

The complaint

Miss H 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 was misrepresented to her by the supplier.

Miss H is represented by a claims management company (“the CMC”)

What happened

In March 2016, Miss H 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, Miss H decided to purchase the system and finance it through a 15-year fixed sum loan agreement with Shawbrook. The system was subsequently installed.

In January 2020, the CMC made a claim on Miss H’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 Miss H to enter into the contract with P.

The CMC said the following misrepresentation had been made:

- The system would be self-funding through the feed-in tariff payments and electricity savings it would generate.

Shawbrook didn’t respond to the complaint until after it was referred to us. Shawbrook told us it didn’t think the system had been misrepresented. It offered for P to inspect the system to investigate under-generation of electricity that was noted by our investigator.

P found that the system was working but had been installed in a way that meant it did not maximise exposure to the sun (that is, it was on the wrong side of the house, facing more north than south). P has since moved the system onto the more south-facing roof, which should improve performance.

Shawbrook offered compensation for the under-generation up to the point the system was moved, a total of £1,029.40, to reflect the loss of feed-in tariff payments and electricity savings, relative to what was in the quote, plus £200 compensation for the time it took to respond to the complaint.

The CMC said that Miss H didn’t accept this. It maintained the system had been misrepresented and the compensation should make the system self-funding over the term of the loan.

As an agreement couldn’t be reached, the case was passed to me for review. I issued a provisional decision explaining that I was planning to uphold this complaint and setting out how I was planning to say that Shawbrook should put things right. Neither Shawbrook nor Miss H responded to my provisional decision. So this final decision is in line with my

provisional decision.

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 56 says that any negotiations between Miss H and P, as the supplier, are deemed to have been conducted by P as an agent of Shawbrook. Section 75 provides protection for consumers for goods or services bought using credit.

As Miss H paid for the system with a fixed sum loan agreement, section 75 applies to this transaction. This means that Miss H 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 this into account when deciding what is fair in the circumstances of this case.

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 think most likely happened, given the evidence that is available and the wider surrounding circumstances.

Miss H says that during a sales meeting she was told that the system would be self-funding through the feed-in tariff payments and electricity savings.

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 consumer'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 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 credit agreement sets out the cash price of the goods, the amount being borrowed, the

interest to be charged, total amount payable, the term of the loan and the contractual monthly repayments.

On balance I'm satisfied that Miss H was told that the cost of the system was £8,024.00. 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 £8,024.00. The monthly payment was £86.07. The total amount of credit is £7,924.00 and the total amount payable would be £15,592.60.

The quote showed the expected monthly loan repayment was £85.74. Miss H deferred her payments for a few months which is reflected in her credit agreement and her monthly payment is marginally higher as a result at £86.07 – but I don't think these differences make the quote mis-leading. Miss H knew approximately how much she'd have to pay each month before she agreed to the purchase, and the actual amount was shown on the credit agreement which she signed.

Overall, I'm satisfied that the quote and the credit agreement both made it clear that although the cost of the system was £8,024.00, it would cost Miss H more than this as she had decided to pay for it with an interest-bearing loan.

Miss H has said that she was told her monthly loan repayments would be covered, or 'self-funded' by the FIT payments and electricity savings. 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 Miss H 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	£ 120.01
Export tariff in year 1	£ 66.29
Total income in year 1	£ 186.30

I think that the first of these tables is clear that Miss H could expect to receive a total FIT income in year one of £186.30, which results in an average monthly income of £15.52. As outlined above, I'm satisfied that the credit agreement and the quote set out that there would be a monthly loan repayment due of about £86. 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 payment.

The quote goes on to look at the electricity savings Miss H could expect from the system. The expected year one electricity savings are £168.00 and the combined income and savings in year one is shown as £354.30. This is shown in a table titled 'Putting it all together'.

There's a section headed "Repayments" with three table 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 Miss H entered into with Shawbrook.

This table shows the loan as repayable in 180 monthly payments of £85.74. 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 indicative monthly loan repayment of £85.74, to give an average difference between the monthly return from the system and the monthly loan repayment in each year.

180 payments of £85.74 p/m			
Yr	Acc. grand total	Est. monthly return	Average monthly repayment diff.
1	£354.30	£29.53	£-56.21
2	£371.59	£30.97	£-54.77
3	£389.85	£32.49	£-53.25
4	£409.16	£34.10	£-51.64
Yr	Acc. grand total	Est. monthly return	Average monthly repayment diff.
5	£429.56	£35.80	£-49.94
6	£451.14	£37.59	£-48.15
7	£473.96	£39.50	£-46.24
8	£498.11	£41.51	£-44.23
9	£523.67	£43.64	£-42.10
10	£550.72	£45.89	£-39.85
11	£579.36	£48.28	£-37.46
12	£609.70	£50.81	£-34.93
13	£641.85	£53.49	£-32.25
14	£675.91	£56.33	£-29.41
15	£712.01	£59.33	£-26.41

I think the quote clearly sets out the income Miss H could expect to receive from the system, by way of FIT payments, as well as her expected contractual monthly loan repayments. The table clearly sets out that the overall income Miss H could expect to receive by way of FIT income and any additional savings would not at any stage be sufficient to cover the monthly loan repayments.

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 alone.

The 'system performance and returns' page of the quote has a table detailing the performance over 30 years. This shows that the overall benefits that Miss H could expect to receive would not exceed the total amount payable under the loan agreement within that time.

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	£120.01	£66.29	£168.00	£0.00	£0.00	£0.00	£0.00	£0.00	£354.30	£354.30	£29.53	4.42%
100.0%	2	£123.66	£68.31	£179.63	£0.00	£0.00	£0.00	£0.00	£0.00	£371.59	£725.89	£30.97	4.63%
100.0%	3	£127.42	£70.38	£192.06	£0.00	£0.00	£0.00	£0.00	£0.00	£389.85	£1,115.74	£32.49	4.86%
99.6%	4	£130.76	£72.23	£204.53	£0.00	£0.00	£0.00	£0.00	£0.00	£407.52	£1,523.26	£33.96	5.08%
99.2%	5	£134.20	£74.13	£217.80	£0.00	£0.00	£0.00	£0.00	£0.00	£426.12	£1,949.39	£35.51	5.31%
98.8%	6	£137.72	£76.08	£231.93	£0.00	£0.00	£0.00	£0.00	£0.00	£445.73	£2,395.11	£37.15	5.55%
98.4%	7	£141.33	£78.07	£246.97	£0.00	£0.00	£0.00	£0.00	£0.00	£466.38	£2,861.49	£38.87	5.82%
98.0%	8	£145.04	£80.11	£262.99	£0.00	£0.00	£0.00	£0.00	£0.00	£488.15	£3,349.64	£40.68	6.09%
97.6%	9	£148.84	£82.22	£280.04	£0.00	£0.00	£0.00	£0.00	£0.00	£511.10	£3,860.74	£42.59	6.37%
97.2%	10	£152.73	£84.37	£298.20	£0.00	£0.00	£0.00	£0.00	£0.00	£535.30	£4,396.04	£44.61	6.67%
96.8%	11	£156.73	£86.57	£317.52	£0.00	£0.00	£0.00	£0.00	£0.00	£560.82	£4,956.86	£46.74	6.99%
96.4%	12	£160.82	£88.83	£338.09	£0.00	£0.00	£0.00	£0.00	£0.00	£587.75	£5,544.61	£48.98	7.33%
96.0%	13	£165.02	£91.16	£359.99	£0.00	£0.00	£0.00	£0.00	£0.00	£616.18	£6,160.79	£51.35	7.68%
95.6%	14	£169.34	£93.54	£383.30	£0.00	£0.00	£0.00	£0.00	£0.00	£646.17	£6,806.96	£53.85	8.05%
95.2%	15	£173.76	£95.98	£408.10	£0.00	£0.00	£0.00	£0.00	£0.00	£677.83	£7,484.79	£56.48	8.44%
94.8%	16	£178.28	£98.48	£434.52	£0.00	£0.00	£0.00	£0.00	£0.00	£711.27	£8,196.07	£59.27	8.86%
94.4%	17	£182.93	£101.05	£462.62	£0.00	£0.00	£0.00	£0.00	£0.00	£746.59	£8,942.66	£62.22	9.31%
94.0%	18	£187.69	£103.67	£492.54	£0.00	£0.00	£0.00	£0.00	£0.00	£783.90	£9,726.56	£65.33	9.77%
93.6%	19	£192.57	£106.38	£524.38	£0.00	£0.00	£0.00	£0.00	£0.00	£823.32	£10,549.88	£68.61	10.26%
93.2%	20	£197.58	£109.14	£558.27	£0.00	£0.00	£0.00	£0.00	£0.00	£864.99	£11,414.87	£72.08	10.78%
92.8%	25	£0.00	£0.00	£776.74	£0.00	£0.00	£0.00	£0.00	£0.00	£776.74	£12,191.61	£64.73	9.68%
92.4%	30	£0.00	£0.00	£1,080.66	£0.00	£0.00	£0.00	£0.00	£0.00	£1,080.66	£13,272.27	£90.05	13.47%
Totals		£3,126.44	£1,726.98	£8,418.90	£0.00	£0.00	£0.00	£0.00	£0.00	£13,272.27	£13,272.27	Ave. ROI:	5.51%

I'm satisfied that P told Miss H that the system would not pay for itself either on a monthly basis nor within the loan term

System performance

I've gone on to consider the performance of the system in terms of electricity generation and whether this is in line with the contract between P and Miss H. The MCS certificate and quote set out that the system is expected to produce 2,733 kWh per year. And the benefits shown in the quote were calculated based on that level of generation.

I have looked at Miss H's FIT statements and can see that the system, on average, has generated 2,350 kWh annually. This is significantly less than estimated by P at the point of sale, so I'm satisfied that is a breach of contract, as the performance of the system in terms of electricity generation is significantly different to that described within the quote. That will have caused a loss to Miss H, since the quoted financial benefits of the system are derived from the amount of electricity generated.

I think the appropriate remedy for this would be for the under-generation to be rectified if possible, and the shortfall in financial benefits between what is shown in the quote and what has been achieved so far, and any expected future shortfall for the remaining term of the loan, should be paid to Miss H. This will put Miss H in a position as close as possible to the position she would've been in if nothing had gone wrong (that is that the system had generated electricity in line with the contract and quote).

P has identified that the system was installed on the wrong part of the roof, but it has now put that right. I assume that has resolved the under-generation issue. I have explained below how I think Shawbrook should put things right, including where the relocation of the panels is not expected to fully resolved the under-generation issue.

Putting things right

To put things right I'm planning to say that Shawbrook should:

- a) calculate the difference between what the panels have generated as income (through FIT and savings) for Miss H and what the sales paperwork set out as being the annual "total income savings",

- b) add 8% simple interest to that amount and pay the total to Miss H.

This should be done up to the point the solar panels were relocated to the correct part of the roof.

If the relocation of the panels is shown to not have resulted in the system generating electricity as expected (that is the updated MCS certificate shows the system is expected to generate significantly less than 2,733 kWh per year) then to ensure that Miss H doesn't lose out going forward, Shawbrook should then:

- c) calculate the expected annual underperformance percentage (comparing the new MCS certificate generation figure to the original figure of 2,733 kWh), and assume that the panels will underperform at that rate through to the conclusion of the finance agreement

- d) recalculate the "total income savings" for each year going forward until the conclusion of the finance agreement, having applied the percentage reduction identified in c) above

- e) pay Miss H the difference between the revised amounts calculated in d) above and the "total income savings" set out in the sales paperwork.

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 also pay this to Miss H if it hasn't already done so.

My final decision

For the reasons I've explained, I uphold this complaint. 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 Miss H to accept or reject my decision before 27 November 2023.

Phillip Lai-Fang
Ombudsman