

The complaint

Mr and Mrs D complains that Shawbrook Bank Limited (“Shawbrook”), has rejected the 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 the supplier.

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

What happened

In July 2017, Mr and Mrs D purchased a solar panel system (“the system”) from a company which I’ll call “P”. they financed it through a 15-year fixed sum loan agreement with Shawbrook.

In August 2022, the CMC made a claim under section 75 and section 140 of the Act to Shawbrook. they said that P had made the following misrepresentations that had induced Mr and Mrs D to enter into the contract and made his relationship with Shawbrook unfair on him:

- The benefits of the system would mean that they only would have to fund just £30 per month towards the loan repayments of £91.39.
- After eight years the benefits of the system would exceed the monthly loan repayments.

Shawbrook explained that it didn’t agree the system had been misrepresented to Mr and Mrs D or that there were any other reasons for the claim to be upheld.

One of our adjudicators looked into what had happened. They didn’t uphold the complaint.

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

- Mr and Mrs D were told they would not have to contribute any more than £30 per month towards the loan repayments and within first 8 years the benefits would cover repayments.
- There was no detailed discussion about the contents of the documentation.
- The salesperson was likely paid commission so had an incentive to encourage Mr and Mrs D to purchase the system. It is not inconceivable that verbal representations were made that were contrary to the contents of the documentation.
- Mr and Mrs D were shown information on a tablet and signed this electronically. The salesperson was in control of what they saw. They were emailed documentation after the sale was agreed. The quote is very lengthy with lots of figures, tables, and graphs, and is not easily understandable.

As an agreement couldn’t be reached, the case has been passed to me for review. I issued a provisional decision explaining I was planning to uphold the complaint and giving Shawbrook and Mr and Mrs D an opportunity to respond before I made my final decision.

Mr and Mrs D said they agreed with my provisional decision. Shawbrook has not responded.

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.

The quote and MCS certificate show the system was expected to generate 2,224.78 kWh of electricity each year. As such I would expect, allowing for a 10% margin of error, the system to generate at least 2,002.3 kWh per year.

The FIT statements show that, based on the system being commissioned on 7 August 2017, and generation meter readings taken on 10 December 2017, 14 December 2018, 22 December 2019 and 18 December 2020, the system has generated only 1,787 kWh in year one, 1,756 kWh in year two and 1,787 kWh in year three. This is consistently below what I would expect.

As such, I think there was a breach of contract by P since the system installed produces significantly less electricity than the one that Mr and Mrs D agreed to buy. It follows that the potential benefits of the system – FIT payments and electricity savings, do not have the potential to match the figures shown in the quote. So, I also think there has been a misrepresentation of the benefits the system was capable of producing.

In light of this, I'm planning to uphold this complaint and tell Shawbrook to put things right as set out below.

Putting things right

The quote showed that the estimated benefits were as follows (see next page):

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	£90.55	£55.95	£259.80	£144.00	£100.80	£0.00	£0.00	£0.00	£851.10	£851.10	£54.26	7.47%
100.0%	2	£93.30	£57.65	£278.71	£154.48	£108.86	£0.00	£0.00	£0.00	£893.00	£1,344.10	£57.75	7.95%
100.0%	3	£96.14	£59.40	£299.00	£165.73	£117.57	£0.00	£0.00	£0.00	£737.84	£2,081.94	£61.49	8.47%
99.6%	4	£98.66	£60.97	£319.49	£177.79	£126.98	£0.00	£0.00	£0.00	£783.89	£2,865.83	£65.32	8.99%
99.2%	5	£101.25	£62.57	£341.37	£190.74	£137.14	£0.00	£0.00	£0.00	£833.07	£3,698.89	£69.42	9.56%
98.8%	6	£103.92	£64.21	£364.75	£204.62	£148.11	£0.00	£0.00	£0.00	£885.61	£4,584.50	£73.80	10.16%
98.4%	7	£106.64	£65.89	£389.71	£219.52	£159.96	£0.00	£0.00	£0.00	£941.72	£5,526.22	£78.46	10.81%
98.0%	8	£109.44	£67.62	£416.38	£235.50	£172.75	£0.00	£0.00	£0.00	£1,001.69	£6,527.91	£83.47	11.49%
97.6%	9	£112.30	£69.39	£444.88	£252.65	£186.57	£0.00	£0.00	£0.00	£1,065.79	£7,593.70	£88.82	12.23%
97.2%	10	£115.24	£71.21	£475.31	£271.04	£201.50	£0.00	£0.00	£0.00	£1,134.30	£8,728.00	£94.52	13.02%
96.8%	11	£118.26	£73.06	£507.81	£290.77	£217.62	£0.00	£0.00	£0.00	£1,207.53	£9,935.52	£100.63	13.86%
96.4%	12	£121.35	£74.98	£542.53	£311.94	£235.03	£0.00	£0.00	£0.00	£1,285.83	£11,221.35	£107.15	14.75%
96.0%	13	£124.52	£76.93	£579.61	£334.65	£253.83	£0.00	£0.00	£0.00	£1,369.55	£12,590.90	£114.13	15.71%
95.6%	14	£127.77	£78.95	£619.21	£359.01	£274.14	£0.00	£0.00	£0.00	£1,459.08	£14,049.97	£121.59	16.74%
95.2%	15	£131.10	£81.01	£661.52	£385.15	£296.07	£0.00	£0.00	£0.00	£1,554.84	£15,604.82	£129.57	17.84%
94.8%	16	£134.52	£83.12	£706.89	£413.18	£319.75	£0.00	£0.00	£0.00	£1,657.26	£17,262.07	£138.10	19.02%
94.4%	17	£138.02	£85.28	£754.94	£443.26	£345.34	£0.00	£0.00	£0.00	£1,766.84	£19,028.91	£147.24	20.27%
94.0%	18	£141.62	£87.50	£806.46	£475.53	£372.96	£0.00	£0.00	£0.00	£1,884.08	£20,912.99	£157.01	21.62%
93.6%	19	£145.30	£89.78	£861.49	£510.15	£402.80	£0.00	£0.00	£0.00	£2,009.53	£22,922.52	£167.46	23.06%
93.2%	20	£149.08	£92.12	£920.27	£547.29	£435.02	£0.00	£0.00	£0.00	£2,143.78	£25,066.30	£178.65	24.60%
91.2%	21-25	£0.00	£0.00	£5,632.33	£3,395.37	£2,756.26	£0.00	£0.00	£0.00	£11,783.96	£36,850.26	£196.40	27.04%
Repair/Replace						£-1,250.00							
Totals		£2,358.99	£1,457.59	£16,182.25	£9,482.37	£6,119.06	£0.00	£0.00	£0.00	£35,600.26	£35,600.26	Ave. ROI:	16.34%

I think Mr and Mrs D purchased the system on the basis of these estimated benefits (albeit they aren't quite as high as they now remember being told). But I think it would be fair for the above table to inform the calculation of redress.

To put things right Shawbrook should:

- Calculate the difference between what the panels have generated as income (through FIT and savings) for Mr and Mrs D and what the sales paperwork set out as being the annual "total income savings".
- Add 8% simple interest per year for the time Mr and Mrs D have been without that money and pay them this combined amount.

If the loan agreement is still running, Shawbrook should:

- Calculate the average annual under-generation percentage so far and assume that the panels will continue to underperform at that rate through to the conclusion of the loan agreement.
- Recalculate the "total income savings" for each year going forward until the conclusion of the loan agreement, having applied the percentage reduction identified in c) above.

- e) Pay Mr and Mrs D the difference between the revised amounts calculated in d) above and the “total income savings” set out in the sales paperwork.

I also think that Shawbrook should pay Mr and Mrs D £100 compensation for the trouble and upset caused, since I think it ought to have reached this conclusion following its own investigation.

My final decision

I uphold this complaint. Shawbrook Bank Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs D and Mr D to accept or reject my decision before 26 May 2023.

Phillip Lai-Fang
Ombudsman