DRN-3737998

The complaint

Mr G and Mrs K complains that Shawbrook Bank Limited ("Shawbrook"), has rejected the claim they made under section 75 of the Consumer Credit Act 1974 ("the Act") in relation to a solar panel system they say were misrepresented to them by the supplier.

Mr G and Mrs K is represented by a claims management company ("the CMC").

What happened

In April 2015, Mr G and Mrs K 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 G and Mrs K 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 on Mr G and Mrs K's behalf under section 75 of the Act to Shawbrook. The CMC said that 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 Mr G and Mrs K to enter into the contract with P. The CMC said the following misrepresentations had been made:

- The system would cost Mr G and Mrs K nothing and provide a substantial income over its lifespan.
- The monthly loan instalments would be covered by the savings made on Feed-In Tariff (FIT) payments and energy bill savings.

Shawbrook issued a final response and explained that it didn't agree the system had been misrepresented to Mr G and Mrs K 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 thought the complaint should be upheld. This was because P had told Mr G and Mrs K the system would be self-funding over 19 years based on its estimated annual electricity generation. But that due to the system generating considerably less electricity the benefits were not as promised.

Shawbrook didn't respond to the adjudicator's assessment, so the case has been passed to me for a decision.

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

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 section 56 and section 75 of the Act. Section 75 provides protection for consumers for goods or services bought using credit.

As Mr G and Mrs K paid for the system with a fixed sum loan agreement, Shawbrook agrees that section 75 applies to this transaction. This means that Mr G and Mrs K 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.

Section 56 is also relevant. This is because it says that any negotiations between Mr G and Mrs K 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.

<u>What happened?</u>

If there is a dispute about what happened, I must decide what happened 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.

Mr G and Mrs K 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 the CMC and Shawbrook. These include the credit agreement and solar quote, titled 'Your Personal Solar Quotation'. I've considered these, along with Mr G and Mrs K'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 the consumer, explaining any benefits of the system, prior to the consumer 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 the Mr G and Mrs K's version of events when considering if there have been any untrue statements of fact.

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

On balance I'm satisfied that Mr G and Mrs K were told that the cost of the system was £8,631.00. The quote sets this out clearly. This is also supported by the credit agreement which sets out that the cash price of the system was £8,631.00. The monthly payment was £95.21. The total amount of credit is £8,631.00 and goes on to show that the total amount payable would be £17,137.80.

Having considered all the evidence, including Mr G and Mrs K's recollections, I'm satisfied that they were 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 although the cost of the system was £8,631.00, it would cost Mr G and Mrs K more than this as they had decided to pay for it with an interest bearing loan.

Mr G and Mrs K have said that they were told the monthly loan repayments would be covered, or 'self-funded' by the FIT payments and savings on energy bills. I've considered the quote that was provided by P as well as the Mr G and Mrs K'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 Mr G and Mrs K 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	£	349.09
Export tariff in year 1	£	63.22
Total income in year 1	£	412.31

Feed in tariff over 20 years

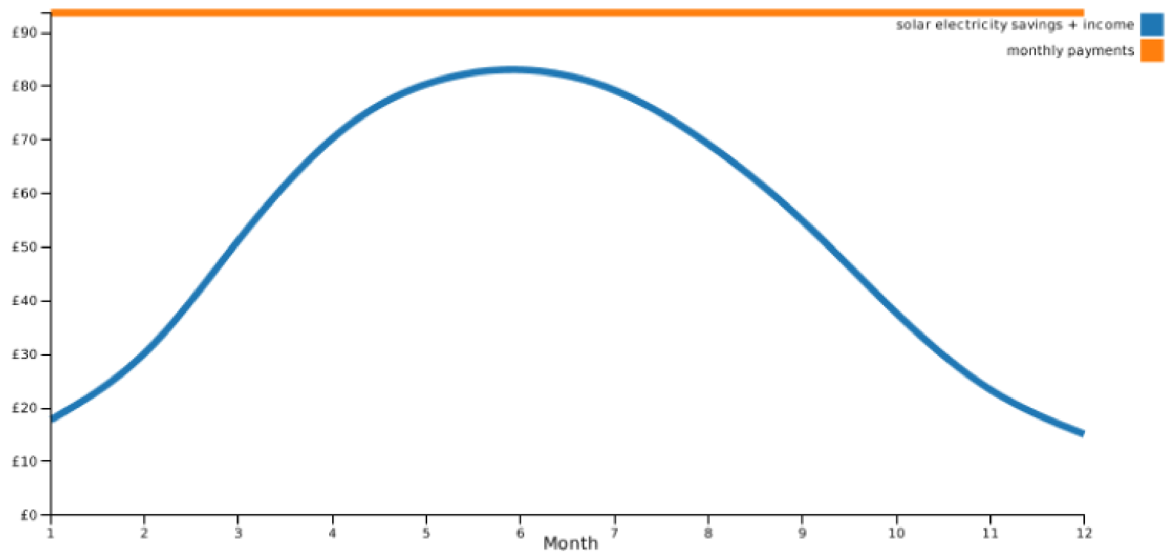
Assumed rate of RPI	2.92	%
Average generation tariff	£	0.178
Average export tariff	£	0.065
Average annual income	£	548.79

I think that the first of these tables is clear that Mr G and Mrs K could expect to receive a total FIT income in year one of £412.31, which results in an average monthly income of £34.35. As outlined above, I'm satisfied that the credit agreement and the quote set out that there would be a monthly loan repayment due of £95.21.

The quote goes on to look at the electricity savings Mr G and Mrs K could expect from the system. The expected year one electricity savings is £202.96 and the combined income and savings in year one is shown as £615.27. This is shown in a table titled 'Putting it all together'. As such it appears that Mr G and Mrs K were likely told that the system would generate benefits of £615.27 in the first year, much less than the annual loan repayments of £1,142.52

The quote contains a graph titled 'earnings and savings against monthly payments year 1'. This clearly shows that the monthly payments exceed the savings and income throughout the year.

Earnings and Savings Against Monthly Payments year 1



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 because this is the length of the loan that Mr G and Mrs K entered into with Shawbrook. This table shows the loan as repayable in 180 monthly payments of £93.66. 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 £93.66, to give an average difference between the monthly return from the system and the monthly loan repayment in each year.

180 payments of £93.66 p/m

Yr	Acc. grand total	Est. monthly return	Average monthly repayment diff.
1	£615.27	£51.27	£-42.39
2	£644.40	£53.70	£-39.96
3	£675.32	£56.28	£-37.38
4	£708.16	£59.01	£-34.65

[redacted]

Yr	Acc. grand total	Est. monthly return	Average monthly repayment diff.
5	£743.06	£61.92	£-31.74
6	£780.19	£65.02	£-28.64
7	£819.69	£68.31	£-25.35
8	£861.76	£71.81	£-21.85
9	£906.58	£75.55	£-18.11
10	£954.36	£79.53	£-14.13
11	£1,005.34	£83.78	£-9.88
12	£1,059.75	£88.31	£-5.35
13	£1,117.86	£93.15	£-0.51
14	£1,179.95	£98.33	£4.67
15	£1,246.33	£103.86	£10.20

I think the quote clearly sets out the income Mr G and Mrs K could expect to receive from the system, by way of FIT payments, as well as their expected contractual monthly loan repayments.

Whilst I accept that the table doesn't simply compare the FIT income to the monthly loan repayments, it does clearly set out that the overall benefits 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. And that it would not be sufficient to do so until year 14.

I've carefully thought about Mr G and Mrs K'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 from the start.

I'll now consider whether P told Mr G and Mrs K that the system would be self-funding. 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 and 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 start. 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.

That said, I do accept that Mr G and Mrs K were told by P that the system would be self-funding over a certain duration of time.

The 'system performance and returns' page of the quote has a table detailing the performance over 20 years. This shows that by year 19 the overall benefits that Mr G and Mrs K could expect to receive would have exceeded the total amount payable under the loan agreement.

Estimated performance over 20 years

Panel degredation	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				
100.0%	1	£349.09	£63.22	£202.96	£0.00	£0.00	£0.00	£0.00	£615.27	£615.27	£51.27	7.13%
100.0%	2	£359.28	£65.07	£220.05	£0.00	£0.00	£0.00	£0.00	£644.40	£1,259.67	£53.70	7.47%
100.0%	3	£369.77	£66.97	£238.58	£0.00	£0.00	£0.00	£0.00	£675.32	£1,934.99	£56.28	7.82%
99.7%	4	£379.24	£68.68	£257.76	£0.00	£0.00	£0.00	£0.00	£705.68	£2,640.67	£58.80	8.17%
99.3%	5	£388.94	£70.43	£278.49	£0.00	£0.00	£0.00	£0.00	£737.86	£3,378.53	£61.49	8.55%
99.0%	6	£398.89	£72.24	£300.87	£0.00	£0.00	£0.00	£0.00	£772.00	£4,150.53	£64.34	8.95%
98.6%	7	£409.08	£74.09	£325.04	£0.00	£0.00	£0.00	£0.00	£808.21	£4,958.74	£67.35	9.37%
98.3%	8	£419.54	£75.98	£351.17	£0.00	£0.00	£0.00	£0.00	£846.68	£5,805.42	£70.55	9.81%
97.9%	9	£430.25	£77.92	£379.37	£0.00	£0.00	£0.00	£0.00	£887.54	£6,692.96	£73.96	10.28%
97.6%	10	£441.23	£79.90	£409.85	£0.00	£0.00	£0.00	£0.00	£930.98	£7,623.94	£77.58	10.79%
97.2%	11	£452.49	£81.94	£442.77	£0.00	£0.00	£0.00	£0.00	£977.19	£8,601.13	£81.43	11.32%
96.9%	12	£464.02	£84.04	£478.31	£0.00	£0.00	£0.00	£0.00	£1,026.37	£9,627.50	£85.53	11.89%
96.5%	13	£475.84	£86.17	£516.72	£0.00	£0.00	£0.00	£0.00	£1,078.73	£10,706.23	£89.89	12.5%
96.2%	14	£487.96	£88.37	£558.19	£0.00	£0.00	£0.00	£0.00	£1,134.52	£11,840.76	£94.54	13.14%
95.8%	15	£500.38	£90.62	£602.98	£0.00	£0.00	£0.00	£0.00	£1,193.98	£13,034.74	£99.50	13.83%
95.5%	16	£513.11	£92.92	£651.37	£0.00	£0.00	£0.00	£0.00	£1,257.40	£14,292.14	£104.79	14.57%
95.1%	17	£526.16	£95.29	£703.63	£0.00	£0.00	£0.00	£0.00	£1,325.07	£15,617.21	£110.42	15.35%
94.8%	18	£539.53	£97.71	£760.07	£0.00	£0.00	£0.00	£0.00	£1,397.30	£17,014.51	£116.44	16.19%
94.4%	19	£553.23	£100.19	£821.02	£0.00	£0.00	£0.00	£0.00	£1,474.43	£18,488.94	£122.87	17.09%
94.1%	20	£567.27	£102.73	£886.84	£0.00	£0.00	£0.00	£0.00	£1,556.85	£20,045.79	£129.74	18.04%
Totals		**£9,025.29**	**£1,634.48**	**£9,386.03**	**£0.00**	**£0.00**	**£0.00**	**£0.00**	**£20,045.79**	**£20,045.79**	**Ave. ROI:**	**11.61%**

As I've set out above, I'm satisfied that P told Mr G and Mrs K that the system would pay for itself by year 19, and this is supported by the table above 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, that would amount to a misrepresentation.

Mr G and Mrs K was told that the system would generate 2,346 kWh of electricity per year. And the benefits shown in the quote were calculated based on that level of generation. The system has consistently generated significantly less than Mr G and Mrs K were told it would, which means they have not received the benefits set out in the quote.

It is unclear why the system has underperformed, but Shawbrook has had sufficient time since the complaint was made to identify the underperformance and inspect the system. Yet it has not done so.

So, based on the evidence available to me, I think that P misrepresented the system's ability to generate electricity, and as a result the benefits it would produce relative to the cost of the loan. I think this misrepresentation induced Mr G and Mrs K into entering into the contract. So, I think that Shawbrook didn't treat Mr G and Mrs K fairly and they have lost out because of this. And this means that Shawbrook should put things right.

Putting things right

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mr G and Mrs K's complaint for Shawbrook to.

a) Calculate the difference between what the panels have generated as income (through FIT and savings) for Mr G and Mrs K and what the sales paperwork set out as being the annual "total income savings" in the "Estimated performance over 20 years" table above.

b) Add 8% simple interest per year to that amount for the time Mr G and Mrs K have been without that money and pay the total to them.

The finance agreement in question has not yet ended. To ensure that Mr G and Mrs K doesn't lose out going forward, Shawbrook should then:

c) Calculate the average annual underperformance percentage so far, and assume that the panels will continue to underperform at that rate through to the conclusion of the finance agreement

d) recalculate the "total income savings" for each year going forward until the conclusion of the finance agreement, having applied the percentage reduction identified in c) above.

e) Pay Mr G and Mrs K the difference between the revised amounts calculated in d) above and the "total income savings" set out in the sales paperwork.

I also think that Shawbrook should pay £100 compensation for the trouble and upset caused.

My final decision

For the reasons I've explained, I'm upholding Mr G and Mrs K's complaint. Shawbrook Bank Limited should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K and Mr V to accept or reject my decision before 11 November 2022.

Phillip Lai-Fang
Ombudsman