

## The complaint

Mr B complains that Shawbrook Bank Limited ("Shawbrook"), hasn't upheld the claim he made under sections 75 and 140 of the Consumer Credit Act 1974 ("the Act") in relation to a solar panel system and several other optional extras ("the system").

## What happened

In August 2018, Mr B bought the system from a supplier, who I'll call "P", using a fixed sum loan agreement with Shawbrook, which was repayable over 15 years. Mr B engaged a claims management company ("the CMC") who sent Shawbrook a letter of claim alleging that P had misrepresented the system, breached their contract and that Mr B's relationship with Shawbrook was unfair.

The CMC said P's quote had misleading figures, in particular in the 'putting it all together' table, as follows:

- The voltage optimiser savings were too high, which wasn't supported by industry reports that were available at the time.
- The predicted boiler doctor's savings should be disregarded as there are no independent reports available about the savings it could produce.
- The cost of credit was missing from the table, which didn't fairly reflect the return on investment
- The figures used to calculate the benefits of the system over its lifetime didn't match the ONS data on which P claimed it was based. The CMC said this was evidence that P was systematically and fraudulently inflating the figures to make the system appear more attractive to customers.

Mr B also mentioned in his witness statement that P's salesman told him he would make a profit from the system. He also said he wasn't told about any likely maintenance costs.

Shawbrook didn't provide a response on the merits of the complaint. Our investigator didn't recommend the complaint should be upheld. The CMC didn't provide reasons for disagreeing with our investigator but asked for an ombudsman's decision.

I issued my provisional decision on 22 January 2024, in which I said the following and which forms part of my final decision:

*'The CMC has made the claim under sections 75 and 140 of the Act. So, I've considered these sections in particular, as well as other 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.*

*I've read all submissions made by the parties and considered them when making my decision. 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.*

*There are several documents that have been provided by both the CMC and Shawbrook. These include the credit agreement and solar quote. The quote is a detailed document that sets out key information about the system, the expected performance, financial benefits and technical information. The quote and the credit agreement have been signed by Mr B. So, I think the quote and credit agreement provide important evidence of what was likely discussed before Mr B agreed to the purchase.*

#### *The cost of the system*

*I'm satisfied that Mr B was told that the cost of the system was £8,000. The quote and credit agreement set this out clearly. There is some disparity in the documentation in that the quote set out that the monthly payment was £84.41 whereas the credit agreement set this out as £85.81. I understand though that the difference was due to Mr B deferring his payments for a few months. Overall, I think that Mr B would have understood from the quote roughly how much the loan would cost per month.*

*Having considered all the evidence, including Mr B's recollections, I'm satisfied that he was told that there would be a monthly loan repayment due. The quote makes this clear, as set out in the table below.*

*I'm satisfied that the two documents, the quote and the credit agreement, made it clear that although the cost of the system was £8,000, it would cost Mr B more than this as he had decided to pay for it with an interest-bearing loan.*

#### *Mis-leading profit figures*

*I appreciate there are sections in the quote that set out the estimated benefits without including the costs associated with the finance – mainly in the “putting it all together” section. But this section specifies these figures do not include finance charges. And I've explained above, I think Mr B was aware he would be paying more than the cash price of the system because he was using an interest-bearing loan to make the purchase. So, I think it would have been clear to him that these profit figures would need to be considered alongside the additional finance charges he had taken on. I also have to bear in mind, that there were sections such as the repayment tables (further set out below), that did compare the full costs with the benefits.*

*I have to consider the quote in its entirety not just this section in isolation – as I'm satisfied that Mr B was provided with all the information in the quote. Overall, I'm not satisfied that the section setting out the estimated benefits and profit without including the finance charges was misleading in the way the CMC suggests.*

#### *Benefit covering the monthly costs*

*Mr B says he bought the system on the basis it would make him a substantial profit and that it was a great investment. This suggests Mr B believed the benefits produced by the system would outweigh the monthly costs of the loan, and therefore the system would more than pay for itself leaving him with a profit.*

*I've considered the quote that was provided by P as well as Mr B's recollections of his 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 B 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	£ 137.36
Export tariff in year 1	£ 78.06
Total income in year 1	£ 215.42

I think the table is clear that Mr B could expect to receive a total FIT income in year one of £215.42, which results in an average monthly income of £17.95. The quote also sets out that the expected year one electricity savings was £220.81 and, when taking into account the optional extras chosen by Mr B, the combined income and savings in year one is shown as £747.86. This is shown in the table titled 'Putting it all together'.

As outlined above, I'm satisfied that the credit agreement set out there would be a monthly loan repayment due of £85.81 (which is £1,029.72 annually). As a result, it seems to me that it was made clear the amounts Mr B would receive per year would be far less than the monthly loan costs.

Overall, I don't think it's likely the system was sold on the basis that it would provide sufficient benefits to cover the monthly costs or that it would provide Mr B with substantial profit from the outset.

There's a section headed 'Repayments' with three tables 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 Mr B entered into with Shawbrook. This table shows the loan as repayable in 180 monthly payments of £84.41. 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 to give an average difference between the monthly return from the system and the monthly loan repayment in each year.

180 payments of £84.41 p/m			
Yr	Acc. grand total	Est. monthly return	Average monthly repayment diff.
1	£747.86	£18.00	£-66.36
2	£798.74	£18.81	£-65.93
3	£854.17	£19.51	£-64.90
4	£913.22	£19.94	£-64.47
5	£975.96	£17.81	£-66.60
6	£1042.46	£18.04	£-66.37
7	£1,112.83	£18.74	£-65.67
8	£1,186.95	£17.75	£-66.66
9	£1,264.83	£17.63	£-66.78
10	£1,346.57	£18.00	£-66.41
11	£1,432.15	£18.85	£-65.56
12	£1,521.57	£18.80	£-65.61
13	£1,614.87	£18.75	£-66.06
14	£1,712.02	£18.94	£-65.47
15	£1,813.05	£18.95	£-65.46

I think the table above does clearly set out that the overall income Mr B could expect to receive by way of FIT income and any additional savings, would not be immediately sufficient to cover the monthly loan repayments. There is a deficit between the monthly benefits received and the monthly outgoings for the first six years.

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 provide Mr B with a substantial profit from the outset or that it would cover the monthly loan payments as Mr B appears to have expected. 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.

### Profit over a period of time

That said, I do accept that Mr B was told by P that the system would eventually provide more benefit than the initial outlay and provide some profit after a certain duration of time. There is a part of the quote that has a table detailing the performance over 30 years. This shows that by year 15 the overall benefits that Mr B could expect to receive would have exceeded the total amount payable under the loan agreement. So, I'm satisfied that he was told that he would likely make some profit during the lifetime of the system.

#### Estimated performance over 30 years

Panel degradation %		Income			Energy saving optional extras *					Total income savings	Ass. grand total	Est. monthly return	Ass. ROI
		Generation Factor	Export Factor	Net savings	VO savings	Heating control	Hot water control	Battery storage	Router control				
100.0%	1	£107.36	£76.06	£309.80	£96.52	£0.00	£96.52	£0.00	£196.80	£747.88	£747.88	£62.32	0.95%
100.0%	2	£141.54	£90.43	£256.09	£94.43	£0.00	£94.51	£0.00	£144.75	£769.74	£1,517.62	£65.81	0.87%
100.0%	3	£166.84	£92.88	£232.42	£100.97	£0.00	£98.31	£0.00	£163.16	£834.17	£2,351.77	£60.91	0.43%
99.8%	4	£140.87	£85.00	£269.80	£107.00	£0.00	£100.33	£0.00	£181.41	£877.79	£3,249.56	£70.10	0.38%
99.2%	5	£100.80	£87.29	£269.25	£114.59	£0.00	£112.17	£0.00	£170.10	£883.91	£4,132.47	£76.00	11.32%
98.8%	6	£107.64	£86.58	£264.83	£121.99	£0.00	£110.45	£0.00	£176.25	£872.87	£5,046.14	£81.00	10.10%
98.4%	7	£101.77	£81.04	£224.80	£120.04	£0.00	£107.10	£0.00	£168.01	£1,004.26	£5,179.36	£86.30	12.81%
98.0%	8	£160.21	£84.24	£245.80	£138.20	£0.00	£105.45	£0.00	£188.07	£1,076.90	£7,249.14	£88.00	13.48%
97.6%	9	£170.25	£86.81	£269.00	£147.22	£0.00	£144.22	£0.00	£209.77	£1,138.45	£8,385.79	£94.70	14.27%
97.2%	10	£174.81	£88.05	£261.82	£156.76	£0.00	£150.58	£0.00	£221.06	£1,187.47	£9,569.07	£98.70	14.97%
96.8%	11	£170.20	£101.94	£117.31	£180.00	£0.00	£162.02	£0.00	£222.00	£1,262.00	£10,849.10	£100.17	15.78%
96.4%	12	£104.20	£104.81	£444.20	£177.74	£0.00	£174.12	£0.00	£245.84	£1,338.34	£12,172.44	£110.00	16.02%
96.0%	13	£160.80	£107.34	£413.13	£189.25	£0.00	£185.40	£0.00	£258.00	£1,400.00	£13,578.07	£118.00	17.33%
95.6%	14	£100.80	£100.14	£90.76	£201.40	£0.00	£107.30	£0.00	£210.42	£1,476.14	£15,067.21	£123.00	18.40%
95.2%	15	£168.87	£110.80	£95.37	£214.54	£0.00	£210.17	£0.00	£287.14	£1,568.42	£16,617.33	£138.00	19.91%
94.8%	16	£204.00	£116.97	£371.08	£228.43	£0.00	£223.79	£0.00	£302.94	£1,648.00	£18,263.18	£137.50	20.97%
94.4%	17	£200.00	£118.88	£369.01	£243.20	£0.00	£236.20	£0.00	£318.78	£1,738.00	£19,999.79	£144.70	22.77%
94.0%	18	£144.80	£120.88	£647.33	£256.93	£0.00	£253.88	£0.00	£305.97	£1,830.30	£21,830.49	£150.70	24.91%
93.6%	19	£220.40	£128.26	£999.10	£279.67	£0.00	£270.08	£0.00	£363.87	£1,934.46	£23,766.06	£161.20	26.18%
93.2%	20	£200.10	£128.81	£723.72	£289.49	£0.00	£287.31	£0.00	£370.83	£2,040.20	£25,808.18	£170.50	28.03%
92.8%	21	£0.00	£0.00	£1,080.85	£469.24	£0.00	£460.21	£0.00	£468.35	£2,501.50	£28,139.72	£180.40	30.00%
92.4%	22	£0.00	£0.00	£1,400.00	£560.12	£0.00	£550.54	£0.00	£550.18	£3,045.15	£31,185.87	£208.00	32.94%
	<b>Total</b>	<b>£3,076.87</b>	<b>£3,000.89</b>	<b>£11,084.81</b>	<b>£8,436.80</b>	<b>£0.00</b>	<b>£8,106.75</b>	<b>£0.00</b>	<b>£9,887.37</b>	<b>£31,328.87</b>	<b>£31,328.87</b>	<b>Ave. ROI:</b>	<b>15.88%</b>

As I've set out above, I'm satisfied that P told Mr B that the system would pay for itself by year 15, and then would provide him with a profit. If that were an untrue statement of fact, and I'm satisfied that this was what induced Mr B to enter into the contract, and he subsequently suffered a loss, that would amount to a misrepresentation.

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 B.

### FIT data

The MCS certificate and quote sets out that the system is expected to produce 3179.61 kWh a year. I have looked at Mr B's FIT statements and can see what the solar panels are generating on average annually. Based on the FIT data provided, it seems the system is generating slightly more than P predicted at the time of sale, so I'm satisfied that the system is performing as expected in line with the MCS certificate and sales quotation document.

### Voltage optimiser

*The CMC has suggested the estimated voltage optimiser savings were inaccurate and misleading. However, I understand that P's method of calculating the savings was approved by an industry body, which is more qualified than I am to know if it was reasonable. How P calculated the savings was also explained in the quote, with reference to a specific report that informed its method of calculation.*

*The quote also included the following statement alongside the figures for electricity savings from the voltage optimiser:*

*"Savings are dependent on individual circumstances and may be higher or lower than those stated above and are based on the manufacturer's own figures."*

*I think there were a number of reports which found that voltage optimisers could provide various levels of benefit. Considering those reports, I think that P's estimated voltage optimiser savings in this case are not outside of a reasonable range. It appears to me that P estimated the benefit of the voltage optimiser based on what it knew about the product it was selling, Mr B's home and how he used electricity. I am not persuaded that P's estimate of the benefit of the voltage optimiser was unreasonable.*

#### *Boiler doctor*

*I note the CMC argues the boiler optimiser savings aren't supported by any reports or other evidence. So, they say this should be viewed as being "too good to be true". However, as with my comments on the voltage optimiser, P's estimate seems to be based on what it knew about the product it was selling. So, I don't think there is sufficient evidence for me to conclude that its estimate for the boiler optimiser savings were unreasonable.*

*I've also seen a credit note from after the sale where the cost of the boiler doctor seems to have been paid to Mr B. The note says this was done because the boiler doctor wasn't installed. So it doesn't appear this particular aspect of the complaint needs further consideration.*

#### *Reliance on ONS data*

*I've 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 that explains why Mr B hasn't 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 benefit Mr B could have expected to receive from the system. So, whilst I can appreciate that the benefit may not have been as high as estimated at the point of sale, I'm not persuaded this was due to unreasonable assumptions being used by P at the time Mr B entered into the contract.*

#### *RPI/EPR rate used*

*The CMC has pointed out that it has seen several cases where the inflation data used did*

*not match the underlying inflation data it referred to. This does not strike me as a systemic issue which would lead me to think that P misled customers in every case. It appears likely to have been a result of human error rather than fraudulently or deliberately done to mislead. Some of those errors resulted in a lower inflation rate being used – thereby making the potential benefits of the system appear less than would've been the case if no error had occurred, which would make the system less attractive to customers, not more.*

*I can see the actual rates used by P in this particular sale weren't accurate. P said it used ONS data from 2006 to 2015 to estimate Mr B's benefits over the expected lifetime of the system. I've looked at the rates that ought to have been used and it seems P understated the EPR. So, if anything the error meant that the estimated benefits shown on the quote were less than they should've been. This is the opposite to what the CMC has suggested P was doing.*

### **Maintenance costs**

*I don't think it's likely that the salesman would have told Mr B that the system would require no maintenance over its estimated lifespan of 25 years. It's possible the salesman didn't tell Mr B that the inverter would need to be replaced, but that's not the same thing as a misrepresentation.*

*I also note that "Your Personal Solar Quotation" says, in a section titled "Inverter":*

*"The Inverter is the one part of PV system that has a higher chance of failure and may require your attention within the 25 years."*

*...*

*In summary, my provisional findings are that:*

- There was no misrepresentation or breach of contract on the part of P. As such, I don't think Shawbrook would have any liability under section 75 of the Act.*
- I don't think a court would find that there was an unfair relationship between Shawbrook and Mr B due to the way P sold the system to him'.*

I asked all parties to send me any further evidence or comments to consider. Mr B replied via his representative saying that, while he was disappointed with my decision, he wished to accept it. Shawbrook replied saying they had nothing further to add.

### **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.

As I've not been sent anything further to consider, I see no reason to depart from my provisional findings. So, for the reasons I gave in my provisional decision which are set out above, I don't uphold this complaint.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 12 March 2024.

Daniel Picken

**Ombudsman**