

The complaint

Mrs A & Mr L 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.

Mrs A & Mr L are represented by a claims management company ("the CMC").

What happened

In or around December 2017, Mrs A & Mr L 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, Mrs A & Mr L decided to purchase the system and finance it through a 15-year fixed sum loan agreement with Shawbrook. The system was subsequently installed.

In September 2019, the CMC made a claim on Mrs A & Mr L'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 Mrs A & Mr L 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.
- The solar panels would improve the properties council tax banding.
- No interest would be charged on the loan.
- No information was given about the cooling off period.

Shawbrook didn't agree the system had been misrepresented to Mrs A & Mr L 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 Mrs A & Mr L and found no reason to uphold the complaint.

Mrs A and Mr L (through the CMC) didn't agree with the investigator's view explaining that Mrs A & Mr L had been told the system would pay for itself within the loan term, but the CMC says it will take over 25 years for the panels to pay for themselves. They are therefore not happy with the service received and the workmanship provided.

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

In my provisional decision of 10 October 2023, I set out why I was minded to not upholding the complaint. I invited both parties to provide any further submissions they may wish to make before I reached a final decision. Neither Shawbrook nor Mrs A and Mr L made any further 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, 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 Mrs A & Mr L paid for the system with a fixed sum loan agreement, Shawbrook agrees that section 75 applies to this transaction. This means that Mrs A & Mr L 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 Mrs A & Mr L 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.

Mrs A & Mr L 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.

The loan agreement clearly sets out the cash price of the goods.

Mrs A & Mr L have said that the cost of the system was documented as £8,925 and they were led to believe there would be no interest charged on the loan.

On balance I'm satisfied that Mrs A & Mr L were told that the cost of the system was £8,925. 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 £8,925. The total amount of credit is £8,825 (after deducting a deposit of £100) and goes on to show that the total amount payable would be £16,949.80.

The quote also set out that the expected monthly loan repayment was £94.29. But I note Mrs A & Mr L deferred their payments for a few months which is reflected in their credit agreement and their monthly payment is also marginally different at £93.61 – but I don't think these differences make the quote mis-leading.

Having considered all the evidence, including the consumers' 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 £8,925, it would cost Mrs A & Mr L more than this as they had decided to pay for it with an interest-bearing loan.

Self-funding

Mrs A & Mr L have said that they were told their monthly loan repayments would be covered, or 'self-funded' by the FIT payments and savings on 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 Mrs A & Mr L 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	£ 96
Generation tariff in year 1	£ 74.40
Export tariff in year 1	£ 47.61
Total income in year 1	£ 122.01

Feed in tariff over 20 years

Assumed rate of RPI	3.04	%
Average generation tariff	£ 0.058	
Average export tariff	£ 0.074	
Average annual income	£ 179.84	

I think that the first of these tables is clear that Mrs A & Mr L could expect to receive a total FIT income in year one of £122.01, which results in an average monthly income of £10.16.

The quote goes on to look at the electricity savings Mrs A & Mr L could expect from the system. The expected year one electricity savings is £221.06 and, when taking into account the optional extra's chosen by Mrs A & Mr L the combined income and savings in year one is shown as £740.80 (which results in a monthly benefit of £61.73). 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 £94.29 (which is £1,131.48). 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 Mrs A & Mr L entered into with Shawbrook. This table shows the loan as repayable in 180 monthly payments of £94.29. 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 £94.29, to give an average difference between the monthly return from the system and the monthly loan repayment in each year.

180 payments of £94.29 p/m

Yr	Ass. grand total	Est. monthly return	Average monthly repayment diff.
2	£788.59	£65.72	£-28.57
3	£839.66	£69.97	£-24.32
4	£894.23	£74.52	£-19.77
5	£952.54	£79.38	£-14.91
6	£1,014.88	£84.57	£-9.72
7	£1,081.51	£90.13	£-4.16
8	£1,152.75	£96.06	£1.77
9	£1,228.92	£102.41	£8.12
10	£1,310.37	£109.20	£14.91
11	£1,397.49	£116.46	£22.17
12	£1,490.66	£124.22	£29.93
13	£1,590.33	£132.53	£38.24
14	£1,696.96	£141.41	£47.12
15	£1,811.04	£150.92	£56.63

I think the quote clearly sets out the income Mrs A & Mr L 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 payment would cover the loan repayment. 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 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 Mrs A & Mr L 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 Mrs A & Mr L 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 25 years. This shows that by year 15 the overall benefits that Mrs A & Mr L could expect to receive would have exceeded the total amount payable under the loan agreement.

Estimated performance over 25 years													
Panel degradation	Yr	Income			Energy saving optional extras *					Total income savings	Acc. grand total	Est. monthly return	Ann. ROI
		Generation Tariff	Export Tariff	Elec. savings	VO savings	Heating control	H/W controller	Battery storage	Boiler doctor				
100.0%	1	£74.40	£47.61	£221.06	£230.40	£167.33	£0.00	£0.00	£0.00	£740.80	£740.80	£61.73	8.39%
100.0%	2	£76.66	£49.06	£236.09	£246.07	£180.71	£0.00	£0.00	£0.00	£788.59	£1,529.39	£65.72	8.94%
100.0%	3	£78.99	£50.55	£252.15	£262.80	£195.17	£0.00	£0.00	£0.00	£839.66	£2,369.05	£69.97	9.51%
99.6%	4	£81.06	£51.88	£268.21	£280.67	£210.79	£0.00	£0.00	£0.00	£892.62	£3,261.67	£74.38	10.11%
99.2%	5	£83.20	£53.24	£285.30	£299.76	£227.65	£0.00	£0.00	£0.00	£949.15	£4,210.82	£79.10	10.76%
98.8%	6	£85.38	£54.64	£303.47	£320.14	£245.86	£0.00	£0.00	£0.00	£1,009.49	£5,220.31	£84.12	11.44%
98.4%	7	£87.62	£56.07	£322.80	£341.91	£265.53	£0.00	£0.00	£0.00	£1,073.92	£6,294.24	£89.49	12.17%
98.0%	8	£89.91	£57.54	£343.35	£365.16	£286.77	£0.00	£0.00	£0.00	£1,142.73	£7,436.97	£95.23	12.95%
97.6%	9	£92.27	£59.05	£365.20	£389.99	£309.71	£0.00	£0.00	£0.00	£1,216.22	£8,653.19	£101.35	13.78%
97.2%	10	£94.68	£60.59	£388.43	£416.51	£334.49	£0.00	£0.00	£0.00	£1,294.71	£9,947.90	£107.89	14.67%
96.8%	11	£97.17	£62.17	£413.14	£444.83	£361.25	£0.00	£0.00	£0.00	£1,378.56	£11,326.46	£114.88	15.62%
96.4%	12	£99.71	£63.81	£439.41	£475.08	£390.15	£0.00	£0.00	£0.00	£1,468.15	£12,794.62	£122.35	16.64%
96.0%	13	£102.31	£65.47	£467.35	£507.38	£421.36	£0.00	£0.00	£0.00	£1,563.87	£14,358.48	£130.32	17.72%
95.6%	14	£104.98	£67.18	£497.04	£541.89	£455.07	£0.00	£0.00	£0.00	£1,666.16	£16,024.64	£138.85	18.88%
95.2%	15	£107.72	£68.93	£528.62	£578.74	£491.47	£0.00	£0.00	£0.00	£1,775.48	£17,800.12	£147.96	20.12%
94.8%	16	£110.53	£70.73	£562.19	£618.09	£530.79	£0.00	£0.00	£0.00	£1,892.33	£19,692.45	£157.69	21.44%
94.4%	17	£113.40	£72.57	£597.89	£660.12	£573.26	£0.00	£0.00	£0.00	£2,017.25	£21,709.70	£168.10	22.86%
94.0%	18	£116.36	£74.46	£635.84	£705.01	£619.12	£0.00	£0.00	£0.00	£2,150.79	£23,860.50	£179.23	24.37%
93.6%	19	£119.39	£76.40	£676.19	£752.95	£668.65	£0.00	£0.00	£0.00	£2,293.57	£26,154.06	£191.13	25.99%
93.2%	20	£122.49	£78.38	£719.08	£804.15	£722.14	£0.00	£0.00	£0.00	£2,446.25	£28,600.31	£203.85	27.72%
91.2%	21-25	£0.00	£0.00	£4,339.76	£4,919.24	£4,575.42	£0.00	£0.00	£0.00	£13,834.42	£42,434.73	£230.57	31.35%
Repair/Replace						£-1,250.00							
Totals		£1,938.23	£1,240.33	£12,862.98	£14,160.99	£10,982.69	£0.00	£0.00	£0.00	£41,184.73	£41,184.73	Ave. ROI:	18.67%

As I've set out above, I'm satisfied that P told Mrs A & Mr L that the system would pay for itself by year 15, 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 them to enter into the contract, and they subsequently suffered a loss, that would amount to a misrepresentation.

I've gone on to consider the performance of the system and whether this is in line with the contract between P and Mrs A & Mr L. The MCS certificate and quote sets out that the system is expected to produce 1893.08 kWh a year.

I have looked at Mrs A & Mr L's FIT statements and can see that their system, on average, has generated 2024.88 kWh. This is slightly more than estimated by P at the point of sale, so I'm satisfied that the system is performing as expected.

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 explain 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 Mrs A & Mr L 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 Mrs A & Mr L entered into the contract.

I've also gone on to consider whether a court may conclude that there existed an unfair relationship under section 140A the Act.

A sufficient inequality of knowledge and understanding is considered a classic source of unfairness in a relationship between a creditor and a consumer. Considering that I haven't found any misrepresentation and I'm of the view that the underlying assumptions used by P were reasonable, I think a court is unlikely to conclude that there is an unfair relationship under section 140.

I understand Mrs A & Mr L were informed that having solar panels may lead to a change in their council tax banding. But the salesperson later apologised and explained that the system would lead to an improvement in the properties EPC rating. It doesn't seem like Mrs A & Mr L took any further action at this time and I think it's unlikely that this was the main reason they purchased the system. So, while it looks like P may have not given clear information regarding this matter – I can see it also apologised for the error, and then appears to have provided the correct information. So, I don't think Shawbrook needs to do anything about this now.

Mrs A & Mr L have also mentioned that they're not happy with the workmanship from P in response to our investigators view of the complaint. They haven't provided any details about what they mean by workmanship, and it doesn't look as though they've complained about this before. As noted above, the system appears to be overperforming in terms of power

generation which indicates it isn't faulty and working as it was intended. So, I also don't think Shawbrook needs to do anything further about this issue at this stage.

Mrs A & Mr L have complained they weren't given any information about their cooling off period. But their credit agreement and quote both set out their cancellation rights. The quote also had a cancellation form. I also haven't seen any evidence that they wanted to or tried to cancel – so this issue doesn't alter my view of the complaint.

Summary

Having carefully considered the evidence provided by all parties in this complaint, I'm satisfied that there were no untrue statements of fact made by P that induced Mrs A & Mr L to enter into the contract for the system, and I have found no other reason to uphold this complaint.

So overall, I'm satisfied that Shawbrook did not act unreasonably or unfairly when declining the claim.

Neither Shawbrook nor Mrs A & Mr L have made any additional comments in response to my provisional decision. So, in the absence of any new points for me to consider, I find no reason to depart from my original findings as set out in my provisional decision.

Having again carefully considered the evidence provided by all parties in this complaint, I'm satisfied that there were no untrue statements of fact made by P that induced Mrs A & Mr L to enter into the contract for the system, and I have found no other reason to uphold this complaint. So overall, I'm satisfied that Shawbrook did not act unreasonably or unfairly when declining the claim and I do not uphold this complaint.

My final decision

For the reasons explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A and Mr L to accept or reject my decision before 23 November 2023.

Asma Begum
Ombudsman