DRN-3490040

The complaint

Mrs D complains that Shawbrook Bank Limited ("Shawbrook") has rejected the claim she made under sections 56 and 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 D is represented by a claims management company ("the CMC").

Background

In or around December 2015, Mrs D and her husband ("Mr D") 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 and Mrs D decided to purchase the system and finance it through a 15 year fixed sum loan agreement with Shawbrook. Mrs D was the sole borrower under the loan agreement. The system was subsequently installed.

In January 2020 the CMC made a claim to Shawbrook on Mrs D's behalf under section 75 of the Act. 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 Mrs D to enter into the contract with P. The CMC said the following misrepresentations had been made:

- the total cost of the system was documented as £8,700 to mislead Mrs D, as when the interest was added the total cost was actually £17,199 (*sic*);
- the system would generate free electricity;
- the system would be self-funding and would pay for itself within nine years;
- the feed in tariff (FIT) and savings on her electricity bills would provide enough income to cover the monthly loan agreement payments; and
- the system would not require maintenance (but in fact the inverter would have to be replaced during the system's 25-year lifespan, at a cost of £1,000).

The CMC also alleged that P was in breach of contract, because:

- it had failed to register the system to receive FIT payments; and
- the panels had been installed on a north-facing roof.

Shawbrook didn't agree the system had been misrepresented to Mrs D or that there were any other reasons for the claim to be upheld.

One of our adjudicators looked into what had happened. Having considered all the information and evidence provided, our adjudicator didn't think that P had misrepresented the system to Mrs D and found no reason to uphold the complaint.

The CMC didn't agree with the adjudicator's view, emphasising that it would take the system over 25 years to pay for itself.

As an agreement couldn't be reached, the case has been passed to me for review.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I do not uphold it. I will explain why.

<u>Relevant considerations</u>

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 sections 56 and 75 of the Act.

Section 75 provides protection for consumers for goods or services bought using credit. As Mrs D paid for the system with a fixed sum loan agreement, Shawbrook agrees that section 75 applies to this transaction. This means that Mrs D 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 D 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 her loss.

<u>What happened?</u>

If there is a dispute about what happened, I must decide on the balance of probabilities – that is, what I consider to have been most likely to have happened, given the evidence that is available and the wider surrounding circumstances.

Mrs D says that during a sales meeting she was 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 versions of the solar quote, titled "Your Personal Solar Quotation" and "Getting Started". I've considered these, along with Mrs D's testimony and recollection of the sales meeting, to decide on balance what is most likely to have happened.

The quotes are detailed documents that set out key information about the system, the expected performance, financial benefits and technical information. P, via Shawbrook, has told this service that the quote formed a central part of the sales process and the representative of P would have discussed this in detail with Mr and Mrs D, explaining any benefits of the system, prior to them agreeing to enter into the contract. Both versions have been signed by Mr or Mrs D.

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 Mrs D's version of events, when considering if there have been any untrue statements of fact.

The credit agreement sets out the amount being borrowed (*i.e.* the cash price of the system), the interest to be charged, the total amount payable, the term of the loan and the contractual monthly repayments.

<u>Cost of the system</u>

The CMC has said that the cost of the system was documented as £8,700, and that this was done to mislead Mrs D as this figure did not include any interest associated with the loan and so hid the true cost of the system, £17,199.

I'm satisfied that Mrs D was told that the overall cost of the system was actually £17,010. The credit agreement makes it clear that the cash price of the system is £8,700. It sets out a clear breakdown of the deposit (nil), the amount of credit provided (£8,700), the total charge for credit (£8,310), and the total amount repayable, which is expressly stated to be £17,010. It can easily be seen that this is made up of £8700 plus £8,310.

(It also gives the monthly payments, £94.50, the interest rate, 9.90%, and APR, 10.36%.)

Having considered all the evidence, including Mrs D'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 it would cost Mrs D more than the cash price as she had decided to pay for it with an interest-bearing loan.

<u>FIT registration</u>

The quote entitled "Your Personal Solar Quotation" makes it clear (in a section titled "Feed in Tariff (FIT)") that it is the customer's responsibility to register the system for FIT payments. So on balance, I don't think it is likely or plausible that the salesman told Mr and Mrs D otherwise.

<u>Installation</u>

No evidence has been provided to corroborate Mrs D's claim that the panels were installed on a north-facing roof. Both quotes say that the panels will be facing south. Another document (untitled but headed with "**To be completed by the installation team" in red) states that the panels were installed on the front roof. On looking up Mrs D's address on Google Maps, it is apparent that the front of the house faces south. So on the balance of probabilities, I am satisfied that the panels have been installed facing south.

<u>Costs versus benefits</u>

Mrs D has said that she was told her monthly loan repayments would be covered, or "self-funded" by the FIT payments and the savings on her energy bills. I've considered the quote that was provided by P as well as Mrs D's recollections of her 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 D 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	£	391.16
Export tariff in year 1	£	78.85
Total income in year 1	£	470.01

Feed in tariff over 20 years

Assumed rate of RPI	3.20	%
Average generation tariff	£	0.165
Average export tariff	£	0.067
Average annual income	£	645.42

I think that the first of these tables is clear that Mrs D could expect to receive a total FIT income in year one of £470.01, which results in an average monthly income of £39.17. I'm satisfied that the same document set out that there would be a monthly loan repayment due of £92.96. As a result, I'm not able to conclude that Mrs D was told that the monthly loan repayments would be covered by the FIT payments alone.

The quote goes on to look at the electricity savings Mrs D could expect from the system. The expected year one electricity savings is £264.01 and, when taking into account the optional extras chosen by Mrs D, the combined income and savings in year one is shown as £833.98. This is shown in a table titled "Putting it all together".

There's a section headed "Repayments" with three tables 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 D entered into with Shawbrook. This table shows the loan as repayable in 180 monthly payments of £92.96. (This is incorrect; the loan agreement gives the correct monthly figure of £94.50, but the difference – £1.54 – is too small to affect the following observations.) 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 £92.96, to give an average difference between the monthly return from the system and the monthly loan repayment in each year. This gives a negative figure for the first six years of the loan, meaning that the system would not make enough money to cover the loan payments for six years.

180 payments of £92.96 p/m

Yr	Acc. grand total	Est. monthly return	Average monthly repayment diff.
1	£833.98	£69.50	£-22.74
2	£879.45	£73.29	£-18.95
3	£927.94	£77.33	£-14.91
4	£979.69	£81.64	£-10.60
5	£1,034.93	£86.24	£-6.00
6	£1,093.95	£91.16	£-1.08
7	£1,157.01	£96.42	£4.18
8	£1,224.44	£102.04	£9.80
9	£1,296.57	£108.05	£15.81
10	£1,373.76	£114.48	£22.24
11	£1,456.40	£121.37	£29.13
12	£1,544.92	£128.74	£36.50
13	£1,639.78	£136.65	£44.41
14	£1,741.48	£145.12	£52.88
15	£1,850.54	£154.21	£61.97

I think the quote clearly sets out the income Mrs D could expect to receive from the system, by way of FIT payments and savings, as well as her expected contractual monthly loan repayments. Whilst I accept that the table doesn't simply compare the FIT income and savings to the monthly loan repayments, it 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. (This supports my finding above that Mrs D wasn't told that the FIT payments alone would cover the loan repayments.) I've carefully thought about Mrs D'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 savings.

<u>Self-funding</u>

I'll now consider whether P told Mrs D 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 (notwithstanding the £1.54

discrepancy in the monthly payments). On balance I'm also satisfied that the salesperson referred to the table at the meeting.

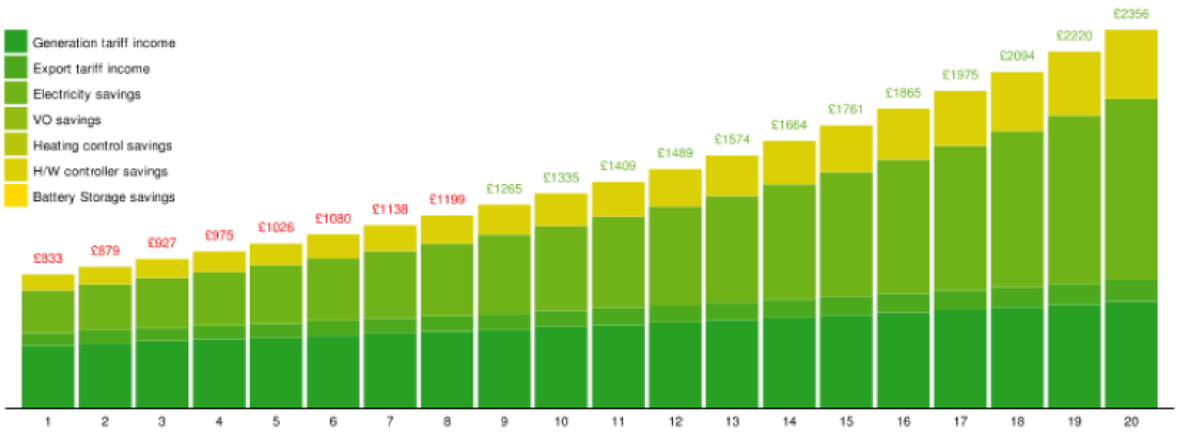
As a result, I consider the salesperson did not make a representation that the system would be self-funding from the outset. Rather, I find that the salesperson went through the quote at the meeting which sets out there would be a difference between the expected income and the monthly loan repayments.

I'm of the view that this makes it clear that the system wouldn't be self-funding from the start. I think the quote is clear that there would be a difference between the expected income and monthly loan repayments.

That said, I do accept that Mrs D was told by P that the system would be self-funding over a certain period of time.

The "Key Facts" page of the quote has a graph detailing the estimated performance over 20 years. This shows that it would take 9 years for the overall benefits that Mrs D could expect to receive to match the cash price of the system.

Performance Visualisation



I think the 9-year estimated payback time is clear and prominent, being in large print on page 2, and so I don't consider that it needed further explaining.

A later page of the quote has a table detailing the estimated performance of the system over 20 years. This shows that during year 15 the overall benefits that Mrs D could expect to receive would reach the total amount payable under the loan agreement, £17,010.

		Income			Energy saving optional extras *							
Panel degradation	Yr	Generation Tariff	Export Tariff	Elec. savings	VO savings	Heating control	H/W controller	Battery storage	Total income savings	Acc. grand total	Est. monthly return	Ann. ROI
95.6%	14	£563.18	£113.52	£716.76	£0.00	£0.00	£271.38	£0.00	£1,664.85	£16,801.95	£138.73	19.14%
95.2%	15	£578.77	£116.67	£773.43	£0.00	£0.00	£292.84	£0.00	£1,761.71	£18,563.67	£146.81	20.25%

As I've set out above, I'm satisfied that P told Mrs D that the system would pay for its cash price in 9 years, and for the loan in about 15 years, as supported by the graph and the table above, which were 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, then that could amount to a misrepresentation.

The CMC says it is untrue because it will actually take 25 years for the system to pay for the loan. So I've gone on to consider the performance of the system and whether this is in line with the contract between P and Mrs D.

Performance

Since the system has not been registered for FIT payments, and no electricity bills have been provided, it has not been possible for me to assess the system's performance. I have seen no evidence that the system is not performing as it should. (Obviously Mrs D has not seen the financial returns she was expecting because she is not receiving FIT payments. So I cannot infer that it is because the system is defective or was not properly installed.)

Just in case the savings on Mrs D's electricity bills have indeed been less than was estimated at the point of sale – although I have seen no evidence to verify this – I have 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 is fair and reasonable.

P 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 P at the point of sale, and I think this explains why Mrs D 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 at the time. 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 Mrs D could have 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 Mrs D entered into the contract.

The inverter

I don't think it is likely that the salesman would have told Mrs D that the system would require no maintenance over its estimated lifespan of 25 years. It is possible that 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.

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 Mrs D to enter into the contract for the system, and I have found no other reason to uphold this complaint.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 23 June 2022.

Richard Wood
Ombudsman