

The complaint

Mr and Mrs W complains that Shawbrook Bank Limited (“Shawbrook”) did not respond in full to a claim they made under section 75 of the Consumer Credit Act 1974 (“the Act”) in relation to a solar panel system they say was misrepresented to them by its supplier.

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

What happened

In April 2014, Mr and Mrs W purchased solar panels, a voltage optimiser, hot water controller and heating controller (“the system”) from a company which I’ll call “P”. they financed it through a 15-year fixed sum loan agreement with Shawbrook.

In February 2022, the CMC made a claim on their behalf under section 75 of the Act to Shawbrook. The CMC said that P had made the following misrepresentations that had induced Mr and Mrs W to enter into the contract:

- The total cost of the system was £8,500.00 but it was actually £16,606.80 including loan interest.
- The system would not cost Mr and Mrs W a penny because the Feed-In Tariff (“FIT”) payments would cover the cost of the loan.

Shawbrook responded to say it was still investigating the claim. The CMC then referred a complaint to the Financial Ombudsman Service.

One of our investigators looked into what had happened and ultimately did not uphold the complaint. The CMC didn’t agree with this, so the case was passed to me for a decision.

I issued a provisional decision to explain why I was not planning to uphold the complaint. Shawbrook said it accepted this and had nothing further to add. The CMC disagreed, and provided some additional comments including:

- Mr and Mrs W both state they were verbally told the FIT income would cover the loan repayments. The CMC felt I did not take sufficient account of this in my provisional decision.
- The contract showed the cost of the system was only £8,500, which did not include the cost of the loan.
- The sales documents included a plethora of information and Mr and Mrs W cannot expected to digest this. They purely relied on what they had been told verbally, which contradicted what was shown on the contract.
- The CMC reiterated its allegation that the quote was fabricated post-installation to defend the claim.

What I’ve decided – and why

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

As Mr and Mrs W 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 W 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 because it says that any negotiations between Mr and Mrs W 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 its agent) to a second party which induces that second party to enter the contract, thereby causing them loss.

There are high-level principles which apply to all firms authorised by the financial regulator, the Financial Conduct Authority ("FCA"). Principle 6 of the FCA Principles states:

- "A firm must pay due regard to the interests of its customers and treat them fairly".

So Shawbrook should have treated Ms D and Ms D fairly when responding to their Section 75 claim.

I think that the important documents from the time of sale are the loan agreement and the contract – both of which Mr and Mrs W signed.

The cost of the system

The CMC says P deliberately misrepresented the cost of the system, because Mr and Mrs W were told the system would cost £8,500.00. But this was not true, because Mr and Mrs W would actually pay £16,606.80 if the loan ran to its full term.

I think it is unlikely that P misrepresented the cost of the system to Mr and Mrs W. The contract shows the basic price of the system. But Mr and Mrs W agreed to fund the purchase using the loan, and received documentation including the loan agreement, which they signed. So, I think they ought to have understood the distinction between the cash price of the system and the overall cost to them if the loan ran to its full term.

The loan agreement clearly shows the cash price of the system and total loan amount were both £8,500.00. The total charge for credit was £8,106.80, with the total amount payable being £16,606.80. This was payable through 180 monthly repayments of £92.26. So, I think P made it clear how much Mr and Mrs W would pay both on a monthly basis and overall if the loan ran to its full term.

So, I do not think the cost of the system was misrepresented to Mr and Mrs W.

FIT payments

The CMC says P told Mr and Mrs W the system “wouldn’t cost them a penny” because the FIT payments would cover the cost of the loan. But, considering what’s shown on the point-of-sale documents, which I know Mr and Mrs W were provided with (and signed), it seems unlikely that P’s representative would’ve said that – even taking into account what Mr and Mrs W have said.

The contract, signed by Mr and Mrs W and provided to us by the CMC, sets out the benefits from the solar panels that can be expected in the first year as follows (not including gas and electricity savings from the voltage optimiser, hot water controller and heating controller):

EM Output KWH/Annum	3028
FIT Rate & Returns	0.146 480.05
Rate of Elec & Savings	0.151 293.87
Export Rate & Returns	0.471 75.25
Total Returns Year 1	849.17

So, I’m satisfied that Mr and Mrs W were told the FIT payments in year one would be £480.05 from the generation tariff, plus £75.25 from the export tariff. Even though the total FIT payments aren’t stated on the contract, I think it is clear that they are less than 12 monthly repayments of £92.26 each, which makes £1,107.12 per year.

In the table the total including FIT payments and electricity savings is just £849.17. That is still significantly less than the annual loan repayment. So, I don’t think it is likely that Mr and Mrs W were told the FIT payments would cover the cost of the loan when they were provided documents that clearly show that would not be the case.

The quote

Shawbrook was able to provide a copy of the quote from the sale, which is a separate document to those mentioned above. The CMC has questioned whether this was created at the time of sale and said in any case that it wasn’t shown to or given to Mr and Mrs W at any stage. But this document has not been important in me reaching my decision. This is because the loan agreement and contract, which Mr and Mrs W clearly saw, were given, and signed, do not support the allegations made in their section 75 claim.

Summary

Looking at the documents which Mr and Mrs W were given at the time and that they signed, these clearly indicate the FIT payments in year one would be significantly less than the annual loan repayment. So, I do not think that the system was misrepresented to P in the way alleged in Mr and Mrs W’s section 75 claim.

I do not think Shawbrook should have upheld the claim. Having said that, it did not provide a full response to the claim within a reasonable time – causing some distress and inconvenience to Mr and Mrs W. So, I uphold this complaint.

My final decision

For the reasons I’ve explained, I uphold this complaint. Shawbrook Bank Limited should put things right by paying Mr and Mrs W £200.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs W and Mr W

to accept or reject my decision before 20 March 2023.

Phillip Lai-Fang
Ombudsman