

The complaint

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

What happened

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

In March 2020, the CMC made a claim on Mr R and Mr S’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 R and Mr S 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 reduction in bills would provide enough income to cover the finance agreement repayments costs.

Shawbrook didn’t agree the system had been misrepresented to Mr R and Mr S 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 R and Mr S to believe the system would be immediately self-funding. But they did think the system had underperformed compared to P’s estimates from the point of sale. They added that the estimates regarding the annual generation, FIT payments and electricity savings would have induced Mr R and Mr S into entering the contract. So, they felt this aspect of the complaint should be upheld.

Shawbrook initially didn’t agree to our investigators view of the complaint. Shawbrook carried out an inspection of the system, which showed the system was not faulty and was working as it was designed to – although it was generating less energy than had been estimated at the time of sale. At this time, Shawbrook was informed that P had installed 3 fewer panels than Mr R and Mr S had been sold when they agreed to purchase the system, as P couldn’t fit the full 14 panels on their roof. While P gave Mr R and Mr S a refund for the cost of the 3 panels, it did not inform them of the consequence of having fewer panels, and what impact this would have on the system’s ability to generate power – and the associated financial benefits. Shawbrook therefore agreed to pay Mr R and Mr S the difference between what the

system had generated and what P had estimated the system would generate at the time of sale.

Our investigator agreed with Shawbrook's offer in principle as an appropriate way to put matters right – but wanted to ensure the calculation took account of both the loss they had suffered to date, as well as the loss they likely will suffer during the original loan term.

Shawbrook did not reply and, as it wasn't clear whether its offer had included any future losses, the case was passed to me to decide. Mr R and Mr S (nor their representative) have made no additional comments.

In my provisional decision of 25 September 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. Neither Shawbrook nor Mr R or Mr S have 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 and section 75 of the Act. Section 75 provides protection for consumers for goods or services bought using credit.

As Mr R and Mr S paid for the system with a fixed sum loan agreement, Shawbrook agrees that section 75 applies to this transaction. This means that Mr R and Mr S 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 R and Mr S 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 R and Mr S 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.

Mr R and Mr S have said that the cost of the system was documented as £11,365.20. They have indicated that this was done to mislead them as this figure did not include any interest associated with the loan so hid the true cost of the system, £21,859.20.

On balance I'm satisfied that Mr R and Mr S were told that the cost of the system was £11,365.20. The quote and credit agreement both set this out clearly. The credit agreement also goes on to show that the total amount payable would be £21,859.20.

The quote also set out that the expected monthly loan repayment was £120.06. But I note Mr R and Mr S's monthly payment is marginally different at £121.44 – but I don't think this difference make the quote mis-leading.

Having considered all the evidence, including the consumer's recollections, I'm satisfied that they were told that there would be a monthly loan repayment due. And I'm also satisfied that the two documents, the quote and the credit agreement, made it clear that although the cost of the system was £11,365.20, it would cost Mr R and Mr S more than this as they had decided to pay for it with an interest-bearing loan.

Self-funding

Mr R and Mr S have said that they were told their monthly loan repayments would be covered, or 'self-funded' by the FIT payments and savings on their 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 Mr R and Mr S 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	£	478.30
Export tariff in year 1	£	89.77
Total income in year 1	£	568.07

Feed in tariff over 20 years

Assumed rate of RPI	3.22	%
Average generation tariff	£	0.178
Average export tariff	£	0.067

I think that the first of these tables is clear that Mr R and Mr S could expect to receive a total FIT income in year one of £568.07, which results in an average monthly income of £47.33.

The quote goes on to look at the electricity savings Mr R and Mr S could expect from the system. The expected year one electricity savings is £360.01 and, when taking into account the optional extra's chosen by Mr R and Mr S the combined income and savings in year one is shown as £1,276.53. 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 £120.06 (which is £1,440.72). The credit agreement he subsequently signed, shows his monthly payments are marginally higher, so his actual yearly payments would be even higher than this. 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, as the benefits fall short of what's required to meet the payments under the loan.

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 R and Mr S entered into with Shawbrook. This table shows the loan as repayable in 180 monthly payments of £120.06. 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 £120.06, to give an average difference between the monthly return from the system and the monthly loan repayment in each year.

180 payments of £120.06 p/m

Yr	Acc. grand total	Est. monthly return	Average monthly repayment diff.
1	£1,316.01	£109.67	£-10.39
2	£1,396.44	£116.37	£-3.69
3	£1,482.63	£123.55	£3.49
4	£1,575.02	£131.25	£11.19
5	£1,674.09	£139.51	£19.45
6	£1,780.38	£148.37	£28.31
7	£1,894.44	£157.87	£37.81
8	£2,016.89	£168.07	£48.01
9	£2,148.40	£179.03	£58.97
10	£2,289.67	£190.81	£70.75
11	£2,441.48	£203.46	£83.40
12	£2,604.68	£217.06	£97.00
13	£2,780.16	£231.68	£111.62
14	£2,968.91	£247.41	£127.35
15	£3,171.99	£264.33	£144.27

I think the quote clearly sets out the income Mr R and Mr S could expect to receive from the system, by way of FIT payments, as well as their expected contractual monthly loan repayments. It 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 the consumer wasn'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'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.

Self-funding over a duration of time

That said, I do accept that Mr R and Mr S 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 13 the overall benefits that Mr R and Mr S 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				
97.0%	1	£463.95	£87.08	£349.22	£121.25	£136.89	£118.15	£0.00	£1,276.53	£1,276.53	£106.38	11.23%
96.3%	2	£475.43	£89.23	£375.75	£130.47	£146.77	£127.13	£0.00	£1,344.77	£2,621.30	£112.06	11.84%
95.6%	3	£487.18	£91.43	£404.28	£140.37	£157.36	£136.77	£0.00	£1,417.39	£4,038.70	£118.11	12.48%
94.9%	4	£499.18	£93.69	£434.96	£151.01	£168.70	£147.15	£0.00	£1,494.69	£5,533.39	£124.56	13.15%
94.2%	5	£511.45	£95.99	£467.92	£162.47	£180.85	£158.30	£0.00	£1,576.99	£7,110.38	£131.42	13.88%
93.5%	6	£524.00	£98.34	£503.37	£174.77	£193.87	£170.29	£0.00	£1,664.66	£8,775.04	£138.72	14.65%
92.8%	7	£536.82	£100.75	£541.46	£187.99	£207.82	£183.19	£0.00	£1,758.04	£10,533.08	£146.50	15.47%
92.1%	8	£549.93	£103.22	£582.41	£202.21	£222.74	£197.04	£0.00	£1,857.56	£12,390.63	£154.79	16.35%
91.4%	9	£563.33	£105.73	£626.42	£217.50	£238.74	£211.93	£0.00	£1,963.64	£14,354.27	£163.63	17.27%
90.7%	10	£577.01	£108.30	£673.71	£233.92	£255.86	£227.93	£0.00	£2,076.73	£16,431.00	£173.06	18.28%
90.0%	11	£590.99	£110.92	£724.54	£251.56	£274.20	£245.12	£0.00	£2,197.33	£18,628.33	£183.11	19.33%
89.3%	12	£605.28	£113.60	£779.14	£270.53	£293.83	£263.60	£0.00	£2,325.98	£20,954.31	£193.83	20.47%
88.6%	13	£619.87	£116.34	£837.82	£290.89	£314.85	£283.45	£0.00	£2,463.22	£23,417.54	£205.27	21.67%
87.9%	14	£634.78	£119.14	£900.85	£312.78	£337.35	£304.78	£0.00	£2,609.67	£26,027.21	£217.47	22.96%
87.2%	15	£650.00	£121.99	£968.57	£336.29	£361.44	£327.68	£0.00	£2,765.98	£28,793.18	£230.50	24.34%
86.5%	16	£665.54	£124.91	£1,041.31	£361.54	£387.23	£352.29	£0.00	£2,932.82	£31,726.00	£244.41	25.8%
85.8%	17	£681.42	£127.89	£1,119.44	£388.67	£414.82	£378.72	£0.00	£3,110.95	£34,836.95	£259.24	27.37%
85.1%	18	£697.62	£130.93	£1,203.35	£417.81	£444.35	£407.11	£0.00	£3,301.16	£38,138.11	£275.09	29.04%
84.4%	19	£714.15	£134.04	£1,293.46	£449.09	£475.95	£437.60	£0.00	£3,504.29	£41,642.40	£292.02	30.83%
83.7%	20	£731.04	£137.20	£1,390.22	£482.69	£509.76	£470.34	£0.00	£3,721.25	£45,363.65	£310.11	32.74%
Totals		£11,778.95	£2,210.73	£15,218.21	£5,283.81	£5,723.39	£5,148.55	£0.00	£45,363.65	£45,363.65	Ave. ROI:	19.96%

As I've set out above, I'm satisfied that P told Mr R and Mr S that the system would pay for itself by year 13, 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.

This then leads me to consider the performance of the system.

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 R and Mr S. The original MCS certificate and quote sets out that the system is expected to produce 3702 kWh a year. And the benefits shown in the quote were calculated based on that level of generation.

I have looked at Mr R and Mr S's FIT statements and meter reading, and can see that the system, on average, has generated 2,645.69 kWh. This is significantly less than estimated by P at the point of sale, so I'm satisfied that the system isn't performing as expected.

Shawbrook has now explained that the reason the system has underperformed so significantly is because P couldn't install the number of panels on the roof that it initially anticipated, so the power generated has been lower. My understanding is that P refunded

the cost of the three panels it was unable to install but didn't provide Mr R and Mr S with any details of how this would impact their systems ability to generate. Although I think it's apparent that the system would generate less, with fewer panels, given the significant difference between what the system would generate based on the fewer panels, and the estimates on which Mr and Mr S based their decision to purchase the system – I think P ought to have made this clear to them. Shawbrook appears to accept this as Shawbrook has made an offer to put things right.

Shawbrook has now provided an updated MCS certificate which shows what the system actually installed is expected to generate and the system is performing broadly in line with that, so I'm satisfied the system isn't faulty.

However, based on the evidence available to me, I think that P didn't make clear how the system's ability to generate electricity would be impacted by the variations made following the initial sales meeting. And it didn't explain the consequence of this on the benefits it would produce relative to the cost of the loan. I think the estimates made during the sale induced Mr R and Mr S into entering into the contract and knowing these estimates could no longer be realised would have been important to them. Because of this, I think that Shawbrook didn't treat Mr R and Mr S fairly and they have lost out because of this. And this means that Shawbrook should put things right.

Putting things right

In this case, I think fair compensation is trying to make sure that Mr R and Mr S do not suffer a financial loss, which in my view would mean that the solar panel system should generate roughly what was promised via the sales paperwork and the original MCS certificate throughout the original duration of the loan, even if the loan has been repaid early. Shawbrook's offer may already include this, but it hasn't provided a breakdown of how its offer was calculated, so I cannot assess whether it's offer is in line with our usual approach to these types of cases.

So, I think to put things right Shawbrook should:

a) calculate the difference between what the panels have generated as income (through FIT and savings) for Mr R and Mr S 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 R and Mr S

The finance agreement in question was due to end in 2030. To ensure that Mr R and Mr S don't lose out going forward, Shawbrook should then:

c) 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

d) recalculate the "total income savings" for each year going forward until the conclusion of the finance agreement, having applied the percentage reduction identified in c) above

e) pay Mr R and Mr S the difference between the revised amounts calculated in d) above and the "total income savings" set out in the sales paperwork.

I can see Shawbrook has offered £200 compensation for the trouble and upset caused and I think that's a fair offer and Shawbrook should pay this to Mr R and Mr S.

Other

Mr R and Mr S have said they don't believe that Shawbrook carried out sufficient credit checks. Shawbrook has provided details of the assessment it carried out and it doesn't look like Mr R and Mr S have struggled to repay this loan. So, as it doesn't look like the loan was unaffordable, I don't think Shawbrook needs to do anything about this now.

Neither Shawbrook nor Mr R or Mr S have made any comments. 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.

So overall having again carefully considered the evidence provided by all parties in this complaint, I'm satisfied that P made it clear that the system wouldn't be immediately self-funding. However, in this case, I do think P ought to have made clear the consequence of installing fewer panels, mainly, that this would result in the system generating significantly less energy than P had estimated at the point of sale (and the impact of this on the financial returns they can expect). I'm satisfied that Mr R and Mr S relied on the estimates P made during the sale and bought the system on that basis, and the system actually installed was not broadly in line with what was sold to them. So, I think they lost out because of what Shawbrook did, and it should therefore put things right.

Putting things right

In this case, I think fair compensation is trying to make sure that Mr R and Mr S do not suffer a financial loss, which in my view would mean that the solar panel system should generate roughly what was promised via the sales paperwork and the original MCS certificate throughout the original duration of the loan, even if the loan has been repaid early. As explained above, Shawbrook's offer may already include this, but as it hasn't provided a breakdown of how its offer was calculated, I cannot assess whether its offer is in line with our usual approach to these types of cases.

So, I think to put things right Shawbrook should:

- a) calculate the difference between what the panels have generated as income (through FIT and savings) for Mr R and Mr S 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 R and Mr S

The finance agreement in question was due to end in 2030. To ensure that Mr R and Mr S don't lose out going forward, Shawbrook should then:

- c) 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
- d) recalculate the "total income savings" for each year going forward until the conclusion of the finance agreement, having applied the percentage reduction identified in c) above
- e) pay Mr R and Mr S the difference between the revised amounts calculated in d) above and the "total income savings" set out in the sales paperwork.

I can see Shawbrook has offered £200 compensation for the trouble and upset caused. I think that's a fair offer and Shawbrook should pay this to Mr R and Mr S.

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 R and Mr S to accept or reject my decision before 9 November 2023.

Asma Begum
Ombudsman