

The complaint

Mr and Mrs S complains that Shawbrook Bank Limited ("Shawbrook"), has rejected the claim they made under sections 75 and 140 and of the Consumer Credit Act 1974 ("the Act") in relation to a solar panel system including a voltage optimiser ("the system"). Mr and Mrs S is represented by a claims management company ("the CMC").

What happened

The CMC's initial letter of claim alleged the following misrepresentations had been made that induced Mr and Mrs S to enter into the contract:

- The system would not cost more than what could be recovered from the Feed-In Tariff ("FIT").
- Mr and Mrs S could make money from the solar system which would more than cover the cost of the loan. In other words, the system would be "self-funding" or would "pay for itself".
- The calculations put forward as to performance of the system were false.

Mr and Mrs S say it sounded like a great investment opportunity and they agreed to the purchase because of the figure of £53,862.16 profit (this appears to be the total benefit over 30 years shown in the quote minus the basic price of the system), which made it seem like an exceptional investment that was too good to miss out on.

And the CMC said there was a breach of contract because:

- P failed to carry out the work with reasonable care and skill and by installing a system which is not fit for purpose, of satisfactory quality and/or does not operate as described.
- The quote formed part of the contract and the promised returns have not been achieved.
- The statement that Mr and Mrs S would not suffer loss by buying the system was a warranty which has been breached.

The CMC also made a claim under section 140 of the Act saying that Mr and Mrs S's relationship with Shawbrook was unfair on them because:

- The putting it all together table in the quote:
 - Exaggerated the benefit of the voltage optimiser and the total savings.
 - Did not take into account the cost of credit.

The CMC also wrote to Shawbrook's legal department and alleged that P was fraudulently misrepresenting information in its quotes because:

- In some cases, P misquoted Office of National Statistics ("ONS") inflation data which was used in its quotes to estimate future benefits of solar panel systems, with the

result that the benefits appeared to be higher than if the accurate inflation data had been used.

The CMC said that this was evidence that P had a predilection for misleading consumers and that there were systemic failures in its processes.

Shawbrook rejected most of the claim but offered £200 compensation for the time taken to respond.

The CMC made a complaint to the Financial Ombudsman Service on Mr and Mrs S's behalf. When doing so it reiterated some of the points it had previously made and pointed to some rules, regulations, and applications of law that it felt had been breached. It also said that:

- For Mr and Mrs S, and the average consumer, the quote is complex and difficult to understand. It is made more difficult by the implied verbal representations made by the sales representative which directly contradict what is written in the quote.

Our adjudicator considered the matter and didn't think the complaint should be upheld for the most part. But they noted the ONS inflation figures had been overstated and suggested that Shawbrook compensate Mr and Mrs S for the effect of this. Shawbrook has not responded to this suggestion within a reasonable time.

Because the adjudicator has been unable to resolve the complaint, I've been asked to make 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.

The CMC has made the claim under sections 75 and 140 of the Act. So, I have considered these sections in particular, as well as other 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. I have read all of the CMC's and Shawbrook's submissions and taken all of these into account when making my decision.

The Financial Ombudsman Service was set up to be a quick and informal alternative to the courts. So, I will not refer to every submission, comment, or relevant consideration. Instead, my decision sets out what I think are the most important points in order to explain my decision in a way that is intended to be clear and easy to understand.

The quote – "Your Personal Solar Quotation"

I'm satisfied that the quote was most likely provided to Mr and Mrs S during the sales meeting. It was signed at that time and my understanding is that the quote would've been prepared and discussed before they were asked to sign it. Mr and Mrs S have pointed to a particular figure in the quote as the main reason they agreed to the purchase.

I think the quote provides important evidence of what was likely discussed before Mr and Mrs S agreed to the purchase. The CMC has made specific points about where it thinks the quote was misleading, and its view that what Mr and Mrs S was told contradicted what was shown in the quote.

The basic price and overall cost of the system

The basic (or cash) price of the system was set out clearly in the quote and the credit agreement as £8,900.00. However, the overall cost to Mr and Mrs S was more, due to them paying for the system using an interest-bearing loan.

The quote showed several repayment options, including one over 120 payments of £115.81 per month. This was slightly less than the actual amount on the credit agreement. But I think Mr and Mrs S would've understood roughly how much the loan would cost per month.

The credit agreement clearly sets out that the loan was repayable through 120 monthly payments of £117.72. It shows the total amount payable would be £14,226.40 including the £100.00 deposit. So, I think that is the total cost that Mr and Mrs S would've expected to pay for the system. Mr and Mrs S signed the credit agreement during the sales meeting, so I think they would've been told how much they would be paying per month and how much they would pay overall.

Alleged misrepresentation - the solar system would not cost more than what could be recovered from the FIT

As mentioned above, I think Mr and Mrs S would've understood that the price of the system was £8,900.00 but that overall, they would pay £14,226.40 due to the loan.

The quote includes a table setting out the estimated performance of the system over 30 years. This included the estimated FIT generation and export payments each year and a total for each at the bottom. The FIT payments were only shown for 20 years, since this is how long a customer would receive FIT payments from the date they registered for the FIT scheme.

The table showed the following totals for FIT payments over 20 years:

- Generation Tariff £2,174.80
- Export Tariff £1,256.37

The quote did not go on to show the total 20-year FIT payments of the generation and export tariffs added together. Nevertheless, I think it would've been clear that the total of these two amounts added together (which is £3,431.17) was less than the basic price (£8,900.00) and overall cost (£14,226.40) that Mr and Mrs S had agreed to pay.

In light of this, I think it is unlikely that the salesperson would've represented the cost of the system as being no more than the FIT income, when the quote showed that was not the case.

Alleged misrepresentation – Mr and Mrs S could make money from the solar system which would more than cover the cost of the loan. In other words, the system would be “self-funding” or would “pay for itself”; The calculations put forward as to performance of the system were false.

I've found above that the quote made clear the estimated FIT income that Mr and Mrs S could expect to receive over 20 years was £3,431.17 in total.

The same table included figures for the estimated savings over a 30-year period. The totals over 30 years were as follows:

- Solar panel savings £41,371.35

- Voltage optimiser savings £17,959.64

The table provided a total for all estimated income and savings over 25 years, which was £62,762.16. This is more than the basic price of the system and the total payable under the loan agreement. So, I accept that Mr and Mrs S were likely to have been told that the overall benefits of the system over 30 years were estimated to exceed what they would pay for it overall, which was £14,226.40.

So, the question is whether this was a misrepresentation that induced Mr and Mrs S into purchasing the system when they otherwise wouldn't have done so.

FIT payments

The quote and MCS certificate show the system was expected to generate 1,929 kWh of electricity each year. The FIT statements show that it has on average exceeded this estimate since installation. So, the system is performing as expected in terms of electricity generation.

The FIT payments are made based on the amount of electricity generated, with a certain unit rate paid per kWh of electricity generated. So, given the system has generated in line with what was expected, I have no reason to think the total FIT payments received are not (and would not continue to be) in line with what Mr and Mrs S were told. So, I don't think the FIT income was misrepresented.

Savings

The solar panel and voltage optimiser savings will be made on what Mr and Mrs S pays for electricity versus what they would've paid without the system.

So, this would not be money paid to Mr and Mrs S, but rather money they will have that they otherwise would've paid to their energy or fuel suppliers. The savings are discussed further below.

Solar panel savings and the self-consumption rate

To calculate the savings from the solar panels, P used a self-consumption rate of 75%. Self-consumption rate is the proportion of electricity generated by the solar panels that P assumed that Mr and Mrs S could use themselves, rather than exporting it to the grid. My understanding is that P tailored the self-consumption rate based on what it knew about the customer and how they used electricity.

As an example, since solar power would be generated in daylight hours, a person that is usually home during the daytime is able to use more of the power generated than someone who only tends to be home during the evenings.

The CMC has argued that P should've used the "industry standard" self-consumption rate of 50% when calculating the savings. But I don't think it was unreasonable for P to tailor the self-consumption rate based on the information available to it. And I have not seen sufficient evidence to persuade me that the self-consumption rate used by P was unreasonable in this instance. I'm aware that P has used lower self-consumption rates on other quotes that I have seen – which reinforces its claim that it was tailored to each customer.

I understand P's methods were checked by an industry body before P started using them, and no objection to P's methods was raised at that time. So, I think that, for the time when

the quote was prepared, I can't reasonably conclude that the self-consumption rate was unreasonable.

The CMC has pointed to an MCS guidance document on calculating self-consumption rates, which suggests a lower rate may have been used if this guidance was followed. However, this guidance was issued in April 2022 – many years after P sold the system to Mr and Mrs S. So, I don't think this guidance was available at the time of sale. Or that P could have been expected to use it when it didn't yet exist.

Ultimately, I think that at the time of sale, P is likely to have made reasonable assumptions when calculating the self-consumption rate. The electricity savings from the solar panels were based on reasonable assumptions about the amount of electricity generated by the system and the self-consumption rate. So, I don't think those savings estimates were a misrepresentation.

That remains the case even if the savings have not in fact been as high as estimated. The savings will be dependent upon how electricity is used in the home and that is beyond P's control. The quote also included the following clarification in the section about electricity bill savings – "The amounts saved will depend on the amounts used." So, I don't think the estimated savings were presented as being guaranteed.

I discuss the ONS inflation figures used below.

Voltage optimiser savings

The CMC has made arguments about the voltage optimiser savings being exaggerated. But I'm not persuaded by those arguments.

The CMC has suggested the estimated voltage optimiser savings were too high, given various reports that were available at the time. However, I understand that P's method of calculating the savings was approved by an industry body, which is more qualified than I am to know if it was reasonable at that time.

How P calculated the savings was also explained in the quote, with reference to a specific report that informed its method of calculation. The quote also included the following statement alongside the figures for electricity savings from the voltage optimiser:

- "Savings are dependent on individual circumstances and may be higher or lower than those stated above and are based on the manufacturers own figures."

Overall, I think there were a number of reports which found that voltage optimisers could provide various levels of benefit. Considering those reports, I think that P's estimated voltage optimiser savings in this case are not outside of a reasonable range.

One report mentioned by the CMC said that the benefits of voltage optimisers would reduce over time. So, the CMC argued that savings from the voltage optimiser should've reduced rather than increased as shown in the quote. But it appears to me that P estimated the benefit of the voltage optimiser based on what it knew about the product it was selling, Mr and Mrs S's home and how they used electricity. I am not persuaded that P's estimate of the benefit of the voltage optimiser was unreasonable. And I'm not persuaded that the benefit of the voltage optimiser should've been assumed to reduce each year, rather than increase with inflation.

Summary of findings regarding savings

Overall, I think the underlying assumptions used to calculate the savings were reasonable. As such I don't think those figures constitute a misrepresentation.

Allegation – In some cases, P misquoted Office of National Statistics (“ONS”) inflation data which was used in its quotes to estimate future benefits of solar panel systems, with the result that the benefits appeared to be higher than if the accurate inflation data had been used.

I'm not persuaded by the CMC's argument here. It said that this happened in 30% of cases it had seen (elsewhere in its submission it said the proportion was 10%). That does not strike me as a systemic issue. And I note that in some cases quoted by the CMC the inflation rate was lower than it should've been. I don't think it can be inferred from this that P had a predilection for misleading its customers by exaggerating the benefits of the products it was selling. Nor that all the other figures used should be assumed to be unreliable.

Nevertheless, I've checked the underlying ONS data that P referred to in the quote, and the rates used by P are higher than the underlying data suggests. To put this right, I think Shawbrook should calculate the benefits over the loan term using the correct inflation figures and pay Mr and Mrs S the difference between this and the benefits shown in the quote for the same period. I think this period is appropriate given that Shawbrook's relationship would only exist for as long as the loan is running. Shawbrook should provide the Mr and Mrs S with its calculations to explain how the settlement figure has been reached.

I don't think how P calculated the predicted annual inflation of the FIT payments or energy savings was unreasonable (had they not made an error in the rates quoted). It was based on a number of years of historical inflation data from a reputable source. P explained in the quote how it had reached these figures and indicated that the actual inflation rates could be higher or lower. So, I don't think there was a misrepresentation due to the method of using inflation figures to illustrate the potential benefits of the system.

I also think that the quote did make clear that other outcomes were possible, since it included graphs based on inflation being 0% throughout, and half the rate it used in the other tables. It also stated in the section about the ONS that, “In reality the return may be higher or lower depending on the actual growth.”

The quote formed part of the contract – and since the promised returns have not been achieved this is a breach of contract.

The quotation stated the following:

- "The performance of solar systems is impossible to predict with certainty due to the variability in the amount of solar radiation (sunlight) from location to location and from year to year. This estimate is based upon the Standard Estimation Method set by MCS and is given as guidance only. It should not be considered as a guarantee of performance."
- However [P] will guarantee your Standard Performance Estimation output in year one that we stipulate in your contract."

The estimate referred to by this guarantee included the FIT generation income of £81.98, FIT export income of £47.36 and electricity savings from the solar panels only of £225.26 in year one – a total of £354.60. As far as I'm aware, Mr and Mrs S did not make a claim under that guarantee even though they say they were unhappy from one year after installation.

Overall, I'm not persuaded that the estimated benefits over 30 years formed a contractual term. I don't think it would be reasonable to expect estimates to be accurate over such a long period given the potential fluctuations in energy prices and the Retail Price Index.

P did guarantee the benefits derived from the electricity generated in the first year but, as mentioned above, Mr and Mrs S's system has been generating electricity as set out in the quote and Mr and Mrs S didn't claim under that guarantee.

I think that estimates should be based on reasonable assumptions. And I've discussed above why I think they were. Where the assumptions were reasonable, but the reality hasn't matched those assumptions, I don't think that is a breach of contract

The statement that Mr and Mrs S would not suffer loss by buying the system was a warranty which has been breached.

Mr and Mrs S said in their statement that they bought the system because they thought it sounded like a great investment opportunity.

As set out in the quote, the financial benefits of the system will increase over time due to inflation increasing the FIT and electricity unit rates. While the actual inflation rates over future years cannot be known, I'm satisfied that over the lifetime of the system the benefits will likely exceed what Mr and Mrs S paid for it. That is, in time I think it is likely that the system will be self-funding and there will be no loss.

So, while I don't think a warranty was created in the way suggested by the CMC, I also do not think that Mr and Mrs S will overall suffer a loss due to the purchase.

For Mr and Mrs S, and the average consumer, the quote is complex and difficult to understand. It is made more difficult by the implied verbal representations made by the sales representative which directly contradict what is written in the quote.

I have not found that the system was misrepresented to Mr and Mrs S. While the quote is a long document with a lot of information in it, there are graphs and tables, some of which I have mentioned above, which I do not think were complex or difficult to understand. I'm also satisfied that the salesperson talked through the quote with Mr and Mrs S in an attempt to avoid any misunderstandings and allow them to ask questions if they were unsure.

There was a breach of contract because P failed to carry out the work with reasonable care and skill, installed a system which is not fit for purpose, that is not of satisfactory quality and/or does not operate as described.

I'm not persuaded there was a breach of contract. The system is generating electricity as expected, so I think it is fit for purpose, of satisfactory quality and operating as described.

I think that the CMC is implying the system did not operate as described and was not of satisfactory quality because the benefits have not matched the estimates in the quote.

I have explained above that I think the estimated benefits shown in the quote were based on reasonable assumptions and set out the main reasons why I don't think the system was misrepresented to Mr and Mrs S. I do not think that the system producing lower benefits constitutes a breach of contract where that is due to FIT and energy unit rates not increasing as much as expected, or Mr and Mrs S not using as much electricity from the solar panels as predicted by P at the time of sale.

Mr and Mrs S' relationship with Shawbrook was unfair because: The "Putting it all together" section of the quote: Does not include the cost of maintenance or the cost of credit (such as loan interest); The self-consumption rate and voltage optimiser savings were unreasonably high; Pressurised sales tactics were used.

I have explained my findings on the self-consumption rate and voltage optimiser savings. I think the estimated benefits were based on reasonable assumptions, and the quote included clarifications that these were estimates and not guaranteed returns.

The "putting it all together" table would have been clearer if the table had included the cost of credit and maintenance. However, I must consider the relationship as a whole, not just one table in one of the documents that were provided at the time of sale. Having done so, I'm satisfied that Mr and Mrs S knew what they were paying for the system, including the cost of credit. This was shown on the credit agreement. So, they could compare this to the estimated benefits before deciding to buy the system.

In addition to this, the "repayments" table and the "estimated performance over 30 years" table in the quote both did incorporate the cost of credit into its illustration of the benefits of the system.

The "repayments" table showed the annual benefit would not exceed the annual loan repayments within the term of the loan. And the "estimated performance" table showed it would be about 16 years before the overall benefits of the system exceeded the total amount payable under the loan agreement.

I have not seen evidence that persuades me that P sold the system in a way that was not fair or clear, or in a way that was misleading. Or that undue pressure was applied to Mr and Mrs S. I think the information provided to Mr and Mrs S before they agreed to the purchase showed the cost and expected benefits of the system. The expected benefits were set out over 30 years, with warnings that those benefits were not guaranteed. I think it is likely that this was discussed with Mr and Mrs S before they agreed to the purchase.

So, I do not think an unfair relationship was created between Shawbrook and Mr and Mrs S as a result of P's actions when selling the system to them.

Summary

In summary, my findings are that:

- There was an error in the inflation figures used in the quote – in that they didn't match to the underlying inflation data that P quoted. Shawbrook should take action to put this right as stated below, which is in line with offers it has made in similar cases.
- I have not found any other reason to uphold this complaint.

Putting things right

Shawbrook should calculate the benefits over the loan term using the correct inflation figures and pay Mr and Mrs S the difference between this and the benefits shown in the quote for the same period.

If it hasn't already done so, Shawbrook should also pay Mr and Mrs S £200 compensation in line with its previous offer.

My final decision

My final decision is that I uphold this complaint in part. Shawbrook should put things right as stated above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Ms S to accept or reject my decision before 25 January 2023.

Phillip Lai-Fang
Ombudsman