

The complaint

Mr 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 and battery they say were misrepresented to them by the supplier. Mr and Mrs B are represented by a claims management company ("the CMC").

Background

In or around April 2019, Mr and Mrs B were contacted by a representative of a company I'll call "P" to talk about purchasing a solar panel system and battery ("the system") to be installed at their home. After being visited by a representative of P, Mr and Mrs B decided to purchase the system and finance it through two 10-year fixed sum loan agreements with Shawbrook. The system was subsequently installed.

In July 2022, the CMC made a claim on Mr and Mrs B'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 Mr and Mrs B to enter into the contract with P. The CMC said the following misrepresentations had been made:

- The system (including the battery) would be self-funding.
- The social energy payments and reduction in energy bills would provide enough income to cover the finance agreement repayment costs.
- The CMC added that P had caused damage to Mr and Mrs B's property during the installation and P had failed to repair that damage.

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

The CMC didn't agree with the investigator's view for the following reasons:

- The CMC re-iterated that Mr and Mrs B were verbally told the social energy payments and savings on energy bills would cover the cost of the monthly payments and that the system would be self-funding.
- The CMC said Mr and Mrs B shouldn't have to check the documents to discover that the verbal representations made by P were untrue.
- The CMC says that the sales document relied on by our investigator was on an electronic device which was lengthy and confusing. Mr and Mrs B were not left to read the document and had they been shown the deficits between the benefit and costs, they would not have purchased the system.
- The CMC pointed out that the consumers weren't given full cancellation rights and it doesn't look like credit checks took place.

As an agreement couldn't be reached, the case was passed to me for review. In my provisional decision of 16 June 2023, I set out why I was minded to upholding the complaint in part. I invited both parties to provide any further submissions they may wish to make before I reached a final decision. Neither Shawbrook nor Mr and Mrs B made any further comments.

My findings

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 75 provides protection for consumers for goods or services bought using credit.

As Mr and Mrs B paid for the system with fixed sum loan agreements, Shawbrook agrees that section 75 applies to this transaction. This means that Mr 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 and Mrs B and P, as the supplier, are deemed to have been conducted by P as an agent of Shawbrook.

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.

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 B 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 two solar quotes. There is a quote for the solar panels alone and another with the battery. 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. Mr and Mrs B bought both the solar panels and the battery, so I've mainly focussed on that quote.

The combined 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 consumers' version of events when considering if there have been any untrue statements of fact.

The cost of the system

The credit agreements set out the amount being borrowed, the interest to be charged, total amount payable, the term of the loan and the contractual monthly repayments.

I'm satisfied that Mr and Mrs B were told that the cost of the solar panels was £14,375.65. The credit agreement also sets out that the total amount of credit is £14,025.65 (after deducting a deposit of £350) and goes on to show that the total amount payable would be £20,416.40. The monthly payment was also £167.22.

Mr and Mrs B's second credit agreement for the battery sets out that cost and amount of credit was £3,675. The monthly payment was £43.81 and goes on to show that the total amount payable would be £5,257.20.

The combined quote for the solar panels and battery also sets out that the combined expected monthly loan repayment was £211.03 and total cash price was £18,050.65.

Having considered all the evidence, including the consumer's recollections, I'm satisfied that Mr and Mrs B were told that there would be monthly loan repayments due. Overall, I'm satisfied that the quotes and the credit agreements made it clear that the cost of the solar panels were £14,375.65 and the cost of the battery was £3,675. And although the combined cost was £18,050.65, it would cost Mr and Mrs B more than this as they had decided to pay for them with interest bearing loans.

Self-funding

Mr and Mrs B have said that they were told their monthly loan repayments would be covered, or 'self-funded' by the social energy payments and savings on their energy bills. I've considered the quote that was provided by P as well as the consumers' recollections of their meeting with P's representative to decide what is most likely to have been said.

The what will you earn and save per year? page of the quote sets out the estimated income Mr and Mrs B could expect to receive by way of social energy and savings on their bills. This is split out into the expected payments in the first year and the expected average income over 30 years. I've included the first-year payment here for ease of reference.

Panel degradation	Yr	Energy saving optional extras *					Total income savings	Acc. grand total	Est. monthly return	Ann. ROI
		Elec. savings	Social Energy Optimiser	Voltage	Boiler Doctor	OWL Heating Control				
100.00%	1	£450.00	£433.18	£96.00	£123.84	£103.20	£139.69	£1,345.91	£112.16	7.46%

I think that it's clear that Mr and Mrs B could expect to receive a total social energy income in year one of £433.18, which results in an average monthly income of £36.09. The table goes

on to look at the electricity savings Mr and Mrs B could expect from the system. The expected year one electricity savings is £450 and, when taking into account the optional extra's chosen by Mr and Mrs B the combined income and savings in year one is shown as £1,345.91.

As outlined above, I'm satisfied that the credit agreement and the quotes set out that the combined monthly loan repayment would be £211.03 which annually is £2,532.36. As a result, I'm not able to conclude that the consumer was told that the monthly loan repayments would be covered by the financial benefits received from the system.

There's a section headed 'Finance repayment' with three table showing repayments over 60 months, 120 months and 180 months. I've focused on the table for 120 months as this is the length of the loan that Mr and Mrs B entered into with Shawbrook. This table shows the loans as repayable in 120 monthly payments of £211.03. For each year of the 10-year term, 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 £211.03, to give an average difference between the monthly return from the system and the monthly loan repayment in each year.

120 payments of £211.03 p/m at 7.9%			
Yr	Acc. grand total	Savings	Potential monthly repayment diff.
1	£1,345.91	£112.16	-£98.87
2	£1,433.47	£119.46	-£91.57
3	£1,526.15	£127.18	-£83.85
4	£1,624.29	£135.36	-£75.67
5	£1,728.28	£144.02	-£67.01
6	£1,838.53	£153.21	-£57.82
7	£1,955.48	£162.96	-£48.07
8	£2,079.59	£173.30	-£37.73
9	£2,211.36	£184.28	-£26.75
10	£2,351.34	£195.94	-£15.09

I think the quote clearly sets out the income Mr and Mrs B could expect to receive from the system, by way of social energy payments and additional savings, 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 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 financial benefits would cover the loan repayments. 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 financial benefits provided by the system.

I'll now consider whether P told Mr 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 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 30 years. This shows that by year 14 the overall benefits that Mr and Mrs B could expect to receive would have exceeded the total amount payable under the loan agreements.

		Energy saving optional extras *							
Panel degradation	Yr Elec. savings	Voltage		Boiler	OWL Heating	EV	Total income	Acc. grand	Est. monthly return Ann. ROI
		Social Energy Optimiser	Doctor	Control	Charger	savings	total		
94.80%	14 £1,089.71	£758.64	£232.47	£319.78	£266.48	£0.00	£2,667.08	£27,859.18	£222.26 14.78%

As I've set out above, I'm satisfied that P told Mr and Mrs B that the system would pay for itself by year 14, 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 Mr and Mrs B. The MCS certificate and quote sets out that the system is expected to produce 5428.8 kWh a year.

I have looked at Mr and Mrs B meter reading and can see that their system, on average, has generated 6516.34 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 Mr and Mrs B 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 Mr and Mrs B entered into the contract.

Other issues

- **Cancellation rights:** Mr and Mrs B have highlighted that they weren't given full cancellation rights as the system was installed shortly after the sale. However, as explained by our investigator, they signed the express work form agreeing to have the system installed at the earliest opportunity, and it also doesn't look like they ever tried to or wanted to cancel within the 14 day period. So, it doesn't look like they've

been affected by this.

- Promised payments: Mr and Mrs B have also asserted that P promised to pay them £89 for Feed in Tariff (FIT) payments. They've also added that P agreed to pay the fee to move energy providers. The FIT scheme had closed to new applications by the time Mr and Mrs B bought their system and nothing in the documents indicates P would pay them anything in replacement of the FIT. I've also seen no mention of covering the fees charged by energy providers. This is also not something I've ever seen P offer. So, I'm afraid, I'm not satisfied that there's sufficient evidence that P agreed to make these payments.*
- 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. Shawbrook has confirmed that it paid no commission to P and, 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.

Damage to property during installation

The CMC has mentioned in its letter of claim that P failed to repair damage done to Mr and Mrs B's property during the installation. In response to P's customer satisfaction questionnaire of 17 May 2019, Mr and Mrs B said:

"hole made in bathroom wall, still not fixed".

I can see in a response to an email survey on July 2019, Mr and Mrs B told P that they were unhappy due to the damage done to their property. They said;

"I have holes in the wall of my downstairs bathroom, and a piece of guttering was knocked off".

Mr and Mrs B have recently confirmed that repair works to the bathroom wall have still not been carried out. They have not confirmed whether the guttering still needs to be fixed.

Given that these issues were raised so soon after the installation, I think if P hadn't been responsible for the damage, it ought to have explained that it hadn't caused such damage. I cannot see this has been addressed. So, based on what I've seen, I'm satisfied that its more likely the damage was caused by P during the installation as alleged by Mr and Mrs B and I think Shawbrook should now arrange for the repair of the wall. It should also repair the guttering (if still required).

I can also see Mr and Mrs B have waited a considerable amount of time to have this damage repaired and this has no doubt caused them some inconvenience. So, I think Shawbrook should pay them £200 compensation for the trouble and upset caused.

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 Mr and Mrs B to enter into the contract for the system.*

- *However, I am satisfied that P caused damage to Mr and Mrs B's property during the installation and Shawbrook should now repair the damage done. It should also pay Mr and Mrs B £200 compensation for the trouble and upset caused.*

Putting things right

I intend to order Shawbrook to:

- *Pay £200 compensation to Mr and Mrs B.*
- *Repair the damage to Mr and Mrs B's bathroom wall. Shawbrook should also repair the guttering (if still required).*

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. So, again, having carefully considered the evidence provided by all parties in this complaint, I'm still satisfied that there were no untrue statements of fact made by P that induced Mr and Mrs B to enter into the contract for the system.

But as explained in my provisional decision, I am satisfied that P caused damage to Mr and Mrs B's property during the installation and Shawbrook should now repair the damage done. It should also pay Mr and Mrs B £200 compensation for the trouble and upset caused.

Putting things right

Shawbrook should:

- Pay £200 compensation to Mr and Mrs B.
- Repair the damage to Mr and Mrs B's bathroom wall. Shawbrook should also repair the guttering (if still required).

My final decision

For the reasons explained, I uphold this 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 August 2023.

Asma Begum

Ombudsman