DRN-3656367

The complaint

Mrs M complains that Shawbrook Bank Limited ("Shawbrook"), has rejected the claim she made under section 75 of the Consumer Credit Act 1974 ("the Act") in relation to a solar panel system she says was misrepresented to her by the supplier.

Mrs M is represented by a claims management company ("the CMC").

What happened

In or around September 2017, Mrs M was 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 her home. After being visited by a representative of P, Mrs M decided to purchase the system and finance it through a 15-year fixed sum loan agreement with Shawbrook. The system was subsequently installed.

In October 2020, the CMC made a claim on Mrs M'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 M to enter into the contract with P. The CMC said the following misrepresentation had been made:

- The financial benefits (including payments from the feed in tariff (FIT) and the savings on energy bills) would exceed the total annual loan repayments within 10 years of installation.

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

The CMC didn't agree with the investigator's view explaining that they didn't think the assumptions used by P in formulating the estimates were correct. The CMC felt the estimated benefits were manipulated to appear higher than they were. In particular, the CMC felt the estimates associated with the optional extras were not correctly formulated, that P hadn't used the average Office of National statistics (ONS) rates for the immediate 10 years preceding the sale and that P ought to have used a self-consumption rate of 50%.

Our investigator explained that overall, we were still satisfied with the assumptions used by P at the time of sale. With regard to the optional extra benefits, there were conflicting evidence on the benefits that could be attributed to optional extras during the time of sale, but we'd assessed P's methods of calculating the voltage optimiser (VO) estimated savings and were satisfied that this was likely fair at the time. And the remaining benefits associated with the other optional extras didn't account for a significant portion of the annual benefit so we didn't think that these would have been a determining factor in inducing Mrs M into the sale.

The CMC subsequently submitted a report by an expert who disagreed with the estimated benefits that P had formulated and suggested lower values would have been correct. As an agreement couldn't be reached, the case has been passed to me for review.

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.

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 Mrs M paid for the system with a fixed sum loan agreement, Shawbrook agrees that section 75 applies to this transaction. This means that Mrs M could claim against Shawbrook, the creditor, for any misrepresentation or breach of contract by P in the same way she 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 M 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 M says that during a sales meeting she was told that the system would be entirely self-financing within 10 years. As Mrs M's loan term was for 15 years, this means she is asserting that benefit amounts would need to have exceeded the cost of the loan during the 10 years.

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 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.

<u>The cost of the system</u>

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

I'm satisfied that Mrs M was told that the cost of the system was £12,336.45. 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 £12,336.45. The total amount of credit is £12,236.45 (after deducting a deposit of £100) and goes on to show that the total amount payable would be £23,100.40.

The quote also set out that the expected monthly loan repayment was £130.75. But I note Mrs M's credit agreement shows her monthly payment is marginally different at £127.78 – but I don't think this difference makes the quote mis-leading.

Having considered all the evidence, including the consumer's recollections, I'm satisfied that she was 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 £12,336.45, it would cost Mrs M more than this as she had decided to pay for it with an interest-bearing loan.

<u>Self-funding from the outset</u>

Mrs M has indicated that she was told her monthly loan repayments would be covered (or exceeded), or 'self-funded' by the FIT payments and savings on energy bills so it would be self-funding within 10 years. 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 M 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	£ 85.00
Generation tariff in year 1	£ 119.63
Export tariff in year 1	£ 73.92
Total income in year 1	£ 193.55

Feed in tariff over 20 years

Assumed rate of RPI	3.04 %
Average generation tariff	£ 0.060
Average export tariff	£ 0.074
Average annual income	£ 285.11

I think that the first of these tables is clear that Mrs M could expect to receive a total FIT income in year one of £193.55, which results in an average monthly income of £16.12. The quote goes on to look at the electricity savings Mrs M could expect from the system. The expected year one electricity savings is £343.24 and, when taking into account the optional extra's chosen by Mrs M the combined income and savings in year one is shown as £1,107.32. 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 £130.75 (which is £1,569 annually). 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 payment and savings on energy bills – as there is a considerable annual shortfall.

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 M entered into with Shawbrook. This table shows the loan as repayable in 180 monthly payments of £130.75. 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 £130.75, to give an average difference between the monthly return from the system and the monthly loan repayment in each year.

180 payments of £130.75 p/m

Yr	Acc. grand total	Est. monthly return	Average monthly repayment diff.
1	£1,107.32	£92.28	£-38.47
2	£1,178.00	£98.17	£-32.58
3	£1,253.51	£104.46	£-26.29
4	£1,334.18	£111.18	£-19.57
5	£1,420.37	£118.36	£-12.39
6	£1,512.49	£126.04	£-4.71
7	£1,610.96	£134.25	£3.50
8	£1,716.22	£143.02	£12.27
9	£1,828.75	£152.40	£21.65
10	£1,949.09	£162.42	£31.67
11	£2,077.78	£173.15	£42.40
12	£2,215.42	£184.62	£53.87
13	£2,362.65	£196.89	£66.14
14	£2,520.16	£210.01	£79.26
15	£2,688.69	£224.06	£93.31

I think the quote clearly sets out the income Mrs M could expect to receive from the system, by way of FIT payments, as well as her expected contractual monthly loan repayments. The table does clearly set out that the overall income she could expect to receive by way of FIT income and any additional savings, would not be immediately sufficient to cover the monthly loan repayments. In fact, the deficit in the first year is shown as almost £40 a month.

This supports my finding above that the consumer wasn't told that the FIT payments and savings would cover the loan repayment. Where it's been made clear that the annual benefits are likely to be significantly less than the annual cost for the first 6 years, I'm not persuaded that P asserted that the system would nevertheless be self-funding within 10 years.

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 she was told that the monthly loan repayments would be covered by the FIT income and additional savings.

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.

<u>Self-funding over a period of time</u>

That said, I do accept that Mrs M was 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 14 the overall benefits that Mrs M could expect to receive would have exceeded the total amount payable under the loan agreement.

Estimated performance over **25** 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	Boiler doctor				
100.0%	1	£119.63	£73.92	£343.24	£204.00	£167.33	£0.00	£0.00	£199.20	£1,107.32	£1,107.32	£92.28	8.98%
100.0%	2	£123.27	£76.17	£368.23	£218.85	£180.71	£0.00	£0.00	£210.77	£1,178.00	£2,285.32	£98.17	9.55%
100.0%	3	£127.01	£78.48	£395.03	£234.78	£195.17	£0.00	£0.00	£223.02	£1,253.49	£3,538.81	£104.46	10.16%
99.8%	4	£130.55	£80.67	£422.73	£251.88	£210.79	£0.00	£0.00	£235.98	£1,332.60	£4,871.41	£111.05	10.80%
99.5%	5	£134.18	£82.91	£452.38	£270.21	£227.65	£0.00	£0.00	£249.69	£1,417.02	£6,288.43	£118.08	11.49%
99.3%	6	£137.91	£85.22	£484.08	£289.88	£245.86	£0.00	£0.00	£264.19	£1,507.14	£7,795.56	£125.59	12.22%
99.0%	7	£141.75	£87.59	£518.02	£310.99	£265.53	£0.00	£0.00	£279.54	£1,603.41	£9,398.97	£133.62	13.00%
98.8%	8	£145.69	£90.02	£554.32	£333.63	£286.77	£0.00	£0.00	£295.79	£1,706.22	£11,105.19	£142.18	13.83%
98.5%	9	£149.74	£92.52	£593.18	£357.92	£309.71	£0.00	£0.00	£312.97	£1,816.04	£12,921.23	£151.34	14.72%
98.3%	10	£153.90	£95.10	£634.74	£383.97	£334.49	£0.00	£0.00	£331.15	£1,933.35	£14,854.58	£161.11	15.67%
98.0%	11	£158.17	£97.74	£679.22	£411.92	£361.25	£0.00	£0.00	£350.39	£2,058.69	£16,913.27	£171.56	16.69%
97.8%	12	£162.56	£100.45	£726.81	£441.91	£390.15	£0.00	£0.00	£370.75	£2,192.63	£19,105.89	£182.72	17.77%
97.5%	13	£167.08	£103.23	£777.73	£474.08	£421.36	£0.00	£0.00	£392.29	£2,335.77	£21,441.66	£194.65	18.93%
97.3%	14	£171.71	£106.10	£832.21	£508.60	£455.07	£0.00	£0.00	£415.08	£2,488.77	£23,930.43	£207.40	20.17%
97.0%	15	£176.48	£109.05	£890.50	£545.62	£491.47	£0.00	£0.00	£439.20	£2,652.32	£26,582.75	£221.03	21.50%
96.8%	16	£181.38	£112.08	£952.86	£585.34	£530.79	£0.00	£0.00	£464.72	£2,827.16	£29,409.91	£235.60	22.92%
96.5%	17	£186.41	£115.18	£1,019.59	£627.96	£573.26	£0.00	£0.00	£491.72	£3,014.12	£32,424.03	£251.18	24.43%
96.3%	18	£191.58	£118.38	£1,090.96	£673.67	£619.12	£0.00	£0.00	£520.29	£3,214.02	£35,638.05	£267.83	26.05%
96.0%	19	£196.89	£121.66	£1,167.37	£722.72	£668.65	£0.00	£0.00	£550.52	£3,427.81	£39,065.86	£285.65	27.79%
95.8%	20	£202.35	£125.03	£1,249.09	£775.33	£722.14	£0.00	£0.00	£582.50	£3,656.44	£42,722.30	£304.70	29.64%
94.5%	21-25	£0.00	£0.00	£7,685.74	£4,810.11	£4,575.42	£0.00	£0.00	£3,461.23	£20,532.50	£63,254.81	£342.21	33.29%
Repair/Replace						£-1,250.00			£-1,250.00				
Totals		**£3,158.22**	**£1,951.48**	**£21,836.06**	**£13,433.37**	**£10,982.69**	**£0.00**	**£0.00**	**£9,390.99**	**£60,754.81**	**£60,754.81**	**Ave. ROI:**	**19.70%**

As I've set out above, I'm satisfied that P told Mrs M 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 her to enter into the contract, and she 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 M. The MCS certificate sets out that the system is expected to produce 2662.87 kWh a year.

I have looked at Mrs M's FIT statements and meter reading and can see what the solar panels are generating on average annually. I'm satisfied that the system is performing at around the expected level of performance.

<u>Assumptions used</u>

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 between 2006 and 2015 to calculate the utility price and RPI inflation and this was set out clearly in the quote. 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 she hasn't been receiving the financial returns she 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 have been correspondingly lower.

As I have explained, the assumptions used by P were based on the information available from the ONS covering 2006 to 2015 and while that may not have been the 10 years immediately preceding the sale, it was made clear what rates were being used. I don't consider it unreasonable for P to have used them as the basis for calculating the potential financial income Mrs M could've expected to receive from the system. I can appreciate that the returns may not have been as high as estimated at the point of sale, but I'm not persuaded that this was due to unreasonable assumptions being used by P at the time Mrs M entered into the contract.

I've also thought carefully about the CMC's comments, especially about the self-consumption rate and the savings associated with the optional extras such as the VO. I've considered everything provided by the CMC but only address the most salient points below.

P says its method of calculating the savings were in line with regulations at the time of sale. 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 and the other optional extras:

- "Savings are dependent on individual circumstances and may be higher or lower than those stated above and are based on the manufacturers own figures."

I think there were a number of reports which found that voltage optimisers could provide various levels of benefit. I think that P's estimated voltage optimiser savings in this case are not outside of a reasonable range even if there is an expert who now thinks it ought to have been lower. It appears to me that P estimated the benefit of the voltage optimiser based on what it knew about the product it was selling, Mrs M's home and how she used electricity, with a clear explanation as to how it was formulated and that it could be different based on consumers' individual circumstances. I am not persuaded that P's estimate of the benefit of the voltage optimiser was unreasonable at the time it was made.

And, as explained above, P has also confirmed they're methods were in line with regulations when the quote was prepared around six years ago. Additionally, as our investigator already explained, the remaining benefits associated with the optional extras didn't form a significant part of the benefit. Mrs M also didn't mention any concerns over the extras in her original complaint – only raising these concerns more recently. So, I'm not satisfied that these were, in any event, a determining factor in her decision to proceed with the sale.

Regarding the self-consumption rate, my understanding is that P tailored the self-consumption rate based on what it knew about the customer and how she used electricity. The CMC has argued that P should've used the "industry standard" self-consumption rate of 50% when calculating the savings. But I don't think it was unreasonable for P to tailor the self-consumption rate based on the information available to it. I've seen it use differing rates for different consumers indicating it was tailoring it to each specific consumer. And I have not seen sufficient evidence to persuade me that the self-consumption rate used by P was unreasonable in this instance.

I've also considered the other points the CMC has made such as P asserting the quotes were checked by another body "EPVS", but that P wasn't a member until 2019. But P says it didn't assert that its methods were checked by EPVS at the time of sale, and it doesn't look like this was mentioned anywhere in this quote. Overall, the CMC's points don't change my view of the complaint.

<u>Summary</u>

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 M 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 refusing to accept this claim.

My final decision

My final decision is that I do not uphold Mrs M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 16 January 2024.

Asma Begum
Ombudsman