DRN-3586813

The complaint

Miss M 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.

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

Background

In or around May 2016 Miss 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, Miss M decided to purchase the system and finance it through a ten year fixed sum loan agreement with Shawbrook. The system was subsequently installed.

In February 2021 the CMC made a claim to Shawbrook on Miss 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 Miss 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 £7,800 to mislead Miss M, as when the interest was added the total cost was actually £12,460;
- the system would generate free electricity;
- the system would be self-funding and would pay for itself within five years; and
- 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).

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

The CMC didn't agree with the adjudicator's view. It emphasised that P had told Miss M that the system would pay for itself within five years, but when the loan interest is taken into account it will actually take 25 years, which is longer than the loan term.

As an agreement couldn't be reached, the case was passed to me for review. I wrote a provisional decision which read as follows.

My provisional 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 am minded to 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 Miss M paid for the system with a fixed sum loan agreement, Shawbrook agrees that section 75 applies to this transaction. This means that Miss 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 Miss 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 relies on the alleged misrepresentation of the system.

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.

Miss 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 two versions of the solar quote, titled "Getting Started" and "Your Personal Solar Quotation". I've considered these, along with Miss M'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 Miss M, explaining any benefits of the system, prior to her agreeing to enter into the contract. Miss M has signed both copies.

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 Miss 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.

Cost of the system

On balance, I'm satisfied that Miss M was told that the overall cost of the system was more than its cash price. The credit agreement makes it clear that £7,800 is only the cash price. It sets out a clear breakdown of the deposit, the amount of credit provided, the total charge for credit, the monthly payments, and the total amount repayable, £12,460.

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

FIT payments and savings

Miss 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 Miss 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 Miss 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	£	110.24
Export tariff in year 1	£	62.65
Total income in year 1	£	172.89

I think that the first of these tables is clear that Miss M could expect to receive a total FIT income in year one of £172.89. The quote goes on to look at the electricity savings Miss M could expect from the system. The expected year one electricity savings are £297.99 and, when taking into account the optional extras chosen by Miss M, the combined income and savings in year one is shown as £1,430.88. This is shown in a table titled "Putting it all together".

Putting it all together

Total income & savings in year 1	£	1430.88

This results in an average monthly income of £119.24. I'm satisfied that the same document set out that there would be a monthly loan repayment due of £101.33. As a result, I agree that Miss M was told that the monthly loan repayments would be covered by the FIT payments and savings.

There's also 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 Miss M entered into with Shawbrook. This table shows the loan as repayable in 120 monthly payments of £101.33. (This is incorrect; the loan agreement gives the correct monthly figure of £103.00, but the difference – £2.67 – is too small to affect the following observations.) 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 of £101.33, to give an average difference between the monthly return from the system and the monthly loan repayment in each year. This gives a positive figure for every year of the loan, meaning that on average the system would make enough money to cover the loan payments from the outset (aside from the fact that FIT payments are paid quarterly, not monthly).

120 payments of £101.33 p/m

Yr	Acc. grand total	Est. monthly return	Average monthly repayment diff.
1	£1,430.88	£119.24	£17.91
2	£1,517.86	£126.49	£25.16
3	£1,610.35	£134.20	£32.87
4	£1,708.70	£142.39	£41.06
5	£1,813.29	£151.11	£49.78
6	£1,924.53	£160.38	£59.05
7	£2,042.85	£170.24	£68.91
8	£2,168.71	£180.73	£79.40
9	£2,302.60	£191.88	£90.55
10	£2,445.04	£203.75	£102.42

I think the quote clearly sets out the income Miss 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 be immediately sufficient to cover the monthly loan repayments.

<u>Self-funding</u>

I'll now consider whether P told Miss M that the system would be self-funding within five years. In doing so I'll again weigh all the available evidence to decide what is most likely to have happened.

The "Key Facts" page of the quote states in large font that it would take five years for the overall benefits that Miss M could expect to receive to match the cash price of the system.

I think the five-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	5	years

A later page of the quote has a table detailing the estimated performance of the system over 30 years. This too shows that during year five the overall benefits that Miss M could expect to receive would reach the cash price of the system, £7,800.

Estimated performance over **30** years

		Income			Energy saving optional extras *								
Panel degradation	Yr	Generation Tariff	Export Tariff	Elec. savings	VO savings	Heating control	H/W controller	Battery storage	Boiler doctor	Total income savings	Acc. grand total	Est. monthly return	Ann. ROI
100.0%	1	£110.24	£62.65	£297.99	£480.00	£0.00	£0.00	£0.00	£480.00	£1,430.88	£1,430.88	£119.24	18.34%
100.0%	2	£113.59	£64.55	£318.61	£513.22	£0.00	£0.00	£0.00	£507.89	£1,517.86	£2,948.74	£126.49	19.46%
100.0%	3	£117.04	£66.52	£340.66	£548.73	£0.00	£0.00	£0.00	£537.40	£1,610.35	£4,559.09	£134.20	20.65%
99.6%	4	£120.12	£68.27	£362.77	£584.35	£0.00	£0.00	£0.00	£566.35	£1,701.87	£6,260.96	£141.82	21.82%
99.2%	5	£123.28	£70.06	£386.32	£622.28	£0.00	£0.00	£0.00	£596.85	£1,796.78	£8,059.74	£149.90	23.06%

The same table shows that the total amount payable under the loan agreement, £12,460, would be reached during year 8, well within the term of the ten year loan.

98.8%	6	£126.51	£71.90	£411.39	£662.66	£0.00	£0.00	£0.00	£628.97	£1,901.44	£9,961.17	£158.46	24.37%
98.4%	7	£129.83	£73.78	£438.08	£705.66	£0.00	£0.00	£0.00	£662.82	£2,010.16	£11,971.34	£167.52	25.77%
98.0%	8	£133.23	£75.71	£466.49	£751.41	£0.00	£0.00	£0.00	£698.49	£2,125.34	£14,096.67	£177.12	27.24%

So I'm satisfied that P told Miss M that the system would pay for its cash price in five years, and for the loan in less than eight 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 itself. So I've gone on to consider the performance of the system and whether this is in line with the contract between P and Miss M.

<u>Performance</u>

The MCS certificate and quote both set out that the system is expected to produce 2,551 kWh a year. I have looked at Miss M's FIT statements and can see that her system, on average, has generated 2,773 kWh a year. This is actually somewhat more than estimated by P at the point of sale (109%), so I'm satisfied that the system is performing as expected, in terms of energy generation, if not financially. So the reason Miss M has not seen the expected financial returns is not because the system is defective, but for some other cause.

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 partly explains why Miss 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.

Over the long term, I would accept that explanation as a reasonable defence to a claim for misrepresentation. (I have done so in other cases.) But the difficulty Shawbrook faces with Miss M's case, in my view, is that this does not explain why P's figures were wrong from the very start. The 120 months repayment table above shows that the system was expected to pay for itself from the first month following installation, with an average monthly profit during the first year of £17.91. The system's failure to achieve that cannot be attributed solely to the failure of electricity prices to continue to follow a historic trend and increase year on year over the next 10 years in line with P's expectations. It was wrong immediately.

For that reason, I am satisfied that in this case a misrepresentation was made, and for that reason I propose to uphold this complaint.

<u>The inverter</u>

I don't think it is likely that the salesman would have told Miss 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>Summary</u>

Having carefully considered the evidence provided by all parties in this complaint, I'm satisfied that the system was misrepresented by P and that this induced Miss M to enter into the contract for the system. For that reason I expect to uphold this complaint.

<u>My provisional decision</u>

So my provisional decision is that I intend to uphold this complaint. Subject to any further representations I receive from the parties … I intend to order Shawbrook Bank Limited to compensate Miss M in the way usually ordered by our service. (That is not to unwind the contract and take back the solar panels, but rather to refund to Miss M the difference between what the panels have made and what P told her they would make, with simple interest on the refund at 8% a year, plus £100 for her inconvenience.)

Responses to my provisional decision

Shawbrook consulted with P and then forwarded P's own response to my provisional decision. In summary, P said that as the system is generating the estimated amount of energy, the reason why this has not translated into the expected financial returns might be because Miss M had not followed P's advice about how to use the system most efficiently. On page 17 of "Your Personal Solar Quotation" it says:

> "So by simply putting your household appliances on sequential timers i.e. washing machine at 10am, dishwasher at 11am & cooker at 12 noon etc, you can increase the benefits of your system. Being efficient in the way you monitor what you produce and how you use it, can actually increase your total usage from an average 50% up to 65% in some cases (based on 4kw system and person using energy in the home at different times during the day)."

That is all very well, but the quote does not say that the figures in the tables above are only valid if the purchaser does this, and this paragraph appears on page 17 while the tables I have shown above appear on pages 10 and 12. So I would not necessarily expect Miss M to see the tables and realise that they are only accurate – and that the system would only be self-funding – if she operated her household appliances in the manner described on page 17. She might not even have read page 17, which is one of three and a half pages of small print (pages 15 to 18) which go into some detail about the system, and other topics too. I doubt that every consumer bothers to read all of that, and I would not expect them to.

It also appears from the figures at the top of page 9 (shown below) that the electricity bill savings were actually calculated based on an assumed usage of 75%,[1] which I note is somewhat higher than the 65% which page 17 suggests is possible. But I don't think this would have been obvious to Miss M either.

Your electricity bill savings

Electricity generated by system

	2551.84	kWh
Allowance for personal usage	1913.88	kWh
Current rate of unit	£	0.1557
Estimated saving in year 1	£	297.99

So for these reasons I am not persuaded to change my mind, and I confirm my provisional findings here.

Putting things right

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Miss M's complaint for Shawbrook to put things right by recalculating the original loan based on the known and assumed savings and income to Miss M from the solar

[1] 1,913.88 is 75% of 2,551.84. 1,913.88 times 0.1557 equals 297.99.

panels over the ten year term of the loan so she pays no more than that, and she keeps the solar panel system, and any future benefits once the loan has ended.

If the calculation shows that Miss M is paying (or has paid) more than she should have, then Shawbrook needs to reimburse her accordingly. Should the calculation show that the misrepresentation has not caused a financial loss, then the calculation should be shared with her by way of explanation.

If the calculation shows there is a loss, then where the loan is ongoing, I require Shawbrook to restructure the loan. It should recalculate the loan to put Miss M in a position where the solar panel system is cost-neutral over the ten year loan term.

Normally, by recalculating the loan this way, Miss M's monthly repayments would reduce, meaning that she would have paid more each month than she should have done, resulting in an overpayment balance. And as she would have been deprived of the monthly overpayment, I would expect a business to add simple interest at 8% a year from the date of the overpayment to the date of settlement. So I think the fairest resolution would be to let Miss M have the following options as to how she would like her overpayments to be used:

a) the overpayments are used to reduce the outstanding balance of the loan and she continues to make her current monthly payment resulting in the loan finishing early,
b) the overpayments are used to reduce the outstanding balance of the loan and she pays a new monthly payment until the end of the loan term,
c) the overpayments are returned to Miss M and she continues to make her current monthly payment resulting in her loan finishing early, or
d) the overpayments are returned to Miss M and she pays a new monthly payment until the end of the loan term.

If Miss M accepts my decision, she should indicate on the acceptance form which option (a, b, c or d) she wishes to accept.

If Miss M has settled the loan, Shawbrook should pay her the difference between what she paid in total and what the loan should have been under the restructure above, with interest at 8% a year.

If Miss M has settled the loan by refinancing, she should supply evidence of the refinance to Shawbrook, and then Shawbrook must:

1. Refund the extra Miss M paid each month with the Shawbrook loan.
2. Add simple interest from the date of each payment until Miss M receives her refund.
3. Refund the extra Miss M paid with the refinanced loan.
4. Add simple interest from the date of each payment until Miss M receives her refund.
5. Pay Miss M the difference between the amount now owed and the amount she would have owed if the system had been self-funding.

I'm satisfied that there was sufficient information available at the time that Miss M first contacted Shawbrook that means the claim should have been upheld. I direct that Shawbrook must pay £100 compensation for the inconvenience caused.

My final decision

My decision is that I uphold this complaint. I order Shawbrook Bank Limited to put things right in the way I’ve set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss M to accept or reject my decision before 10 November 2022.

Richard Wood
Ombudsman