

Complaint

Ms B complains that Shawbrook Bank Limited (“Shawbrook”), has rejected the claim she made under section 75 of the Consumer Credit Act 1974 (“the Act”) in relation to a solar panel system she says were misrepresented to her by the supplier.

Ms B is represented by a claims management company (“the CMC”).

Background

In or around November 2015, Ms B 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 her home. After being visited by a representative of P, Ms B decided to purchase the system and finance it through a 15-year fixed sum loan agreement with Shawbrook. The system was subsequently installed.

In October 2019, the CMC made a claim on Mr B’s behalf under section 75 of the Act to Shawbrook. The CMC said that 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 Ms B to enter into the contract with P. The CMC said the following misrepresentations had been made:

- The system would be self-funding.
- The feed in tariff (FIT) and savings on energy bills would provide enough income to cover the finance agreement repayments costs.
- The system should be producing more energy than it was and was therefore underperforming.

Shawbrook didn’t agree the system had been misrepresented to Ms B or that there were any other reasons for the claim to be upheld. But it did offer £200 compensation for delays in complaint handling.

One of our investigators looked into what had happened. Having considered all the information and evidence provided, our investigator didn’t think that P had led Ms B to believe the system would be immediately self-funding. But they did think the system had underperformed compared to P’s estimates from the point of sale. They added that the generation and the subsequent FIT payments and electricity savings would have induced Ms B into entering the contract. So, they felt this aspect of the complaint should be upheld.

Shawbrook didn’t agree to our investigators view of the complaint. Shawbrook wanted to carry out an inspection to see whether there was a fault with the system. It also notified us that a previous fault had been repaired in December 2021. Our investigator felt Shawbrook had been given ample opportunity to complete its investigation and had not done so. In the interests of bringing matters to a close, they recommended Shawbrook offer redress to compensate Ms B for the losses she had suffered.

As an agreement couldn’t be reached, the case was passed to me for review.

In my provisional decision of 19 December 2022, I set out why I was minded to upholding the complaint in part. I invited both parties to provide any further submissions they may wish to make before I reached a final decision. Shawbrook did not respond while Ms B raised some additional points which I will address below.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In my provisional decision I explained the following:

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 section 56 and section 75 of the Act. Section 75 provides protection for consumers for goods or services bought using credit.

As Ms B paid for the system with a fixed sum loan agreement, Shawbrook agrees that section 75 applies to this transaction. This means that Ms B could claim against Shawbrook, the creditor, for any misrepresentation or breach of contract by P in the same way she 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 Ms B 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 them loss.

What happened?

If there is a dispute about what happened, I must decide on the balance of probabilities - what I think most likely happened, given the evidence that is available and the wider surrounding circumstances.

Ms B says that during a sales meeting she 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 the CMC and Shawbrook. These include the credit agreement and solar quote, titled 'Your Personal Solar Quotation'. I've considered these, along with the consumers 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 the consumer, explaining any benefits of the system, prior to the consumer agreeing to enter into the contract.

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

The CMC has recently submitted a meter reading showing how the system is currently performing. And Shawbrook has submitted a copy of P's most recent inspection report. I've also considered these as part of my assessment of the case.

The cost of the system

The credit agreement sets out the amount being borrowed, the interest to be charged, total amount payable, the term of the loan and the contractual monthly repayments.

The loan agreement clearly sets out the cash price of the goods.

I'm satisfied that Ms B was told that the cost of the system was £8,720. The quote sets this out clearly. This is also supported by the credit agreement which sets out that the cash price of the system was £8,720. The total amount of credit is £8,720 and goes on to show that the total amount payable would be £17,047.80.

The quote also set out that the expected monthly loan repayment was £93.17. But I note Ms B deferred her payments for a few months which is reflected in her credit agreement and her monthly payment is also marginally different at £94.71 – but I don't think these differences make the quote mis-leading.

Having considered all the evidence, including the consumer's recollections, I'm satisfied that she was told that there would be a monthly loan repayment due. The quote makes this clear, as set out in the table below. Overall, I'm satisfied that the two documents, the quote and the credit agreement, made it clear that although the cost of the system was £8,720, it would cost Ms B more than this as she had decided to pay for it with an interest bearing loan.

Financial benefits

Ms B has said that she was told her monthly loan repayments would be covered, or 'self-funded' by the FIT payments and savings on energy bills. I've considered the quote that was provided by P as well as the consumer'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 Ms B 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	£ 242.79
Export tariff in year 1	£ 47.21
Total income in year 1	£ 290.00

Feed in tariff over 20 years

Assumed rate of RPI	3.22	%
Average generation tariff	£ 0.171	
Average export tariff	£ 0.067	
Average annual income	£ 398.16	

I think that the first of these tables is clear that Ms B could expect to receive a total FIT income in year one of £290, which results in an average monthly income of £24.16.

The quote goes on to look at the electricity savings Ms B could expect from the system. The expected year one electricity savings is £227.36 and, when taking into account the optional extra's chosen by Ms B the combined income and savings in year one is shown as £600.69. This is shown in a table titled 'Putting it all together'.

As outlined above, I'm satisfied that the quote set out that there would be an expected monthly loan repayment due of £93.17 (which annually amounts to £1,118.04). As a result, I'm not able to conclude that the consumer was told that the monthly loan repayments would be covered by the FIT payments and savings on energy bills.

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 since this is the length of the loan that Ms B entered into with Shawbrook. This table shows the loan as repayable in 180 monthly payments of £93.17. 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 of £93.17, to give an average difference between the monthly return from the system and the monthly loan repayment in each year.

180 payments of £93.17 p/m

Yr	Acc. grand total	Est. monthly return	Average monthly repayment diff.
1	£600.69	£50.06	£-42.39
2	£636.07	£53.01	£-39.44
3	£673.92	£56.16	£-36.29
4	£714.46	£59.54	£-32.91
5	£757.87	£63.16	£-29.29
6	£804.39	£67.03	£-25.42
7	£854.27	£71.19	£-21.26
8	£907.76	£75.65	£-16.80
9	£965.15	£80.43	£-12.02
10	£1,026.74	£85.56	£-6.89
11	£1,092.88	£91.07	£-1.38
12	£1,163.92	£96.99	£4.54
13	£1,240.25	£103.35	£10.90
14	£1,322.30	£110.19	£17.74
15	£1,410.51	£117.54	£25.09

I think the quote clearly sets out the income Ms B could expect to receive from the system, by way of FIT payments, as well as her expected contractual monthly loan repayments. The table does clearly set out that the overall income she could expect to receive by way of FIT income and any additional savings, would not be immediately sufficient to cover the monthly loan repayments. This supports my finding above that the consumer wasn't told that the FIT

payments and savings would cover the loan repayment. I've carefully thought about the consumer'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 she was told that the monthly loan repayments would be covered by the FIT income and additional savings.

I'll now consider whether P told Ms B 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 and 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 Ms B was told by P that the system would be self-funding over a certain duration of time.

The 'system performance and returns' page of the quote has a table detailing the performance over 20 years. This shows that by year 18 the overall benefits that Ms B could expect to receive would have exceeded the total amount payable under the loan agreement.

Estimated performance over 20 years

Panel degradation	Yr	Income		Energy saving optional extras *					Total income savings	Acc. grand total	Est. monthly return	Ann. ROI
		Generation Tariff	Export Tariff	Elec. savings	VO savings	Heating control	N/W controller	Battery storage				
100.0%	1	£242.79	£47.21	£227.36	£83.33	£0.00	£0.00	£0.00	£600.69	£600.69	£50.06	6.89%
100.0%	2	£250.61	£48.73	£246.41	£90.32	£0.00	£0.00	£0.00	£636.07	£1,236.76	£53.01	7.29%
100.0%	3	£258.68	£50.30	£267.06	£97.89	£0.00	£0.00	£0.00	£673.92	£1,910.68	£56.16	7.73%
99.6%	4	£265.94	£51.71	£288.28	£105.67	£0.00	£0.00	£0.00	£711.60	£2,622.28	£59.30	8.16%
99.2%	5	£273.40	£53.16	£311.19	£114.06	£0.00	£0.00	£0.00	£751.81	£3,374.09	£62.65	8.62%
98.8%	6	£281.07	£54.66	£335.91	£123.11	£0.00	£0.00	£0.00	£794.74	£4,168.83	£66.23	9.11%
98.4%	7	£288.94	£56.19	£362.58	£132.90	£0.00	£0.00	£0.00	£840.60	£5,009.43	£70.05	9.64%
98.0%	8	£297.03	£57.76	£391.36	£143.44	£0.00	£0.00	£0.00	£889.60	£5,899.03	£74.14	10.2%
97.6%	9	£305.34	£59.37	£422.43	£154.83	£0.00	£0.00	£0.00	£941.99	£6,841.02	£78.50	10.8%
97.2%	10	£313.89	£61.03	£455.96	£167.12	£0.00	£0.00	£0.00	£997.99	£7,839.01	£83.16	11.44%
96.8%	11	£322.66	£62.74	£492.13	£180.38	£0.00	£0.00	£0.00	£1,057.91	£8,896.92	£88.16	12.13%
96.4%	12	£331.67	£64.49	£531.16	£194.69	£0.00	£0.00	£0.00	£1,122.02	£10,018.94	£93.50	12.87%
96.0%	13	£340.93	£66.30	£573.29	£210.12	£0.00	£0.00	£0.00	£1,190.64	£11,209.58	£99.22	13.65%
95.6%	14	£350.44	£68.14	£618.74	£226.78	£0.00	£0.00	£0.00	£1,264.12	£12,473.70	£105.34	14.49%
95.2%	15	£360.22	£70.04	£667.79	£244.76	£0.00	£0.00	£0.00	£1,342.81	£13,816.50	£111.90	15.4%
94.8%	16	£370.25	£71.99	£720.71	£264.16	£0.00	£0.00	£0.00	£1,427.11	£15,243.61	£118.93	16.36%
94.4%	17	£380.56	£74.00	£777.81	£285.09	£0.00	£0.00	£0.00	£1,517.45	£16,761.06	£126.46	17.4%
94.0%	18	£391.15	£76.06	£839.42	£307.67	£0.00	£0.00	£0.00	£1,614.29	£18,375.35	£134.52	18.51%
93.6%	19	£402.03	£78.17	£905.89	£332.03	£0.00	£0.00	£0.00	£1,718.12	£20,093.47	£143.18	19.7%
93.2%	20	£413.20	£80.35	£977.60	£358.32	£0.00	£0.00	£0.00	£1,829.47	£21,922.94	£152.46	20.98%
Totals		£6,440.81	£1,252.40	£10,413.10	£3,816.67	£0.00	£0.00	£0.00	£21,922.94	£21,922.94	Ave. ROI:	12.57%

As I've set out above, I'm satisfied that P told Ms B that the system would pay for itself by year 18, and this is supported by the table above included in the quote. If that were an untrue statement of fact, and I'm satisfied that this was what induced her to enter into the contract, and she subsequently suffered a loss, that would amount to a misrepresentation.

I've gone on to consider the performance of the system and whether this is in line with the contract between P and Ms B. The MCS certificate and quote sets out that the system is expected to produce 1947 kWh a year.

Shawbrook says the system was previously underperforming in terms of power generation as there was a fault with the system which was repaired in December 2021. I've looked at the performance of the system since the repair. I don't have a meter reading from December 2021 but do have one from September 2021. And the annual generation from September 2021 to October 2022 is 2063 kWh which is slightly more than the figure quoted in the MCS certificate and quote. This is even though between September 2021 and December 2021 the system was likely underperforming due to the fault. I've also considered the annual generation from between March 2022 (the earliest reading I have post repair) and October 2022 – and the annual generation is 2,683 kWh.

So, it seems that since the repair, the system is performing as expected and in line with the MCS and quote so is no longer underperforming. So, based on what I've seen, I'm satisfied the system is now performing in line with the estimates set out by P at the point of sale.

I have 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 are fair and reasonable.

P used Office of National Statistics (ONS) data between 2005 and 2014 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 that also explains why she hasn't been receiving the financial returns she 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 has been correspondingly lower.

As I have explained, the assumptions used by P were based on the information available from the ONS covering 2005 to 2014. 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 Ms B could've 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 Ms B entered into the contract.

Underperformance between November 2015 and December 2021

I have looked at Ms B's FIT statements from before December 2021 and can see that her system, on average, had generated 1,395.87 kWh. This is significantly less than estimated by P at the point of sale, so I'm satisfied that the system wasn't performing as expected. This also appears to have been accepted by Shawbrook and P.

As Shawbrook explained, the system required a repair which was completed in December 2021 by replacing an inverter. P also offered Ms B loss of generation up until the repair. I understand Ms B didn't accept this offer at the time due to her believing the system was sold on the basis that it would be self-funding and she didn't think this offer adequately compensated her for her losses.

But as I've previously explained, I'm not satisfied that the system was sold to her on the basis that it would be self-funding. I do, however, agree that it underperformed in terms of power generation prior to the repair in December 2021 due to a fault with the system. And given that Ms B has lost out because of the fault with the system, I think Shawbrook should put this right. However, I think since December 2021, the system has been performing in line with the estimate from the time of sale, so redress should only be limited to the losses suffered up until that point.

Putting things right

I think Shawbrook should pay Ms B for the lost generation caused by the fault with the inverter with 8% simple interest. P calculated Ms B lost out on 3536.24kwh of energy which amounted to £801.94. I think the repair to the system, plus the compensation for lost generation is a fair and reasonable way to put matters right so I intend to ask Shawbrook to pay this to Ms B.

So, I intend to order Shawbrook to pay:

- 1. £801.94 for lost generation up until the repair in December 2021 with 8% interest from when it was offered in December 2021 until the date of payment.*
- 2. I can see Shawbrook has offered £200 compensation for the trouble and upset caused and I think that's a fair offer and Shawbrook should pay this to Ms B if it hasn't already done so.*

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 Ms B to enter into the contract for the system. But I do think the system had a fault which caused the system to significantly underperform until the repair was completed in December 2021. So, I intend to uphold this aspect of Ms B complaint.

Further submissions

Ms B has reiterated that she feels the information she was given by P was misleading. She's pointed out that an alternative solar panel company had visited her prior to P and told her that the position of her roof was not suitable for best performance from solar panels. She said P advised her to install panels on the side and front of her roof. She's also questioned whether she needed 10 panels but agreed to it as she relied on the advice of P – who she felt were the experts.

I've thought about Ms B's concerns, however it seems to me that P provided her with the panels it offered, installed them as they agreed and they're now performing in line with the contract and quote. Additionally, if she'd bought fewer panels, the system would produce less energy and reduced benefits. So I'm not satisfied the information P provided was misleading and these comments do not change my view of the case.

Ms B has finally added that she felt pressured to make a decision quickly as she was told the FIT rate could change. Pressure can be subjective, so I'd need persuasive evidence that P placed undue pressure on her to purchase the system – which I haven't seen. Additionally, I can see that she agreed to purchase the system on 6 November 2015. There was a cancellation form included in the sales quote which gave her 14 days to cancel if she'd changed her mind. She also signed the express supply form which informed her that if the system was installed within the 14 days, she'd only have until the day the service was supplied to cancel. Although – it seems the system wasn't installed until mid-December 2015. It therefore looks like she did have the opportunity to cancel if she'd wanted to and I've seen no evidence that did.

Overall I'm not persuaded that P applied undue pressure and these comments do not change my view of the complaint.

So having considered this complaint again in its entirety, for the reasons I've explained above, I'm still satisfied that there were no untrue statements of fact made by P that induced Ms B to enter into the contract for the system. But I do think the system had a fault which

caused the system to significantly underperform until the repair was completed in December 2021. So, I uphold this aspect of Ms B's complaint.

Putting things right

I think Shawbrook should pay Ms B for the lost generation caused by the fault with the inverter with *8% simple interest. P calculated Ms B lost out on 3536.24kwh of energy which amounted to £801.94. I think the repair to the system, plus the compensation for lost generation is a fair and reasonable way to put matters right so (if it hasn't already done so) Shawbrook should now pay this to Ms B.

So, Shawbrook should pay Ms B:

1. £801.94 for lost generation up until the repair in December 2021 with *8% interest from when the compensation was offered until the date of payment (if it hasn't already done so).
2. I can see Shawbrook has offered £200 compensation for the trouble and upset caused and I think that's a fair offer and Shawbrook should pay this to Ms B (if it hasn't already done so).

*If Shawbrook Bank Limited considers that it is required by HM Revenue & Customs to take off income tax from that interest, it should tell Ms B how much it's taken off. It should also give her a certificate showing this, if she asks for one, so she can claim the tax from HM Revenue & Customs

My final decision

For the reasons explained, I uphold this complaint in part. Shawbrook Bank Limited should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 17 February 2023.

Asma Begum
Ombudsman