DRN-3494529

The complaint

Ms M complains that Shawbrook Bank Limited ("Shawbrook") has rejected the claim she made under sections 56, 75 and 140A of the Consumer Credit Act 1974 ("the Act") in relation to a solar panel system she says was misrepresented to her by the supplier.

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

Background

In or around July 2015, Ms 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, Ms 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 September 2020 the CMC made a claim to Shawbrook on Ms M'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 Ms M 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 £9,860 to mislead Ms M, as when the interest was added the total cost was actually £19,278;
- the system would generate free electricity;
- the system would be self-funding;
- 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 said that P's quote did not take into account the fact that the panels would deteriorate over time, and so the figures in the quote were misrepresentations.

The CMC also complained that some of the solar panels had been installed facing north, and P never registered the system for FIT payments, and that these were breaches of contract.

Shawbrook issued a final response and explained that it didn't agree the system had been misrepresented to Ms M or that there were any other reasons for the claim to be upheld. However it offered £200 compensation for its delay in responding to the complaint.

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 Ms M and found no reason to uphold the complaint.

The CMC didn't agree with the adjudicator's view. It pointed out that it would take 18 years for Ms M to begin to make a profit from the system, when the loan term was only 15 years.

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.

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 sections 56 and 75 of the Act.

Section 75 provides protection for consumers for goods or services bought using credit. As Ms M paid for the system with a fixed sum loan agreement, Shawbrook agrees that section 75 applies to this transaction. This means that Ms 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 Ms M and P, as the supplier, are deemed to have been conducted by P as an agent of Shawbrook.

Section 140A is about unequal relationships between the parties to a credit agreement. In this case, the CMC argues that the alleged misrepresentation of the system and the alleged breach of contract gave rise to an unfair relationship to Ms M's detriment.

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.

What happened?

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.

Ms M 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 parties. These include the credit agreement and solar quote, titled "Your Personal Solar Quotation". I've considered these, along with Ms M's 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 Ms M, explaining any benefits of the system, prior to her 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 Ms M'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>

On balance, I'm satisfied that Ms M was told that the overall cost of the system was £19,278. The credit agreement makes it clear that the cash price of the system is £9,860. It sets out a clear breakdown of the amount of credit provided, the total charge for credit, the monthly payments, the interest rate, the APR, and the total amount repayable, £19,278.

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

<u>FIT payments and savings</u>

Ms M 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 Ms M'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 Ms 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

Generation tariff in year 1	£	477.71
Export tariff in year 1	£	89.66
Total income in year 1	£	567.37

I think that the first of these tables is clear that Ms M could expect to receive a total FIT income in year one of £567.37, which results in an average monthly income of £47.28. I'm satisfied that the same document set out that there would be a monthly loan repayment due of £104.35. As a result, I'm not able to conclude that Ms M 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 Ms M could expect from the system. The expected year one electricity savings is £191.99 and, when taking into account the optional extras chosen by Ms M, the combined income and savings in year one is shown as £1088.11. 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 Ms M entered into with Shawbrook. This table shows the loan as repayable in 180 monthly payments of £104.35. (This is incorrect; the loan agreement gives the correct monthly figure of £107.10, but the difference – £2.85 – is too small to affect the following observations very much.) 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 £104.35, 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 three years of the loan, meaning that the system would not make enough money to cover the loan payments until year four. (In fact, with loan payments of £107.10 it would actually have taken an extra year.)

180 payments of £104.35 p/m

Yr	Acc. grand total	Est. monthly return	Average monthly repayment diff.
1	£1,088.11	£90.68	£-13.67
2	£1,149.40	£95.78	£-8.57
3	£1,214.84	£101.24	£-3.11
4	£1,284.74	£107.06	£2.71
5	£1,359.43	£113.29	£8.94
6	£1,439.28	£119.94	£15.59
7	£1,524.69	£127.06	£22.71
8	£1,616.08	£134.67	£30.32
9	£1,713.91	£142.83	£38.48
10	£1,818.67	£151.56	£47.21
11	£1,930.91	£160.91	£56.56
12	£2,051.21	£170.93	£66.58
13	£2,180.18	£181.68	£77.33
14	£2,318.52	£193.21	£88.86
15	£2,466.94	£205.58	£101.23

I think the quote clearly sets out the income Ms M 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 Ms M wasn't told that the FIT payments alone would cover the loan repayments.) I've carefully thought about Ms M'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.

However, according to the table, during the three years of shortfall Ms M would only spend about £300 in additional costs, in small monthly payments, before the returns from the system would begin to cover the loan payments. (Using the correct loan payment of £107.10 increases this figure to about £440 over four years.) She may have thought this was a worthwhile initial outlay in order to profit in the long term.

<u>Self-funding, and panel deterioration</u>

I'll now consider whether P told Ms M 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.

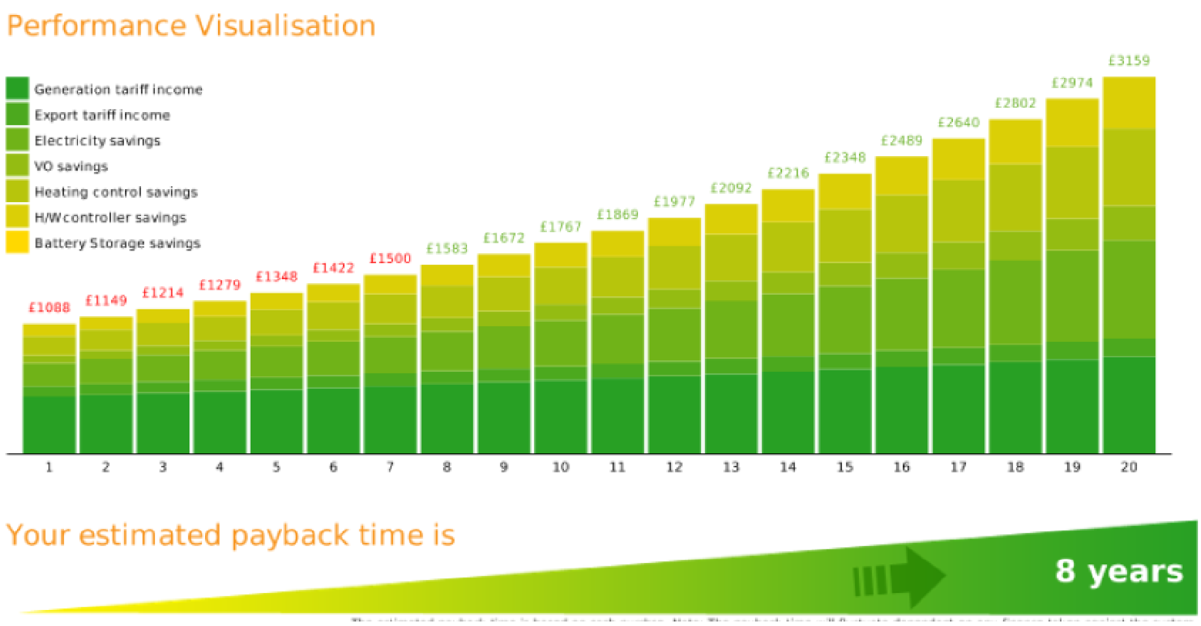
Bearing in mind my finding on the central role the quote played in the sales meeting, I've considered the table above which sets out the estimated average monthly income from the system, and the effect on that income of subtracting the monthly loan repayment. I'm satisfied that the table is clear and easy to understand (notwithstanding the £2.85 discrepancy in the monthly payments). That section of the quote has been signed by Ms M, so I'm satisfied that P did enough to bring it to her attention. 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 Ms M 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 8 years for the overall benefits that Ms M could expect to receive to match the cash price of the system.



I think the 8-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. This figure also appears in the "Putting it all together" section.

A later page of the quote has a table detailing the estimated performance of the system over 20 years. This also shows that during year 8 the overall benefits that Ms M could expect to receive would reach the cash price of the system, £9,860.

		Income			Energy saving optional extras *							
Panel degredation	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
100.0%	1	£477.71	£89.66	£191.99	£66.67	£161.28	£100.80	£0.00	£1,088.11	£1,088.11	£90.68	11.04%
98.4%	7	£568.52	£106.70	£306.17	£106.31	£251.84	£160.75	£0.00	£1,500.29	£9,002.81	£125.03	15.21%
98.0%	8	£584.43	£109.69	£330.49	£114.76	£270.88	£173.51	£0.00	£1,583.76	£10,586.57	£131.98	16.06%

(The same table shows that the total amount payable under the loan agreement would be reached by the end of year 13, although that amount is not shown in the quote but only in the loan agreement.)

This table also shows, in the first column (which is titled "Panel degradation"), how the panels will reduce in efficiency year on year. This is shown as a percentage which reduces each year, ending in year 20 at 92.3%. The quote also says (on page 4) that the 25 year warranty covers the panels for up to 90% of their original output. So I'm satisfied that the quote did take into account that the panels would deteriorate over time, and that this would have been factored into the table, and into the quote generally.

As I've set out above, I'm satisfied that P told Ms M that the system would pay for its cash price in 8 years, and for the loan in about 13 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 18 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 Ms M.

<u>Performance and FIT registration</u>

The MCS certificate and quote set out that the system is expected to produce 3,697 kWh a year. I have looked at Ms M's meter reading and can see that her system, on average, has generated 3,489 kWh a year. This is slightly less than estimated by P at the point of sale (94%), so I'm satisfied that the system is performing as expected.

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 is fair and reasonable.

P used Office of National Statistics (ONS) data between 2005 and 2014 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 Ms M 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 Ms M 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 Ms M entered into the contract.

Another reason why Ms M is not receiving the financial returns she expected is because her system was never registered for FIT payments. That is not P's fault. The quote clearly explains that it was her responsibility to register with the FIT scheme.

<u>The inverter</u>

I don't think it is likely that the salesman would have told Ms M 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.

<u>Installation</u>

No evidence has been provided to corroborate Ms M's claim that some panels were installed facing north. The contract states that they would be oriented facing roughly south (30 degrees off due south), and there appears to be no reason why this should not have been done. I have viewed the property on Google Maps, and although it is not possible to tell which way the panels are facing, the property does appear to have a flat roof, so it is not a case of the panels having to be installed on a sloping roof which faces north. On this evidence, I am not satisfied that any panels are facing the wrong way.

<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 Ms M 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.

I leave it to Ms M to decide whether to accept Shawbrook's offer of £200 compensation for its delay in responding to her complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D to accept or reject my decision before 29 June 2022.

Richard Wood
Ombudsman