

## **The complaint**

Mr and Mrs S complain 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 were misrepresented to them by the supplier.

Mr and Mrs S are represented by a claims management company ("the CMC").

## **What happened**

In or around August 2017, Mr and Mrs S were 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 their home. After being visited by a representative of P, Mr and Mrs S decided to purchase the system and finance it through a 15-year fixed sum loan agreement with Shawbrook. The system was subsequently installed.

In March 2020, the CMC made a claim on Mr and Mrs S's behalf under section 75 of the Act to Shawbrook. 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 and Mrs S 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 repayment costs.
- Mr and Mrs S also complained to P directly that the system should be producing more energy than it was and was therefore underperforming.

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

One of our investigators looked into what had happened. Having considered all the information and evidence provided, our investigator felt the complaint should be upheld and that the system was likely misrepresented to Mr and Mrs S. She suggested Shawbrook put things right by ensuring Shawbrook charged Mr and Mrs S no more than the benefit they would likely receive over the term of the loan.

Shawbrook didn't agree to our investigators view of the complaint. Shawbrook said the system was not sold as self-funding and the sales quote had made that clear. Shawbrook also wanted to carry out an inspection to see whether there was a fault with the system. Having completed it, Shawbrook said that while the system had underperformed, and it was not faulty, the performance issues were due to increased foliage growth over a period of 5 years effecting generation. This did not mean the system benefits had been misrepresented to the consumers and it had made no other errors. Our investigator was not persuaded by this argument and maintained the complaint should be upheld.

As an agreement couldn't be reached, the case has been passed to me for review.

In my provisional decision of 12 October 2023, I set out why I was minded to upholding the complaint. I invited both parties to provide any further submissions they may wish to make before I reached a final decision. Both Shawbrook and Mr and Mrs S, broadly accepted my findings, although Mr and Mrs S felt the compensatory element of my recommended award was too low.

### **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.

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 Mr and Mrs S 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 S 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. This is because it says that any negotiations between Mr and Mrs S 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.*

*Mr and Mrs S say that during a sales meeting they were 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 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.*

*Mr and Mrs S have said that the cost of the system was documented as £9,134. They have indicated that this was done to mislead them as this figure did not include any interest associated with the loan so hid the true cost of the system, £17,349.40.*

*On balance I'm satisfied that Mr and Mrs S were told that the cost of the system was £9,134. The credit agreement sets out that the cash price of the system was £9,134. The total amount of credit is £9,034 (after deducting a deposit of £100) and goes on to show that the total amount payable would be £17,349.40.*

*The quote set out that the expected monthly loan repayment was £95.83. But I note Mr and Mrs S deferred their payments for a few months which is reflected in their credit agreement and their monthly payment is also marginally different at £96.54 – 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 they were 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 £9,134, it would cost Mr and Mrs S more than this as they had decided to pay for it with an interest-bearing loan.*

#### Self-funding

*Mr and Mrs S have said that they were told their monthly loan repayments would be covered, or 'self-funded' by the FIT payments and savings on their 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 Mr and Mrs S 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	£	90
Generation tariff in year 1	£	140.98
Export tariff in year 1	£	87.12
Total income in year 1	£	228.10

### Feed in tariff over 20 years

Assumed rate of RPI	3.04	%
Average generation tariff	£	0.060
Average export tariff	£	0.074
Average annual income	£	336.01

*I think that the first of these tables is clear that Mr and Mrs S could expect to receive a total FIT income in year one of £228.10, which results in an average monthly income of £19.00.*

*The quote goes on to look at the electricity savings Mr and Mrs S could expect from the system. The expected year one electricity savings is £404.51 and, when taking into account the optional extra's chosen by Mr and Mrs S the combined income and savings in year one is shown as £935.30. 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 a monthly loan repayment due of £96.54 (which is £1,158.48 annually). 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 table showing repayments over 60 months, 120 months and 180 months. I've focused on the table for 180 months as this is the length of the loan that Mr and Mrs S entered into with Shawbrook. This table shows the loan as repayable in 180 monthly payments of £96.54. 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 £96.54, to give an average difference between the monthly return from the system and the monthly loan repayment in each year.*

### 180 payments of £96.54 p/m

Yr	Acc. grand total	Est. monthly return	Average monthly repayment diff.
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2	£994.34	£82.86	£-13.68
3	£1,057.44	£88.12	£-8.42
4	£1,124.88	£93.74	£-2.80
5	£1,196.97	£99.75	£3.21
6	£1,274.06	£106.17	£9.63
7	£1,356.50	£113.04	£16.50
8	£1,444.66	£120.39	£23.85
9	£1,538.98	£128.25	£31.71
10	£1,639.88	£136.66	£40.12
11	£1,747.85	£145.65	£49.11
12	£1,863.39	£155.28	£58.74
13	£1,987.06	£165.59	£69.05
14	£2,119.43	£176.62	£80.08
15	£2,261.15	£188.43	£91.89

*I think the quote clearly sets out the income Mr and Mrs S could expect to receive from the system, by way of FIT payments, as well as their expected contractual monthly loan repayments. The table does clearly set out that the overall income they 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 consumers weren't told that the FIT payments and savings would cover the loan repayment. I've carefully thought about the consumers' 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 they were told that the monthly loan repayments would be covered by the FIT income and additional savings.*

*I'll now consider whether P told Mr and Mrs S 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 Mr and Mrs S were told by P that the system would be self-funding over a certain duration of time.*

### Self-funding over a period of time

The 'system performance and returns' page of the quote has a table detailing the performance over 25 years. This shows that by year 13 the overall benefits that Mr and Mrs S could expect to receive would have exceeded the total amount payable under the loan agreement.

#### 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	£140.08	£87.12	£404.51	£216.00	£86.69	£0.00	£0.00	£0.00	£935.30	£935.30	£77.94	10.26%
100.0%	2	£145.27	£89.77	£433.96	£231.72	£93.62	£0.00	£0.00	£0.00	£994.34	£1,029.64	£82.86	10.88%
100.0%	3	£149.66	£92.50	£465.55	£248.59	£101.11	£0.00	£0.00	£0.00	£1,057.43	£2,987.07	£88.12	11.58%
99.6%	4	£153.61	£94.93	£497.44	£266.69	£109.20	£0.00	£0.00	£0.00	£1,121.87	£4,108.94	£93.49	12.29%
99.2%	5	£157.65	£97.42	£531.51	£286.11	£117.94	£0.00	£0.00	£0.00	£1,190.64	£5,299.58	£99.22	13.03%
98.8%	6	£161.78	£99.98	£567.91	£306.94	£127.37	£0.00	£0.00	£0.00	£1,263.98	£6,563.56	£105.33	13.84%
98.4%	7	£166.03	£102.60	£606.78	£329.28	£137.56	£0.00	£0.00	£0.00	£1,342.26	£7,905.82	£111.85	14.69%
98.0%	8	£170.38	£105.29	£648.32	£353.25	£148.57	£0.00	£0.00	£0.00	£1,425.81	£9,331.63	£118.82	15.61%
97.6%	9	£174.84	£108.04	£692.68	£378.97	£160.45	£0.00	£0.00	£0.00	£1,514.98	£10,846.61	£126.25	16.59%
97.2%	10	£179.42	£110.88	£740.05	£406.56	£173.29	£0.00	£0.00	£0.00	£1,610.20	£12,456.81	£134.18	17.63%
96.8%	11	£184.11	£113.78	£790.86	£436.16	£187.15	£0.00	£0.00	£0.00	£1,711.86	£14,168.68	£142.66	18.74%
96.4%	12	£188.92	£116.75	£844.72	£467.91	£202.13	£0.00	£0.00	£0.00	£1,820.44	£15,989.12	£151.70	19.90%
96.0%	13	£193.86	£119.80	£902.46	£501.97	£218.30	£0.00	£0.00	£0.00	£1,936.39	£17,925.50	£161.37	21.20%
95.6%	14	£198.92	£122.93	£964.12	£538.51	£235.76	£0.00	£0.00	£0.00	£2,060.24	£19,985.75	£171.69	22.55%
95.2%	15	£204.12	£126.14	£1,029.98	£577.72	£254.62	£0.00	£0.00	£0.00	£2,192.58	£22,178.32	£182.71	24.00%
94.8%	16	£209.44	£129.42	£1,100.32	£619.78	£274.99	£0.00	£0.00	£0.00	£2,333.96	£24,512.28	£194.50	25.55%
94.4%	17	£214.89	£132.79	£1,175.44	£664.90	£296.99	£0.00	£0.00	£0.00	£2,485.62	£26,997.30	£207.08	27.23%
94.0%	18	£220.49	£136.25	£1,255.67	£713.30	£320.75	£0.00	£0.00	£0.00	£2,646.46	£29,643.76	£220.54	28.97%
93.6%	19	£226.22	£139.80	£1,341.35	£765.23	£346.41	£0.00	£0.00	£0.00	£2,819.62	£32,462.77	£234.92	30.88%
93.2%	20	£232.11	£143.43	£1,432.86	£820.94	£374.12	£0.00	£0.00	£0.00	£3,003.46	£35,466.23	£250.29	32.88%
91.2%	21-25	£0.00	£0.00	£8,769.55	£5,093.06	£2,370.39	£0.00	£0.00	£0.00	£16,233.00	£51,699.23	£270.55	35.54%
Repair/Replace						£-1,250.00							
Totals		£3,672.74	£2,269.63	£25,195.86	£14,223.59	£5,087.41	£0.00	£0.00	£0.00	£50,449.23	£50,449.23	Ave. ROI:	22.09%

As I've set out above, I'm satisfied that P told Mr and Mrs S that the system would pay for itself by year 13, and this is supported by the table above included in the quote. If that were an untrue statement of fact at the time it was made, and I'm satisfied that this was what induced them to enter into the contract, and they subsequently suffered a loss, that would amount to a misrepresentation.

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 are fair and reasonable.

P used Office of National Statistics (ONS) data 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 partly explains why they haven't been receiving the financial returns they 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. 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 and Mrs S 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 they entered into the contract, so I don't think this is sufficient for me to uphold their complaint on this basis.*

*This then leads me to consider the performance of the system in terms of energy generated.*

### *Underperformance*

*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 and Mrs S. The MCS certificate and quote sets out that the system is expected to produce 3464 kWh a year. And the benefits shown in the quote were calculated based on that level of generation.*

*I have looked at Mr and Mrs S's FIT statements and meter readings, and can see that the system, on average, has generated 2808.57 kWh. This is significantly less than estimated by P at the point of sale, so I'm satisfied that the system isn't performing as expected.*

*I understand Mr and Mrs S raised this with P directly shortly after the system was installed. The system was inspected, and a repair carried out in July 2018. P said the system had underperformed by 560kWh so P paid Mr and Mrs S £107.40 in compensation for the lost generation up to that point. However, the system has continued to significantly underperform.*

*It is unclear why the system has underperformed, but Shawbrook has inspected the system a second time and has said the system is not faulty but accepts it is generating significantly less than it should. It says this is because there has been significant foliage growth over the 5 years since installation, which could be impacting generation. But it doesn't mean the system benefits were misrepresented at the time of sale, and it cannot be held responsible for such issues which is outside of its control.*

*However, like our investigator, I am not persuaded by Shawbrook's explanation of why the system has underperformed to this degree. During the July 2018 repair, P commented that it had "Looked over for shading and there isn't anything worth worrying about". Which indicates that there wasn't any significant growth at this time. So, after the repair in July 2018, the system ought to have performed in line with the quote and MCS certificate. However, the meter readings from 2019 (only a year following the repair) show the system continued to underperform despite the repair. And it has continued to underperform since.*

### *2019 (post repair)*

*The meter reading from December 2019 of 6595 kWh gives an annual generation of 2,795.77 kWh. Even if we add the underperformance of 560kWh from the year before which was supposedly caused by the faulty inverter, the annual generation is only 3036.81 kWh (against an MCS estimate of 3464)*

*The meter reading from April 2022 of 12,880.99 kWh shows an average annual generation of 2808.57. Even with the additional 560 kWh adjustment, the annual generation is 2930.68 kWh.*

*If the system generation issues were caused by shading caused by foliage, I would have expected the system to perform in line with P's estimates at the beginning of the installation (or at least in 2019 post repair given that there were no issues with shading noted at that time). And then the system would have started to produce less over time as shading impacted the panels' ability to generate.*

*But this has not happened here. It looks as though this system has never performed in line with the MCS certificate or the quote.*

*So, based on the evidence available to me, I think that it's more likely P misrepresented the system's ability to generate electricity, and as a result the benefits it would produce relative to the cost of the loan. I think this misrepresentation induced Mr and Mrs S into entering into the contract and its likely they bought the system based on the system's ability to generate energy in line with the contract. Because of this, I think that Shawbrook didn't treat Mr and Mrs S fairly and they have lost out because of this. And this means that Shawbrook should put things right.*

### **Summary**

*Having carefully considered the evidence provided by all parties in this complaint, I'm satisfied that the system wasn't mis-represented to Mr and Mrs S on the basis that it would be immediately self-funding. I'm also satisfied that the assumptions used to estimate the benefits during the lifetime of the system were reasonable.*

*However, I think it's more likely that Shawbrook did misrepresent the system's ability to generate energy, and the benefits were then estimated on that basis. I think it's likely that Mr and Mrs S bought the system on the basis that the system would generate energy in line with the contract and were expecting benefits that correspond with that level of generation. The system has not performed in line with the contract and from what I can see, it will not perform in line with the contract going forward. I'm therefore satisfied that Mr and Mrs S have suffered a loss because of this and Shawbrook should therefore put this right.*

### **Putting things right**

*In this case, I think fair compensation is trying to make sure that Mr and Mrs S do not suffer a financial loss, which in my view would mean that the solar panel system should generate roughly what was promised via the sales paperwork and MCS certificate.*

*So, I think to put things right Shawbrook should:*

- a) calculate the difference between what the panels have generated as income (through FIT and savings) for Mr and Mrs S 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 Mr and Mrs S*

*Shawbrook can deduct the £107.40 from the compensation that it already paid Mr and Mrs S for the underperformance in July 2018.*

*The finance agreement in question was due to end in 2032. To ensure that Mr and Mrs S don't lose out going forward, Shawbrook should then:*

- c) calculate the average annual underperformance percentage so far, and assume that the panels will continue to 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 Mr and Mrs S the difference between the revised amounts calculated in d) above and the “total income savings” set out in the sales paperwork.*

*I'm satisfied that there was sufficient information available at the time that Mr and Mrs S first contacted Shawbrook that means the claim should have been upheld. I intend to direct Shawbrook to pay £100 compensation for the trouble and upset caused.*

Shawbrook replied accepting my findings and requested updated FIT statements and a meter reading to help it work out redress. Mr and Mrs S said they're also happy to settle the matter on this basis and submitted FIT statements. They said a meter reading would follow.

Mr and Mrs S have, however, said they've waited a considerable amount of time for a resolution and do not feel £100 compensation for the worry they've experienced is adequate. I do appreciate that it has been a considerable amount of time since Mr and Mrs S initially raised their concerns, but their complaint has been upheld and they will be compensated for their losses. I think the £100 is broadly in line with what we would normally award for the length of time taken to resolve the complaint, and I haven't seen any other factors that lead me to conclude a higher award is warranted here.

So, in the absence of any further points for me to consider, I find no reason to depart from my findings as set out in my provisional decision. With this in mind, I uphold this complaint.

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

I'm satisfied that there was sufficient information available at the time that Mr and Mrs S first contacted Shawbrook that means the claim should have been upheld. I direct Shawbrook to pay £100 compensation for the trouble and upset caused.

### **My final decision**

For the reasons 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 Mr S and Mrs S to accept or reject my decision before 1 December 2023.

Asma Begum  
**Ombudsman**