

The complaint

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

What happened

In or around October 2015, Mr B and Mrs B 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 B and Mrs B decided to purchase the system and finance it through a 15-year fixed sum loan agreement with Shawbrook. The system was subsequently installed.

In May 2021, the CMC made a claim on Mr B and Mrs B’s behalf under section 75 of the Act to Shawbrook. The CMC said that P had made several representations about the system that had turned out not to be true, and it was these misrepresentations that had induced Mr B and Mrs B to enter into the contract with P.

The CMC said the following misrepresentations had been made:

- The system would be self-funding.
- Mr B and Mrs B weren’t told the performance of the system would degrade over time or that the inverter would need to be replaced.
- No interest would be charged on the loan.

The CMC also said the system wasn’t fit for purpose and hadn’t performed as sold as it hadn’t provided Mr B and Mrs B with the benefits they were promised.

Shawbrook didn’t agree the system had been misrepresented to Mr B and Mrs B 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 didn’t think that P had misrepresented the system to Mr B and Mrs B and found no reason to uphold the complaint.

Mr B and Mrs B (through the CMC) didn’t agree with the investigator’s view. They said they had been told the system would pay for itself within the loan term, but it will take over 25 years for the panels to pay for themselves. They also referred to a Non-Compliance Panel Hearing from November 2023 and reiterated the system wasn’t fit for purpose because certain elements weren’t working.

As agreement couldn’t be reached, the complaint was passed to me for a 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.

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, section 75 and section 140 of the Act. Section 140A is about unequal relationships between the parties to a credit agreement.

In this case, the CMC relies on the alleged misrepresentation of the system. Section 75 provides protection for consumers for goods or services bought using credit. As Mr B and Mrs B paid for the system with a fixed sum loan agreement, section 75 applies to this transaction. This means that Mr B and Mrs B 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 B and Mrs B and P, as the supplier, are deemed to have been conducted by P as an agent of Shawbrook. Here, 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.

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 B and Mrs B say that during a sales meeting they were told the system would be entirely self-funding 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 Mr B and Mrs B'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 Mr B and Mrs B, explaining any benefits of the system, prior to them 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 Mr B and Mrs B's version of events when considering if there have been any untrue statements of fact.

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. The loan agreement clearly sets out the cash price of the goods. I've seen that Mr B and Mrs B alleged to Shawbrook that they were led to believe there would be no interest charged on the loan.

I'm satisfied that Mr B and Mrs B were told that the cost of the system was £8,748.60. 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 £8,748.60. The total amount of credit is £8,077.80 and

goes on to show that the total amount payable would be £16,826.40. The quote also set out that the expected monthly loan repayment was £93.48, and the credit agreement set out that this would be the monthly payment due.

Having considered all the evidence, I'm satisfied that Mr B and Mrs B 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 £8,748.60, it would cost Mr B and Mrs B more than this as they had decided to pay for it with an interest-bearing loan.

Mr B and Mrs B have said they were told the system would pay for itself within the term of the loan. I've considered the quote that was provided by P as well as Mr B and Mrs B'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 B and Mrs 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	£	354.46
Export tariff in year 1	£	68.93
Total income in year 1	£	423.39

Feed in tariff over 20 years

Assumed rate of RPI	3.22	%
Average generation tariff	£	0.171
Average export tariff	£	0.067
Average annual income	£	581.29

I think the first of these tables is clear that Mr B and Mrs B could expect to receive a total FIT income in year one of £423.39, which results in an average monthly income of £35.28. The quote goes on to look at the electricity savings Mr B and Mrs B could expect from the system. The expected year one electricity savings is £254.39 and, when taking into account the optional extras chosen by Mr B and Mrs B the combined income and savings in year one is shown as £761.78 (which results in a monthly benefit of £63.48). 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 £93.48 (which is £1,121.76 over a year). As a result, I'm not able to conclude that Mr B and Mrs B were 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 B and Mrs B entered into with Shawbrook. This table shows the loan as repayable in 180 monthly payments of £93.48. 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 £93.48, to give an average difference between the monthly return from the system and the monthly loan repayment in each year.

180 payments of £93.48 p/m

Yr	Acc. grand total	Est. monthly return	Average monthly repayment diff.
1	£761.78	£63.48	£-29.26
2	£803.77	£66.98	£-25.76
3	£848.58	£70.72	£-22.02
4	£896.41	£74.70	£-18.04
5	£947.50	£78.96	£-13.78
6	£1,002.10	£83.51	£-9.23
7	£1,060.48	£88.37	£-4.37
8	£1,122.93	£93.58	£0.84
9	£1,189.76	£99.15	£6.41
10	£1,261.31	£105.11	£12.37
11	£1,337.95	£111.50	£18.76
12	£1,420.07	£118.34	£25.60
13	£1,508.11	£125.68	£32.94
14	£1,602.54	£133.54	£40.80
15	£1,703.85	£141.99	£49.25

I think the quote clearly sets out the income Mr B and Mrs B could expect to receive from the system, by way of FIT payments, as well as their expected contractual monthly loan repayments. And the table clearly sets 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 Mr B and Mrs B weren't told the FIT payment would cover the loan repayment. I've carefully thought about what Mr B and Mrs B have said about this. 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 B and Mrs B 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 B and Mrs B were told by P that the system would be self-funding over a certain duration of time. The 'system performance and returns' page of the quote has a table detailing the performance over 20 years. This shows that by year 15 the overall benefits that Mr B and Mrs B could expect to receive would have exceeded the total amount payable under the loan agreement.

Estimated performance over 20 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				
100.0%	1	£354.46	£68.93	£254.39	£0.00	£0.00	£84.00	£0.00	£761.78	£761.78	£63.48	8.71%
100.0%	2	£365.87	£71.15	£275.71	£0.00	£0.00	£91.04	£0.00	£803.77	£1,565.55	£66.98	9.19%
100.0%	3	£377.65	£73.44	£298.81	£0.00	£0.00	£98.67	£0.00	£848.58	£2,414.13	£70.71	9.7%
99.6%	4	£388.26	£75.51	£322.55	£0.00	£0.00	£106.51	£0.00	£892.82	£3,306.95	£74.40	10.21%
99.2%	5	£399.15	£77.62	£348.18	£0.00	£0.00	£114.97	£0.00	£939.92	£4,246.87	£78.33	10.74%
98.8%	6	£410.34	£79.80	£375.84	£0.00	£0.00	£124.10	£0.00	£990.07	£5,236.95	£82.51	11.31%
98.4%	7	£421.84	£82.04	£405.68	£0.00	£0.00	£133.96	£0.00	£1,043.51	£6,280.46	£86.96	11.93%
98.0%	8	£433.65	£84.33	£437.89	£0.00	£0.00	£144.59	£0.00	£1,100.47	£7,380.93	£91.71	12.58%
97.6%	9	£445.79	£86.69	£472.66	£0.00	£0.00	£156.07	£0.00	£1,161.21	£8,542.14	£96.77	13.27%
97.2%	10	£458.26	£89.11	£510.16	£0.00	£0.00	£168.46	£0.00	£1,225.99	£9,768.13	£102.17	14.02%
96.8%	11	£471.07	£91.60	£550.64	£0.00	£0.00	£181.82	£0.00	£1,295.14	£11,063.27	£107.93	14.8%
96.4%	12	£484.23	£94.16	£594.32	£0.00	£0.00	£196.24	£0.00	£1,368.95	£12,432.22	£114.08	15.65%
96.0%	13	£497.74	£96.80	£641.44	£0.00	£0.00	£211.80	£0.00	£1,447.79	£13,880.00	£120.65	16.55%
95.6%	14	£511.63	£99.49	£692.31	£0.00	£0.00	£228.60	£0.00	£1,532.03	£15,412.03	£127.66	17.51%
95.2%	15	£525.89	£102.26	£747.18	£0.00	£0.00	£246.72	£0.00	£1,622.07	£17,034.09	£135.17	18.54%
94.8%	16	£540.55	£105.11	£806.39	£0.00	£0.00	£266.27	£0.00	£1,718.33	£18,752.42	£143.20	19.64%
94.4%	17	£555.60	£108.04	£870.28	£0.00	£0.00	£287.36	£0.00	£1,821.29	£20,573.71	£151.78	20.82%
94.0%	18	£571.06	£111.05	£939.21	£0.00	£0.00	£310.12	£0.00	£1,931.45	£22,505.15	£160.96	22.08%
93.6%	19	£586.94	£114.14	£1,013.59	£0.00	£0.00	£334.69	£0.00	£2,049.35	£24,554.51	£170.78	23.43%
93.2%	20	£603.25	£117.31	£1,093.83	£0.00	£0.00	£361.19	£0.00	£2,175.58	£26,730.08	£181.30	24.87%
Totals		£9,403.22	£1,828.59	£11,651.06	£0.00	£0.00	£3,847.20	£0.00	£26,730.08	£26,730.08	Ave. ROI:	15.28%

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 and Mrs B. P accepts the system hasn't been performing as expected since it was installed and has offered Mr B and Mrs B £739.91 to cover the underperformance from March 2015 to March 2023. Mr B and Mrs B have accepted this.

I mentioned to Shawbrook that I intended to ask them to cover future underperformance of the system bearing in mind the extent of its underperformance to date. I explained that I would be asking Shawbrook to do the following:

- 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.
- recalculate the “total income savings” for each year going forward until the conclusion of the finance agreement, having applied the percentage reduction identified in the bullet point above.
- pay Mr B and Mrs B the difference between the revised amounts calculated in the bullet point above and the “total income savings” set out in the sales paperwork.

Both Shawbrook and Mr B and Mrs B have agreed to this resolution. I’m satisfied therefore that the offer P has made, and the resolution above around future underperformance, is a fair and reasonable way to settle this complaint.

Putting things right

To put things right Shawbrook should pay Mr B and Mrs B £739.91 representing the underperformance from March 2015 to March 2023.

The finance agreement is due to end in 2030. To ensure that Mr B and Mrs B don’t lose out going forward, Shawbrook should also:

- a) 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.
- b) recalculate the “total income savings” for each year going forward until the conclusion of the finance agreement, having applied the percentage reduction identified in a) above
- c) pay Mr B and Mrs B the difference between the revised amounts calculated in b) above and the “total income savings” set out in the sales paperwork.

My final decision

My final decision is that I uphold Mr B and Mrs B’s complaint in part. 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 B and Mrs B to accept or reject my decision before 3 May 2024.

Daniel Picken

Ombudsman