DRN-3534723

The complaint

Mrs C and Mr R complain that Shawbrook Bank Limited ("Shawbrook") has rejected the claim they made under sections 56 and 75 of the Consumer Credit Act 1974 ("the Act") in relation to a solar panel system they say was misrepresented to them by the supplier.

Mrs C and Mr R are represented by a claims management company ("the CMC").

Background

In or around May 2017, Mrs C and Mr R 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, Mrs C and Mr R decided to purchase the system and finance it through a ten year fixed sum loan agreement with Shawbrook. The system was subsequently installed.

In July 2020 the CMC made a claim to Shawbrook on Mrs C and Mr R'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 C and Mr R 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 £8,800 (*sic*) to mislead Mrs C and Mr R, as when the interest was added the total cost was actually £13,666;
- the system would generate free electricity;
- the system would be self-funding; and
- the feed in tariff (FIT) and savings on their electricity bills would provide enough income to cover the monthly loan payments.

Shawbrook issued a final response and explained that it didn't agree the system had been misrepresented to Mrs C and Mr R 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 Mrs C and Mr R and found no reason to uphold the complaint.

The CMC didn't agree with the adjudicator's view for the following reasons:

- the adjudicator had based his opinion on a copy of P's quote dated May 2017, but this was the wrong version, and Mrs C and Mr R had now provided (via the CMC) another version dated August 2017;
- whichever version of P's quote is referred to, it states that Mrs C and Mr R would have to contribute their own money towards the loan repayments for eight years, but this had not been mentioned during the sales meeting, and so they had thought that the system would cover the loan payments from the outset.

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 Mrs C and Mr R paid for the system with a fixed sum loan agreement, Shawbrook agrees that section 75 applies to this transaction. This means that Mr R could claim against Shawbrook (the creditor) for any misrepresentation or breach of contract by P in the same way they 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. However, since the contract to purchase the system only refers to Mr R being a party to the contract, and not Mrs C, I don’t think Mrs C could bring a claim against P for misrepresentation, and so it follows that she cannot bring a like claim against Shawbrook under section 75.

Section 56 is also relevant. This is because it says that any negotiations between Mrs C and Mr R 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 – 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 C and Mr R say that during a sales meeting they were 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 two versions of the solar quote, both titled “Your Personal Solar Quotation”, and dated May and August 2017. I’ve considered these, along with Mrs C and Mr R’s testimony and recollection of the sales meeting, to decide on balance what is most likely to have happened.

The August quote named a third party as the customer and gave a different address for the installation of the system, so I have ignored it.

The May 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 Mrs C and Mr R, explaining any benefits of the system, prior to them agreeing to enter into the contract.

Having thought carefully about the available evidence, I'm satisfied that on balance the May 2017 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 C and Mr R'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.

Cost of the system

On balance, I'm satisfied that Mrs C and Mr R were told that the overall cost of the system was more than its cash price. The credit agreement makes it clear that the cash price is £8,700 (not £8,800). It sets out a clear breakdown of the deposit (£100), the amount of credit provided (£8,600), the total charge for credit (£4,966), the monthly payments (£113.05), and the total amount repayable, which was £13,666. I think this is easy to follow.

Having considered all the evidence, including Mrs C and Mr R's recollections, I'm satisfied that they were told that there would be a monthly loan repayment due. The quote makes this clear too, 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 C and Mr R more than the cash price as they had decided to pay for it with an interest-bearing loan.

FIT payments and savings

Mrs C and Mr R have said that they were told their monthly loan repayments would be covered, or "self-funded" by the FIT payments and the savings on their energy bills. I've considered the quote that was provided by P as well as Mrs C and Mr R'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 C and Mr R 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	£	70
Generation tariff in year 1	£	93.42
Export tariff in year 1	£	56.75
Total income in year 1	£	150.17

I think that the first of these tables is clear that Mrs C and Mr R could expect to receive a total FIT income in year one of £150.17, which results in an average monthly income of £12.51. I'm satisfied that the same document set out that there would be a monthly loan repayment due of £113.18. As a result, I'm not able to conclude that Mrs C and Mr R were 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 C and Mr R could expect from the system. The expected year one electricity savings is £263.51 and, when taking into account the optional extras that were chosen, the combined income and savings in year one is shown as £802.48. This is shown in a table titled “Putting it all together”.

Putting it all together

Total income & savings in year 1 £ 802.48

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 120 months as this is the length of the loan that Mrs C and Mr R entered into with Shawbrook. This table shows the loan as repayable in 120 monthly payments of £113.18. (This is incorrect; the loan agreement gives the correct monthly figure of £113.05, but the difference – 13p – is too small to be misleading.) For each year of the ten 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, 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 eight years of the loan, meaning that the system would take nine years to begin to make enough money to cover the loan payments.

120 payments of £113.18 p/m

Yr	Acc. grand total	Est. monthly return	Average monthly repayment diff.
1	£802.48	£66.87	£-46.31
2	£861.78	£71.81	£-41.37
3	£925.92	£77.16	£-36.02
4	£995.32	£82.94	£-30.24
5	£1,070.43	£89.20	£-23.98
6	£1,151.73	£95.98	£-17.20
7	£1,239.78	£103.31	£-9.87
8	£1,335.13	£111.26	£-1.92
9	£1,438.45	£119.87	£6.69
10	£1,550.40	£129.20	£16.02

I think the quote clearly sets out the income Mrs C and Mr R could expect to receive from the system, by way of FIT payments and savings, as well as their 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 they 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 C and Mr R weren’t told that the FIT payments alone would cover the loan repayments.) I’ve carefully thought about Mrs C and Mr R’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 they were 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 C and Mr R 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.

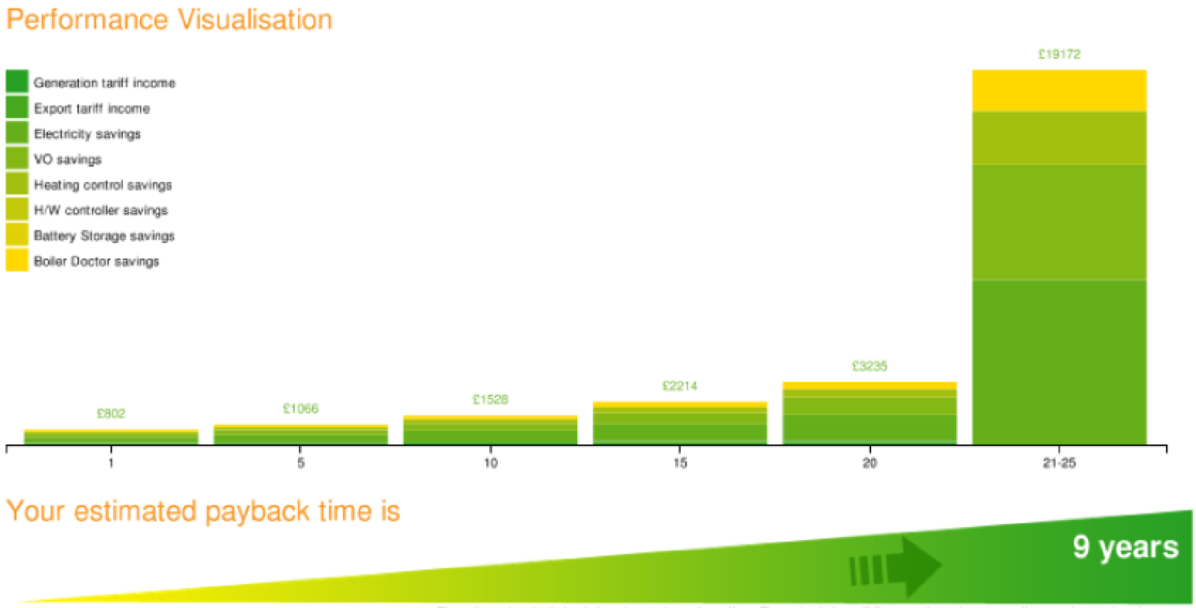
Bearing in mind my finding on the central role the quote played in the sales meeting, I've considered the table above which sets out the estimated average monthly income from the system, and the effect on that income of subtracting the monthly loan repayment. I'm satisfied that the table is clear and easy to understand (notwithstanding the 13p discrepancy in the monthly payments). That section of the quote has been signed by Mr R, so I'm satisfied that P did enough to bring it to his 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 that 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 C and Mr R were 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 25 years. This shows that it would take 9 years for the overall benefits that Mrs C and Mr R could expect to receive to match the cash price of the system.



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. This figure also appears in the "Putting it all together" section.

Estimated payback time	9	years

A later page of the quote has a table detailing the estimated performance of the system over 25 years. This also shows that during year 9 the overall benefits that Mrs C and Mr R could expect to receive would reach the cash price of the system.

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	£93.42	£56.75	£263.51	£168.00	£100.80	£0.00	£0.00	£120.00	£802.48	£802.48	£66.87	9.22%
98.0%	8	£112.91	£68.59	£478.17	£311.08	£172.75	£0.00	£0.00	£178.18	£1,321.68	£8,345.69	£110.14	15.19%
97.6%	9	£115.86	£70.38	£520.03	£339.70	£186.57	£0.00	£0.00	£188.54	£1,421.08	£9,766.77	£118.42	16.33%

As I've set out above, I'm satisfied that P told Mrs C and Mr R that the system would pay for its cash price in nine 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 them to enter into the contract, and they subsequently suffered a loss, then that could amount to a misrepresentation. So I've gone on to consider the performance of the system and whether this is in line with the contract between P and Mr R.

<u>Performance</u>

The quote sets out that the system is expected to produce 2,256 kWh a year. I have looked at Mr R's FIT statements and can see that the system, on average, has generated 2,483 kWh a year. This is slightly more than estimated by P at the point of sale, so I'm satisfied that the system is performing as expected, in terms of energy generation, if not financially. So the reason Mrs C and Mr R 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 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 C and Mr R haven't been receiving the financial returns they 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 C and Mr R 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 Mr R entered into the contract.

RPI / EPR rate

I've considered whether the assumptions used by P were reasonable and generally I think they are. However, P overstated the average RPI / EPR rate increase between 2006 and 2015. This inflated the estimated income, savings and benefits that the solar panels would generate.

This discrepancy in estimated income, savings and benefits amounted to approximately £365.35 over the term of the loan. While this error does not change my overall assessment, I think it is fair that Shawbrook makes up the difference between the income, savings and benefits which Mrs C and Mr R were expecting to make based on the overstated RPI / EPR, as compared to the correct figures.

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 Mr R to enter into the contract for the system, or induced Mrs C and Mr R to enter into the loan agreement. I don't think a difference of only £365.35 over ten years would have made a difference to their decision. But it would still be fair and reasonable to require Shawbrook to pay them that much, in addition to the £200 it offered them for the delay in responding to their complaint.

I have found no other reason to uphold this complaint.

My final decision

My decision is that I uphold this complaint in part. I order Shawbrook Bank Limited to pay Mrs C and Mr R £565.35 (that is, £365.35 plus £200).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C and Mr M to accept or reject my decision before 21 July 2022.

Richard Wood
Ombudsman