

## **The complaint**

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

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

## **What happened**

In or around July 2018, Mr D 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 his home. After being visited by a representative of P, Mr D decided to purchase the system and finance it through a 2-year fixed sum loan agreement with Shawbrook. The system was subsequently installed.

In May 2020, the CMC made a claim on Mr D’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 D 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.

Shawbrook didn’t agree the system had been misrepresented to Mr D 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 Mr D to believe the system would be immediately self-funding.

But he did think the system had underperformed compared to P’s estimates from the point of sale. So, he felt this aspect of the complaint should be upheld. The investigator felt that Shawbrook should inspect and repair the system. He also felt Shawbrook should compensate Mr D for the period the system underperformed.

Mr D, (through the CMC), said he agreed with the investigators view of the complaint, but reserved the right to check the compensation payment had been correctly worked out. Shawbrook initially didn’t agree to our investigators view of the complaint but on review of the case, it agreed to the investigators view of the complaint. It inspected the system and carried out a repair. It also offered compensation in line with our investigators view of the complaint.

Details of the offer was sent to Mr D (through the CMC), but we have not received a response.

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

In my provisional decision of 16 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. Shawbrook replied asking for updated FIT information so it could do an updated calculation. I can see the CMC has sent this through. Neither party have made any additional comments.

### **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 D paid for the system with a fixed sum loan agreement, Shawbrook agrees that section 75 applies to this transaction. This means that Mr D could claim against Shawbrook, the creditor, for any misrepresentation or breach of contract by P in the same way he 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 D 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 D says that during a sales meeting he 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. 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

I'm satisfied that Mr D was told that the cost of the system was £7,895. The quote and credit agreement set this out clearly. The total amount of credit is £5,895 (after deducting a deposit of £2,000) and goes on to show that the total amount payable would be £7,894.88. Mr D appears to have been given an interest free loan. His monthly payment is £245.62.

Overall, I'm satisfied that the credit agreement is clear and sets out exactly how much Mr D would be paying for the system overall as well as monthly.

### Self-funding

Mr D has said that he was told his monthly loan repayments would be covered, or 'self-funded' by the FIT payments and savings on energy bills.

The "what will you earn and save per year? Section of the quote sets out the estimated income Mr D could expect to receive by way of FIT payments and savings on energy bills from the system.

Yr	Feed in tariff		Elec. savings	Energy saving optional extras *		Total income savings
	Generation	Export		VO savings	Boiler DR	
1	£106.07	£70.71	£315.17	£70.20	£130.56	£692.71

I think it's clear that Mr D could expect to receive a total FIT income in year one of £176.78, which results in an average monthly income of £14.73. The expected year one electricity savings is £315.17 and, when taking into account the optional extra's shown on the quote, the combined income and savings in year one is shown as £692.71.

As outlined above, I'm satisfied that the credit agreement set out that there would be a monthly loan repayment due of £245.62 (which is £2,947.44 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 'Finance repayments' with three table showing repayments over 60 months, 120 months and 180 months. These are the terms of the loan that is usually offered to consumers – although as stated above, I can see Mr D appears to have taken a much shorter loan period based on his own preferences.

But I still think the way the cost in relation to the benefits is set out in the quote is useful in ascertaining whether it's likely he was told the system would be self-funding from the outset.

I've looked at the table for 60 months as this is the shortest length of the loan set out in the quote. This table shows the loan as repayable in 60 monthly payments of £118.40 and I think Mr D was fully aware that his monthly payments were higher than that.

## 60 payments of £118.40 p/m at 7.9%

Yr	Acc. grand total	Average income and savings per month	Potential monthly repayment diff.
1	£692.71	£57.73	-£60.68
2	£732.10	£61.01	-£57.39
3	£773.95	£64.50	-£53.91
4	£818.43	£68.20	-£50.20
5	£865.72	£72.14	-£46.26

The table does clearly set out that the overall income he could expect to receive by way of FIT income and any additional savings, would not be immediately sufficient to cover the monthly loan repayments over a 5-year period. So, I think it is apparent that the benefit provided by the system wouldn't cover the monthly loan payments of around £118. And therefore, it would have been apparent that it certainly wouldn't cover the payments of £245 which is more than double the amount shown in the quote.

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. So, I don't think I can reasonably find that he was told that his monthly loan repayments would be covered by the FIT income and savings on energy bills.

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.

### Self-funding over a period of time

That said, I do accept that Mr D was told by P that the system would be self-funding over a certain duration of time.

The 'what will you earn & save per year?' page of the quote has a table detailing the performance over 25 years. This shows that by year 10 the overall benefits that Mr D could expect to receive would have exceeded the total amount payable under the loan agreement.

#### What will you earn & save per year?

Panel degradation	Yr	Feed in tariff		Energy saving optional extras *			Total income savings	Acc. grand total	Est. monthly return	Ann. ROI
		Generation	Export	Elec. savings	VO savings	Boiler DR				
100.00%	1	£106.07	£70.71	£315.17	£70.20	£130.56	£692.71	£692.71	£57.73	8.72%
99.60%	2	£108.86	£72.57	£335.26	£74.97	£140.44	£732.10	£1,424.81	£61.01	9.27%
99.20%	3	£111.72	£74.47	£356.61	£80.07	£151.07	£773.95	£2,198.76	£64.50	9.80%
98.80%	4	£114.65	£76.43	£379.33	£85.52	£162.51	£818.43	£3,017.19	£68.20	10.37%
98.40%	5	£117.66	£78.43	£403.48	£91.33	£174.81	£865.72	£3,882.91	£72.14	10.97%
98.00%	6	£120.74	£80.49	£429.17	£97.54	£188.05	£915.99	£4,798.89	£76.33	11.60%
97.60%	7	£123.90	£82.60	£456.48	£104.18	£202.28	£969.44	£5,768.33	£80.79	12.28%
97.20%	8	£127.15	£84.76	£485.52	£111.26	£217.59	£1,026.28	£6,794.61	£85.52	13.00%
96.80%	9	£130.47	£86.98	£516.40	£118.82	£234.07	£1,086.74	£7,881.36	£90.56	13.76%
96.40%	10	£133.88	£89.25	£549.24	£126.90	£251.79	£1,151.06	£9,032.42	£95.92	14.58%
96.00%	11	£137.38	£91.58	£584.16	£135.53	£270.85	£1,219.50	£10,251.92	£101.62	15.45%
95.60%	12	£140.97	£93.97	£621.28	£144.75	£291.35	£1,292.32	£11,544.24	£107.69	16.37%
95.20%	13	£144.64	£96.42	£660.75	£154.59	£313.40	£1,369.82	£12,914.05	£114.15	17.35%

As I've set out above, I'm satisfied that P told Mr D that the system would pay for itself by year 10, 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 him to enter into the contract, and he 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 he may not have been receiving the financial returns he 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 D could've expected to receive from the system. I'm not persuaded that the way in which the estimates were calculated was due to unreasonable assumptions being used by P at the time Mr D entered into the contract, so I don't think this is sufficient for me to uphold the complaint on this basis.*

*I would add that, given the current increase in utility prices most consumers are now subject to, it may be that the system will be self-funding over a period of 10 years and the estimates may yet still materialise. So, overall, I don't think I have enough here, to make a finding that the estimates regarding the benefits the system will produce over the lifetime of the system amount to a misrepresentation.*

*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 D. The MCS certificate and quote sets out that the system is expected to produce 2698.95 kWh a year. And the benefits shown in the quote were calculated based on that level of generation.*

*I have looked at Mr D's FIT statements and meter readings, and can see that the system, on average, has generated 2260.61 kWh. This is significantly less than estimated by P at the point of sale, so I'm satisfied that the system hasn't performed as expected.*

*In the above assessment, I have taken into account that the meter was replaced on 29 March 2019, and at that point, the system had generated 2,359.3 kWh. But even including this amount of energy, the system has overall still significantly underperformed. Shawbrook appears to accept this and has agreed to put things right as suggested by our investigator.*

*Our investigator recommended Shawbrook should:*

- Inspect and repair the system.*
- Compensate Mr D for the period of underperformance by giving him the difference between what the system has generated and what it ought to have generated in line with the sales documents. Shawbrook was also expected to add 8% interest onto this amount.*
- Pay Mr D compensation of £300 for the inconvenience and upset caused (including the £200 previously offered by Shawbrook.)*

*Shawbrook has since inspected the system and carried out a repair. The report prepared by the engineer says.*

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*So, it looks like the system has been repaired.*

*Shawbrook says it has also calculated the compensation in line with our investigators recommendation and I've seen nothing to suggest it hasn't been worked out correctly.*

*So, while I'm satisfied that the system was faulty and Mr D suffered a loss because of this, I'm satisfied that Shawbrook's offer to put things right is fair and reasonable in the circumstances of this complaint. And I don't intend to ask it to do anymore.*

### **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 D 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 also reasonable even if such estimates may not have come to fruition. So, I don't uphold his complaint on this basis.*

*However, I do think the system installed was faulty, and hasn't generated the amount of power it should have so Shawbrook should put this right. It appears all parties are now in agreement with this. And I think the offer made by Shawbrook now is fair and reasonable and I don't plan to ask it to do anymore.*

### **Putting things right**

*For the avoidance of any doubt, Shawbrook is expected to work out the following and pay this to Mr D:*

- 1. From the date of installation until the date the repair was carried out:*
  - a) calculate the difference between what the panels have generated as income (through FIT and savings) for Mr D 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 D*
- 2. I can see Shawbrook has also now offered £300 compensation in total for the trouble and upset caused and I think that's a fair offer and Shawbrook should pay this to Mr D.*
- 3. Shawbrook has already inspected and repaired the system so at this stage I don't think it needs to do anymore.*

Shawbrook has asked for updated FIT information to enable it to carry out another redress offer in line with my provisional decision. The CMC has sent these in which have been forwarded to Shawbrook. As neither party have made any other comments, I find no reason to depart from my original findings as set out in my provisional decision. So, for the reasons set out above, I uphold the complaint.

## **Putting things right**

Shawbrook must work out the following and pay this to Mr D:

1. From the date of installation until the date the repair was carried out:
  - a) calculate the difference between what the panels have generated as income (through FIT and savings) for Mr D 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 D
2. Shawbrook has also now offered £300 compensation in total for the trouble and upset caused and I think that’s a fair offer and Shawbrook should pay this to Mr D.
3. Shawbrook has already inspected and repaired the system, so I don’t think it needs to do anymore.

## **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 D to accept or reject my decision before 4 December 2023.

Asma Begum

**Ombudsman**