DRN-4496281

The complaint

Mrs J complains that Shawbrook Bank Limited ("Shawbrook"), has rejected the claim she made under sections 75 and 140 and of the Consumer Credit Act 1974 ("the Act") in relation to a solar panel system with battery, voltage optimiser, boiler doctor, and heating control ("the system")

What happened

In May 2017, Mrs J bought the system from a supplier (which I'll call "P") using a fixed sum loan agreement with Shawbrook Bank Limited, which was repayable over 15 years.

In September 2021, Mrs J engaged a claims management company ("the CMC"), which sent Shawbrook a letter of claim alleging that P had misrepresented the system, breached its contract with Mrs J, and that Mrs J's relationship with Shawbrook was unfair on her because:

- There were misleading figures in the quote – specifically the "putting it all together" table, which had the following issues:
    - The voltage optimiser savings were too high, which was not supported by industry reports that were available at the time.
    - The electricity savings were too high – they should've been based on a self-consumption rate of 50% (the industry standard), rather than the 75% self-consumption rate that was used.
    - The cost of credit was missing from the table, distorting the return on investment to make the system more attractive.
- The supplier had a predilection for unscrupulous behaviour illustrated by some other cases where inflation data had fraudulently or deliberately been manipulated.

Mrs J also mentioned in her witness statement that she was told the savings and income from the system would cover the loan repayments from the start. She realised from reading the quote shortly after the meeting that the quote did not say the system was self-funding. And shortly after installation that the benefits of the system did not cover the monthly loan repayments.

Shawbrook did not uphold the claim and the CMC referred a complaint to the Financial Ombudsman Service about this. Our investigator considered the matter and thought the complaint should be upheld. Shawbrook disagreed and provided some comments from the

supplier, including that Mrs J delayed applying for Feed-In Tariff ("FIT") payments for over six months, so missed out on some income that she would've otherwise received.

Because the investigator has been unable to resolve the complaint, I've been asked to make a decision. I issued a provisional decision explaining that I was not planning to uphold the complaint and giving Mrs J and Shawbrook the opportunity to respond with anything further

they wanted me to take into account when making my final decision.

Shawbrook did not respond by the deadline given. Mrs J's representative responded to say that they accepted my provisional decision. So, this final decision is in line with that, and I do not uphold this complaint.

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

I have the power to consider whether Shawbrook's failure to uphold the claim was fair and reasonable. In doing so I must 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.

The CMC has made the claim under sections 75 and 140 of the Act. So, I have considered sections 75 and 140 of the Act, plus Section 56, since that says that the creditor can be held liable for what the supplier has said to the consumer prior to them taking out the credit agreement.

I have read all of the CMC's and Shawbrook's submissions and taken all of these into account when making my decision.

The quote

I'm satisfied that the quote was provided to Mrs J during the sales meeting. It was signed by her at that time. She has also confirmed receiving a copy during the meeting and reading it afterwards. This prompted some concerns, which she emailed the supplier about. Despite receiving no response, Mrs J says she assumed what she'd been told – that the system would be self-funding, was accurate.

With this in mind, including that Mrs J was not sufficiently concerned by the contents of the quote to pursue the matter at the time, I think the quote provides important evidence of what was likely discussed before Mrs J agreed to the purchase.

The basic price and overall cost of the system

The basic (or cash) price of the system was set out clearly in the quote and the credit agreement as £14,500.00. However, the overall cost to Mrs J was more, due to her paying for the system using an interest-bearing loan.

The quote showed several repayment options, including one over 180 payments of £154.93 per month. This was 11p per month more than the actual amount on the credit agreement. But I think Mrs J would've understood from the quote roughly how much the loan would cost per month.

The credit agreement clearly sets out that the loan was repayable through 180 monthly payments of £153.82. It shows the total amount payable would be £27,887.60. So, I think that the monthly and total overall cost that Mrs J would pay for the system was made clear to her when she agreed to buy it.

Allegation – the voltage optimizer saving contradicts reports available at the time of sale and

was beyond the range of reasonableness

The CMC has suggested the estimated voltage optimiser savings were too high, given various reports that were available at the time. However, I understand that P's method of calculating the savings was approved by an industry body, which is more qualified than I am to know if it was reasonable at that time.

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:

- "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. Considering those reports, I think that P's estimated voltage optimiser savings in this case are not outside of a reasonable range.

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 J's home and how she used electricity. I am not persuaded that P's estimate of the benefit of the voltage optimiser was unreasonable.

Allegation – The electricity savings were too high – they should've been based on a self-consumption rate of 50% (the industry standard), rather than the 75% self-consumption rate that was used

To calculate the savings from the solar panels, P used a self-consumption rate of 75%. Self-consumption rate is the proportion of electricity generated by the solar panels that P assumed that Mrs J could use herself, rather than exporting it to the grid. 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. And I have not seen sufficient evidence to persuade me that the self-consumption rate used by P was unreasonable in this instance.

I understand P's methods were checked by an industry body before P started using them, and no objection to P's methods was raised at that time. So, I think that, for the time when the quote was prepared, I can't reasonably conclude that the self-consumption rate was unreasonable.

The electricity savings from the solar panels were based on reasonable assumptions about the amount of electricity generated by the system and the self-consumption rate. So, I don't think those savings estimates were a misrepresentation. That remains the case even if the savings have not in fact been as high as estimated.

The savings will be dependent upon how electricity is used in the home and that is beyond P's control. The quote also included the following clarification in the section about electricity bill savings – "The amounts saved will depend on the amounts used." So, I don't think the estimated savings were presented as being guaranteed, nor do I think they were a contractual term.

Allegation - the cost of credit was missing from the "putting it all together" table, distorting the

return on investment to make the system appear more attractive

The “putting it all together” table would have been clearer if the table had included the cost of credit. However, I must consider the sale as a whole, not just one table in one of the documents that was provided at the time of sale. Having done so, I’m satisfied that Mrs J knew what she was paying for the system, including the cost of credit. This was shown on the credit agreement. So, she could compare this to the estimated benefits before deciding to buy the system.

In addition to this, the “repayments” table did incorporate the cost of credit into its illustration of the benefits of the system. It showed the annual benefit would not exceed the annual loan repayments until year 4.

The “estimated performance” table also showed it would be about 12 years before the overall benefits of the system exceeded the total amount payable under the loan agreement.

Allegation - the supplier had a predilection for unscrupulous behaviour illustrated by some other cases where inflation data had fraudulently or deliberately been manipulated

The CMC has said in 10% of cases it had seen against P the inflation data used did not match the underlying inflation data the quote referred to. This does not strike me as a systemic issue which would lead me to think that P misled customers in every case.

It appears likely to have been a result of human error rather than fraudulently or deliberately done to mislead. Some of those errors resulted in a lower inflation rate being used – thereby making the potential benefits of the system appear less than would’ve been the case if no error had occurred, which would make the system less attractive to customers, not more.

In this case there is no suggestion that the inflation rate used didn’t match the underlying data the supplier referred to. So, there was no detriment to Mrs J in this case. And the quote warned that inflation may be higher or lower than the rate used.

I think P’s method for calculating an assumed inflation rate was reasonable. And I don’t think it was a breach of contract or misrepresentation just because actual inflation has not matched P’s assumption.

Allegation – Mrs J was told the savings and income from the system would cover the loan repayments from the start

I’m not persuaded that it is likely that Mrs J was told this. The “repayments” table mentioned above directly compared the benefits of the system with the illustrative monthly loan repayments. This showed that the estimated benefits of the system would be less than the loan repayments until four years after installation.

The “estimated benefits over 25 years” table showed the total benefits would not exceed the total payable under the credit agreement until about 12 years. This allowed Mrs J to compare her loan repayments with the annual benefit shown for each year.

Elsewhere the quote also showed the total first year benefit, which was much less than the annual loan repayments.

Mrs J may have been told the system was self-funding overall since it was projected to benefit her by more than the loan repayments over 25 years.

Summary

I have not seen evidence that persuades me that P sold the system in a way that was not fair or clear, or in a way that was misleading. Or that undue pressure was applied to Mrs J.

I think the information provided to Mrs J before she agreed to the purchase showed the cost and expected benefits of the system based on reasonable assumptions. The expected benefits were set out over 25 years, with warnings that those benefits were not guaranteed. I think it is likely that this was discussed with Mrs J before she agreed to the purchase.

With this in mind, I don't think Shawbrook did anything wrong when not upholding Mrs J's Section 75 claim.

In summary, my findings are that:

- There was no misrepresentation or breach of contract on the part of P. As such, I don't think Shawbrook would have any liability under section 75 of the Act.

- I think it is unlikely that a court would find that there was an unfair relationship between Shawbrook and Mrs J due to the way P sold the system to her.

- Shawbrook did not act unreasonably by not upholding Mrs J's claim or her complaint.

My final decision

For the reasons I've explained, I do not uphold this complaint.

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

Phillip Lai-Fang
Ombudsman