## Background

In or around October 2016, Mr R 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 R decided to purchase the system and finance it through a ten year fixed sum loan agreement with Shawbrook. The system was subsequently installed.

In July 2022 the CMC made a claim to Shawbrook on Mr R’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 R to enter into the contract with P. The CMC said the following misrepresentations had been made by P’s salesman:

- the system would be self-funding, in that the feed in tariff (FIT) payments alone would be enough (on average over the course of a year) to cover the monthly loan payments;
- Mr R’s electricity bills would significantly reduce;
- the system could be connected to both of Mr R’s electricity meters (he has one normal meter and one “off-peak meter” which is only active at certain times);
- the system would require little or no maintenance, and the whole system was covered by a guarantee; and
- it was not explained that the system would degrade over time and that it would gradually produce less and less electricity.

Shawbrook failed to substantively respond to the claim, so Mr R instructed the CMC to bring this complaint to our service.

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 R and found no reason to uphold the complaint.

The CMC didn’t agree with the adjudicator’s view for the following reasons:

- the adjudicator had based her opinion on the assumption that P’s written quote reflected what the salesman had verbally told Mr R, whereas the salesman had said that the system would be self-funding even though the quote does not say that;
- although Mr R had signed the quote, this did not prove he had read it, and in fact the salesman had not gone through it with him at the sales meeting;
- although the quote was subsequently emailed to Mr R, it was too complicated for the average consumer to understand;

- it was not credible to suggest that Mr S would have agreed to buy the system unless he had been told that it would pay for itself;
- the adjudicator had given greater weight to evidence from Trading Standards than to Mr R's own recollection of the sales meeting. (This point is unclear, because the adjudicator makes no reference to Trading Standards anywhere in her decision.)

As an agreement couldn't be reached, the case was passed to me for review. I wrote a provisional decision which read as follows.

### **My provisional 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 the misrepresentation side of this complaint, but I do think that the failure to connect the system to both meters is a breach of contract. 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 and 75 of the Act.

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

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 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 R 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 parties. These include the credit agreement and solar quote, titled "Your Personal Solar Quotation". I've considered these, along with Mr R's testimony and recollection of the sales meeting, to decide on balance what is most likely to have happened.

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.

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 R, explaining any benefits of the system, prior to him agreeing to enter into the contract. As I've said, he signed it. And I'm afraid that I don't think it's likely or plausible that Mr R would have simply taken the salesman's word for it when he was told that he could buy thousands of pounds' worth of equipment – paid for with an interest-bearing loan – without it costing him a penny, without at any point asking to see something to that effect in writing at the time he decided to buy it.

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 R's version of events, when considering if there have been any untrue statements of fact.

Even if I took a different view about that, the quote was emailed to Mr R after the meeting for him to read in his own time, and there was a 14-day cooling-off period. So for these reasons, I think it is unlikely that the salesman would have contradicted what the quote says during the meeting.

#### FIT payments

Mr R has said that he was told his monthly loan repayments would be covered, or "self-funded" by the FIT payments alone. I've considered the quote that was provided by P, as well as Mr R'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 R 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

Current electricity spend per month	£ 125
Generation tariff in year 1	£ 100.70
Export tariff in year 1	£ 59.14
Total income in year 1	£ 159.84

I think that the first of these tables is clear that Mr R could expect to receive a total FIT income in year one of £159.84.

Elsewhere in the quote, it says that there would be a *monthly* loan repayment due of £121.07 (or £1,452.84 a year). As a result, I'm not able to conclude that Mr R was told that the monthly loan repayments would be covered by the FIT payments alone.

The quote goes on to look at the electricity savings Mr R could expect from the system. The expected year one electricity savings are £281.31 and, when taking into account the optional extras chosen by Mr R, the combined income and savings in year one are shown as £846.15. This is shown in a table titled "Putting it all together".

### Putting it all together

Total income & savings in year 1

£ 846.15

This results in an average monthly income of £70.51. That is still barely more than half of a monthly loan payment. So even when all of the expected income and savings are put together, they could not have been enough to cover the loan payments without Mr R making a further contribution. And I do not agree with the submissions that the quote is too complex for the average consumer to follow that. I think this information is set out clearly and in an accessible manner.

There's another section headed "Repayments" with three tables showing repayments over 60 months, 120 months and 180 months. I've focused mainly on the table for 120 months as this is the length of the loan that Mr R entered into with Shawbrook. This table shows the loan as repayable in 120 monthly payments of £121.07. For each year of the ten 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 £121.07, 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.

### 120 payments of £121.07 p/m

Yr	Acc. grand total	Est. monthly return	Average monthly repayment diff.
1	£846.15	£70.51	£-50.56
2	£898.79	£74.90	£-46.17
3	£954.88	£79.57	£-41.50
4	£1,014.66	£84.55	£-36.52
5	£1,078.37	£89.86	£-31.21
6	£1,146.28	£95.52	£-25.55
7	£1,218.67	£101.56	£-19.51
8	£1,295.85	£107.99	£-13.08
9	£1,378.14	£114.85	£-6.22
10	£1,465.89	£122.16	£1.09

I have also considered the table for 180 months, because this has been highlighted, which may indicate that it was at least discussed. But that still shows that the system would not begin to pay for itself until year seven.

I think the quote clearly sets out the income Mr R could expect to receive from the system, by way of FIT payments and savings, as well as his 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 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. I've carefully thought about Mr R'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 by the FIT income and savings.

### Self-funding

I'll now consider whether P told Mr R 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. That section of the quote has been signed by Mr R, so I'm satisfied that P did bring it to his attention. 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 R was 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 nine years for the overall benefits that Mr R could expect to receive to match the cash price of the system.

Your estimated payback time is



I think the nine-year estimated payback time is clear and prominent, being in large print on page 2, and so I don't consider that it needed further explaining. This figure also appears in the "Putting it all together" section.

Estimated payback time

9

years

A later page of the quote has a table detailing the estimated performance of the system over 25 years. (I have only shown the first ten rows here.) This too shows that during year nine

the overall benefits that Mr R could expect to receive would reach the cash price of the system, £9,300.

### 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	£100.70	£59.14	£281.31	£300.00	£0.00	£105.00	£0.00	£0.00	£846.15	£846.15	£70.51	9.10%
100.0%	2	£103.94	£61.04	£300.78	£320.76	£0.00	£112.27	£0.00	£0.00	£898.79	£1,744.94	£74.90	9.66%
100.0%	3	£107.29	£63.01	£321.59	£342.96	£0.00	£120.03	£0.00	£0.00	£954.88	£2,699.82	£79.57	10.27%
99.6%	4	£110.30	£64.78	£342.46	£366.69	£0.00	£128.34	£0.00	£0.00	£1,012.57	£3,712.39	£84.38	10.89%
99.2%	5	£113.40	£66.59	£364.70	£392.06	£0.00	£137.22	£0.00	£0.00	£1,073.97	£4,786.36	£89.50	11.55%
98.8%	6	£116.57	£68.46	£388.36	£419.19	£0.00	£146.72	£0.00	£0.00	£1,139.31	£5,925.66	£94.94	12.25%
98.4%	7	£119.84	£70.39	£413.56	£448.20	£0.00	£156.87	£0.00	£0.00	£1,208.85	£7,134.52	£100.74	13.00%
98.0%	8	£123.20	£72.35	£440.37	£479.22	£0.00	£167.73	£0.00	£0.00	£1,282.87	£8,417.39	£106.91	13.79%
97.6%	9	£126.65	£74.38	£468.93	£512.38	£0.00	£179.33	£0.00	£0.00	£1,361.67	£9,779.05	£113.47	14.64%
97.2%	10	£130.19	£76.46	£499.33	£547.84	£0.00	£191.74	£0.00	£0.00	£1,445.55	£11,224.61	£120.46	15.54%

The same table shows that the total amount payable under the loan agreement – £14,628.40 – would not be reached until early in year 13.

96.4%	12	£137.56	£80.79	£566.12	£626.28	£0.00	£219.20	£0.00	£0.00	£1,629.95	£14,389.42	£135.83	17.53%
96.0%	13	£141.41	£83.05	£602.78	£669.62	£0.00	£234.37	£0.00	£0.00	£1,731.23	£16,120.66	£144.27	18.62%

This table also shows, in the first column (which is titled “Panel degradation”), how the panels will reduce in efficiency year on year. This is shown as a percentage which reduces each year, ending in year 25 at 91.2%. So I’m satisfied that the quote did take into account that the panels would deteriorate over time, and that this would have been factored into the table, and into the quote generally. I’m also satisfied that the quote said as much.

## Estimated p

Panel degradation	Yr
100.0%	1
100.0%	2
100.0%	3
99.6%	4
99.2%	5
98.8%	6
98.4%	7
98.0%	8
...	
93.2%	20
91.2%	21-25

As I've set out above, I'm satisfied that P told Mr R that the system would pay for its cash price in nine years, and for the loan in about thirteen years, as supported by the graph 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, then that could amount to a misrepresentation.

The CMC says it is untrue because it will actually take 58 years for the system to pay for itself. So I've gone on to consider the performance of the system and whether this is in line with the contract between P and Mr R.

### Performance

The MCS certificate and quote set out that the system is expected to produce 2,409 kWh a year. I have looked at Mr R's FIT statements and can see that his system, on average, has generated 2,703 kWh a year. This is significantly more than was estimated by P at the point of sale – 112% – so I'm satisfied that the system is performing as expected, in terms of energy generation, if not financially. So the reason Mr R has not seen the expected financial returns is not because the system is defective, but for some other cause.

I have also looked at the assumptions used by P, including the self-consumption rate, expected annual increase in utility prices (EPR) and expected annual RPI inflation increase. I am satisfied that P's method for calculating these is fair and reasonable.

P used Office of National Statistics (ONS) data between 2006 to 2015 to calculate the utility price and RPI inflation. I have looked at the actual yearly increases between 2016 and 2020,

and the increases have been lower than predicted by P at the point of sale, and I think this explains why Mr R hasn't been receiving the financial returns he may have been expecting from the solar panels. Since actual energy prices have been lower than the modelling predicted, the savings achieved through the energy generated by the system have been correspondingly lower.

As I have explained, the assumptions used by P were based on the information available from the ONS at the time. And based on this, I don't consider it unreasonable for P to have used them as the basis for calculating the potential financial income Mr R could have expected to receive from the system. So, whilst I can appreciate that the returns may not have been as high as estimated at the point of sale, I'm not persuaded that this was due to unreasonable assumptions being used by P at the time Mr R entered into the contract.

### Warranty

The quote says on page 4 that there is a lifetime warranty on the system, and I have seen no evidence that this is not the case. On page 21, under the heading "Warranty", paragraphs 15 to 21 of the terms and conditions set this out in greater detail, and if not complied with then these would be enforceable in court. So I think there is nothing in this complaint point.

### The system was not connected to the off-peak meter

Mr R says that the salesman told him that the system could be connected to both of his meters, but when it was installed this turned out to be impossible – which he was only told after the installation had been completed. This meant that one of the optional extras he had chosen, the hot water controller, could not be installed (because the hot water was only powered through the off-peak meter). As a result, he was given a £500 refund (by way of reducing the amount repayable under the loan). I have seen evidence of this refund, an undated document from P titled "Variation Order."

Mr R's account of events has never been contradicted by Shawbrook, and so I accept his unchallenged evidence that this is what happened. I also think the refund corroborates his account, as it must have been paid for something and this is the only explanation I have been given.

Mr R accepted the refund and did not complain at the time, and so while the salesman's assurance that the system could be connected to both meters turned out to be untrue, I do not think it amounts to a misrepresentation. That is because on balance, given Mr R's reaction, he would probably still have bought the system if the salesman had told him that it could only be connected to one meter.

However, I am satisfied that the representation that the system would be connected to both meters became a term of the contract, as P and Mr R had agreed that this work would be done. Even if P's salesman was misinformed, or just guessing, or even lying, he certainly had P's authority to enter into a contract on P's behalf, and this included the authority to negotiate its terms. There was no "one size fits all" system; I have seen in other cases that different sales by P involved different numbers of panels, different optional extras, and so on, and so each quotation was bespoke. So P undertook to connect the system to both meters and then failed to do so. I am satisfied that this was a breach of contract.

The quote says Mr R would have made savings from the hot water controller of £6,565, so I don't think that £500 is fair redress, even though Mr R accepted that at the time. I think that fair redress would be a refund of £6,565 (less the £500 already paid), and also interest on £6,065 at eight per cent a year from the date Mr R first raised his section 75 claim to the date of settlement.



## 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 R to enter into the contract for the system, but that there was a breach of contract due to P's failure to install the system in the agreed way.

### **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 ... I intend to order Shawbrook Bank Limited to pay Mr R:

- £6,065, plus simple interest on that sum at 8% a year from 21 July 2022 to the date of settlement, and
- £100 for his inconvenience.

### **Responses to my provisional findings**

The CMC did not reply to my provisional decision. Shawbrook replied to say this:

"[P]'s Personal Solar Quotation estimated savings from the hot water controller of £6,565.00. However, it's reasonable to say [Mr R] was aware the hot water controller wasn't installed given he signed the Variation Order, so it follows it's reasonable to say he wouldn't be getting the estimated savings attributed to the hot water controller. On this basis, we don't believe he could be compensated for the loss of expected savings.

On the available evidence, [Mr R] raised no concerns about this matter at the time. Indeed, he has signed our 'Customer Satisfaction Note' on 1 December 2016 (see attached) confirming ... the products have been fitted to his satisfaction by [P]."

### **My findings**

Shawbrook's submissions have not changed my mind. I will explain why.

I accept that Mr R did sign the customer satisfaction note, in which he confirmed that the system had been installed. However, that document has to be understood in the context in which it was signed – that is, what it is for and what had just happened.

By the time Mr R signed the satisfaction note, the solar panels had been installed without the hot water controller, and Mr R had signed the variation order in which he acknowledged that the hot water controller had not been installed. So the satisfaction note only indicated that the rest of the system had been installed satisfactorily. It has never been in dispute that Mr R knew about this at the time. His complaint is that P failed to do everything it had contracted to do, not that they withheld that information from him.

The purpose of the satisfaction note is that, once it has been signed by the customer, the finance company is thereby authorised to release the funds to pay the supplier of the relevant goods and services. It does not operate as a waiver of Mr R's right to sue P for breach of contract, or to bring a claim against Shawbrook under section 75. (I agree that it does prevent Mr R from repudiating the contract later on, but I am not dealing here with a repudiatory breach of contract. Indeed, as Shawbrook has pointed out, Mr R accepted that the hot water controller was not being installed when he signed the variation order.)

If Mr R had declined to sign the satisfaction note, then his only alternative options would have been either to pay P with his own money, or to repudiate the contract and reject the goods which had just been installed.

On the facts of this case, I can well understand Mr R's decision to sign both documents and accept delivery of the system without the hot water controller. Paying the cash price of the system – £8,800 (after deducting the refund) – with his own money, all at once, was presumably too expensive, otherwise he would not have agreed to take out an interest-bearing loan in the first place. And rejecting the whole system after it had just been installed on his roof – meaning it would have to be removed again (and after the scaffolding had just been taken down, which would have to go up again) – would certainly not have been an attractive option. So I think that accepting the system without the hot water controller was a rational choice. Mr R was making the best of a situation that was far from ideal. That doesn't mean he cannot complain about it later on. He raised his section 75 claim with Shawbrook within the six year limitation period, so I'm satisfied that this is a valid claim, properly made.

The usual remedy for a breach of contract is to put the parties in the same position they would have been in if the contract had been fully performed, so far as possible. I am satisfied that the failure to install the hot water controller was a breach of contract. The fact that Mr R was told about it after the solar panels were installed, and that he signed an acknowledgement of that, does not prevent him from bringing a claim against P or Shawbrook for that breach. It only prevents him from rejecting the entire system as a remedy for that breach. Putting Mr R in the position he would have been in if the breach had not occurred would mean paying him the £6,565 he would have made from the hot water controller if it had been installed, less the £500 refund, plus interest.

I have thought about the fact that the variation order was effectively a collateral contract with an implied term that Mr R would not sue P for breaching the original contract. But as I said in my provisional decision, I do not think that a £500 refund was a fair remedy for the breach. So I remain of the view that this is the fairest way to resolve this complaint.

### **My final decision**

My decision is that I uphold this complaint. I order Shawbrook Bank Limited to pay Mr R:

- £6,065, plus simple interest on that sum at 8% a year from 21 July 2022 to the date of settlement, and
- £100 for his inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 20 March 2023.

Richard Wood  
**Ombudsman**