

The complaint

Mrs M and Mr M complain about a claim they made to Shawbrook Bank Limited ("Shawbrook") under sections 75 and 140 of the Consumer Credit Act 1974 in respect of a solar panel system and battery.

What happened

In August 2018, Mrs M and Mr M bought a solar panel system and battery ("the system") from a supplier (who I'll call "Z") using two fixed sum loan agreements with Shawbrook, which were repayable over 10 years.

Mrs M and Mr M engaged a claims management company ("the CMC") who sent Shawbrook a letter of claim alleging that Z had misrepresented the system, breached their contract and that Mrs M and Mr M's relationship with Shawbrook was unfair.

The CMC said Z's quote had misleading figures, in particular in the 'putting it all together' table, as follows:

- The voltage optimiser savings were too high, which wasn't supported by industry reports that were available at the time.
- The electricity savings were too high – they should have been based on a self-consumption rate of 50% rather than the 58.63% rate that was used.
- The predicted boiler doctor's savings should be disregarded as there are no independent reports available about the savings it could produce.
- The cost of credit was missing from the table, which didn't fairly reflect the return on investment.

Mrs M also mentioned in her witness statement that her and her husband were told they would make a profit from the system and that it would pay the credit agreements in full by the end of the term. She also said they weren't told about any likely maintenance costs.

Shawbrook didn't provide a response on the merits of the complaint. Our investigator didn't recommend the complaint should be upheld. The CMC didn't provide reasons for disagreeing with our investigator but asked for an ombudsman's decision.

I issued my provisional decision on 28 November 2023, in which I said the following and which forms part of my final decision:

“The CMC has made the claim under sections 75 and 140 of the Consumer Credit Act 1974. I have therefore considered these sections in particular, as well as other relevant law and regulations, regulatory rules, guidance and standards and codes of practice. I’ve also considered, where appropriate, what I consider to have been good industry practice at the relevant times.

I’ve firstly looked at the quote provided by Z to Mr M who signed it at the time. I think this gives important context of what was likely discussed before the purchase of the system. The total basic (or cash price) of the system was in my view clearly set out in the quote and the credit agreements as being £12,588.45. I note that the overall cost to Mrs M and Mr M was in fact more and that’s because they paid for the system with interest-bearing loans. I note also that the quote showed several repayment options, including one over 120 months, with monthly payments of £148.89. The credit agreements taken out by Mrs M and Mr M show that their total monthly payments were £148.89. I think therefore they would have understood from the quote how much the loans would cost them each month. The credit agreements also show the total amounts payable. So, I think the monthly and total overall costs that Mrs M and Mr M would pay for the system were made clear to them before they agreed to buy it.

Mrs M and Mr M have said they were told the total annual benefits of the system would pay for the credit agreements by the end of their term. I’ve considered the quote that was provided by Z as well as Mrs M’s recollections of the meeting with Z’s representative to decide what is most likely to have been said.

There’s a section in the quote with three tables 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 loans that Mrs M and Mr M entered into with Shawbrook. This table shows the loan as repayable in 120 monthly payments of £148.89. For each year of the 10-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 £148.89 to give an average difference between the monthly return from the system and the monthly loan repayment in each year.

120 payments of £148.89 p/m at 7.9%

Yr	Acc. grand total	Average income and savings per month	Potential monthly repayment diff.
1	£1,002.88	£83.57	-£65.32
2	£1,153.82	£96.15	-£52.74
3	£1,223.50	£101.96	-£46.93
4	£1,297.67	£108.14	-£40.75
5	£1,376.62	£114.72	-£34.17
6	£1,460.68	£121.72	-£27.17
7	£1,550.16	£129.18	-£19.71
8	£1,645.45	£137.12	-£11.77
9	£1,746.92	£145.58	-£3.31
10	£1,854.99	£154.58	£5.69

This table shows there would be a deficit between the expected benefits from the system and the required payments under the loans until year ten. Overall, I'm not persuaded that it was likely Z told Mrs M and Mr M that the system would pay for itself within the loan term.

I've gone on to consider the performance of the system as Mrs M and Mr M have mentioned it hasn't performed as sold. The MCS and the quote that Mr M signed set out the system is expected to produce 2,915.30 kWh a year. I have looked at Mrs M and Mr M's FIT statements and can see the system generated 2,895kWh in 2020 and 2,976kWh in 2021. That averages out at 2,935.50kWh so I'm satisfied the system is performing as expected, in terms of energy generation, if not financially. So, the reason Mrs M and Mr M have not seen the expected financial returns is not because the system is defective, but for some other cause.

I have also looked at the assumptions used by Z, including the self-consumption rate, expected annual increase in utility prices and expected annual RPI inflation increase. I am satisfied that Z's method for calculating these is fair and reasonable. Z used Office of National Statistics (ONS) data between 2006 and 2015 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 Z at the point of sale, and I think this explains why Mrs M and Mr M haven't been receiving the financial returns they may have been expecting from the solar panels. The assumptions used by Z were based on the information available from the ONS at the time. And based on this, I don't consider it unreasonable for Z to have used them as the basis for calculating the potential financial income Mrs M and Mr M could have expected to receive from the system. So, whilst I can appreciate the returns may not have been as high as estimated at the point of sale, I'm not persuaded this was due to unreasonable assumptions being used by Z at the time.

I'd also add that my understanding is that the self-consumption rate used to estimate the electricity savings was based on Mrs M and Mr M's electricity usage and was tailored to their circumstances. The CMC has said Z used a self-consumption rate of 58.63%. I'm aware of other examples where Z used a self-consumption rate that was higher. So, I don't find Z was being unreasonable here.

Likewise, I understand the voltage optimiser was only recommended following a test of the supply voltage at Mrs M and Mr M's property. And the estimated benefits of the voltage optimiser were then tailored based on this information and what Z knew about how they used electricity and the product they were selling. So, again, I don't think this was unreasonable.

I note the CMC argues the boiler optimiser savings aren't supported by any reports or other evidence. So, they say this should be viewed as being "too good to be true". However, as with my comments on the voltage optimiser, Z's estimate seems to be based on what it knew about the product it was selling. So, I don't think there is sufficient evidence for me to conclude that its estimate for the boiler optimiser savings were unreasonable.

I'm aware that Z's methods were checked by an industry body, who is better qualified than me to judge whether the assumptions were reasonable at that time. So, I don't think I can reasonably conclude that, at the time of sale, Z used unreasonable assumptions when calculating the potential savings. I do not think it is a misrepresentation if the savings achieved do not match the estimates given at the time of sale, where those estimates were reasonable.

I've considered the CMC's comments about the quote not including the cost of credit in the 'putting it all together' table. Mrs M and Mr M's quote didn't have a 'putting it all together' section although it did have a section headed 'your savings and earnings summary'. I agree the section would have been clearer if the table included the cost of credit. But the quote did have separate sections where finance options were set out and I find these were clear and easy to understand. Overall, I'm satisfied that Mrs M and Mr M knew what they were paying for the system, including the cost of credit as shown on the credit agreements so they could compare this to the estimated benefits before they decided to buy the system. In addition, the repayments table I've included above did incorporate the cost of credit into this.

Finally, I've considered Mrs M's comments in her witness statement about maintenance. I don't think it's likely Z's salesman would have told her the system would require no maintenance over its estimated lifespan of 25 years. It's possible the salesman did not tell her during the meeting that the inverter would need to be replaced, but that is not the same thing as a misrepresentation. I also note that the quote says, in a section titled "Inverter": "The Inverter is the one part of PV system that has a higher chance of failure and may require your attention within the 25 years." So, I don't uphold this complaint point.

In summary, my provisional findings are that there was no misrepresentation or breach of contract on the part of Z. So, Shawbrook doesn't need to do anything in respect of the section 75 claim. And I think it's unlikely a court would find there was an unfair relationship between Shawbrook and Mrs M and Mr M due to the way Z sold the system to them.

My provisional decision

For the reasons I've set out above, I don't uphold this complaint".

I asked all parties to send me any further evidence or comments they wanted me to consider. Mrs M and Mr M said they were deeply disappointed by my decision but had nothing further to add. Shawbrook didn't reply.

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.

As I've not been given anything further to consider since my provisional decision, I see no reason to depart from this. So, for the reasons I've given in my provisional decision which I have set out above, I won't be upholding this complaint.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and Mr M to accept or reject my decision before 2 February 2024.

Daniel Picken
Ombudsman