

The complaint

Mr and Mrs N complain 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, boiler optimiser and heating controller ("the system"). Mr and Mrs N are 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 N 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 N 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 N say that they were led to believe the income from the solar panels would cover the loan repayments and they saw it as a risk-free 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 N would not suffer loss by buying the system was a warranty which has been breached.

Shawbrook rejected the claim, saying the quote was clear in that the system would not be self-funding.

The CMC also made a claim under section 140 of the Act saying that Mr and Mrs N'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, boiler 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 did not change its position and the CMC made a complaint to the Financial Ombudsman Service on Mr and Mrs N’s behalf. When doing so it wrote to us and Shawbrook reiterating some of the points it had previously made and pointing to some rules, regulations, and applications of law that it felt had been breached. It also said that:

- For Mr and Mrs N, 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. The CMC disagreed for a number of reasons, but largely reiterated its previous points. Because the adjudicator has been unable to resolve the complaint, I’ve been asked to make a decision.

I issued a provisional decision explaining that I was planning to uphold part of the complaint and setting out what I thought Shawbrook should do to put things right.

Neither the CMC, nor Mr and Mrs N, nor Shawbrook responded by the deadline given in my provisional decision. So, there is no additional information or comments for me to consider.

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

Mr and Mrs N have said that the sales meeting mainly focussed on the income and savings the system would generate. So, I’m satisfied that the quote was provided to them during the sales meeting. They took some time to decide and agreed to the purchase at a second meeting having been offered a discount on the original price.

I think the quote provides important evidence of what was likely discussed before Mr and Mrs N 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 N was told contradicted what was

shown in the quote. Mr and Mrs N have said that the salesperson focussed on the savings and income they'd receive when taking them through 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 £11,025.00. However, the overall cost to Mr and Mrs N 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 £131.97 per month. This was slightly more than the actual amount on the credit agreement. But I think Mr and Mrs N 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 £131.90. It shows the total amount payable would be £15,928.00 including the £100.00 deposit. So, I think that is the total cost that Mr and Mrs N would've expected to pay for the system.

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 N would've understood that the price of the system was £11,025.00 but that overall, they would pay £15,928.00 due to the loan.

The quote includes a table setting out the estimated performance of the system over 25 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 £3,293.91
- Export Tariff £2,235.86

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 £5,529.77) was less than the basic price (£8,925.00) and overall cost (£15,928.00) that Mr and Mrs N 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 N 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 N could expect to receive over 20 years was £5,529.77 in total.

The same table included figures for the estimated savings over a 25-year period. The totals over 25 years were as follows:

- Solar panel savings £22,796.85
- Voltage optimiser savings £7,278.18
- Boiler optimiser savings £7,509.91
- Heating controller savings £6,119.08

The table provided a total for all estimated income and savings over 25 years, which was £49,233.79. 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 N were likely to have been told that the overall benefits of the system over 25 years were estimated to exceed what they would pay for it overall, which was £15,928.00.

So, the question is whether this was a misrepresentation that induced Mr and Mrs N 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 3,298 kWh of electricity each year. The FIT statements and the CMC's own calculations show that it generated on average 2,939 kWh in year one. This is slightly less than 90% of the amount shown on the quote and the MCS certificate – and this under-generation has continued in each year since.

I think this is a significant difference compared to what Mr and Mrs N were led to expect and beyond what I would consider a reasonable margin of error. Less electricity generated means less in FIT payments and potential electricity savings from the solar panels only. So, I think that P misrepresented the benefits of the system.

I set out below how Shawbrook should put things right.

Savings

The solar panel and voltage optimiser savings will be made on what Mr and Mrs N pays for electricity versus what they would've paid without the system. The boiler savings and heating controller savings would be on what they pay for gas, oil, or LPG versus what they would pay without the boiler optimiser and heating controller.

So, this would not be money paid to Mr and Mrs N, 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 N 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 – some years after P sold the system to Mr and Mrs N. 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. So, I don't think the self-consumption rate was a misrepresentation even if Mr and Mrs N have not used the amount of generated electricity as predicted. 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.

The system's ability to generate electricity appears to have been overestimated compared to what it has actually generated. I have dealt with this above and set out how I think that should be put right 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 N'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.

Boiler optimiser savings

The CMC argues that the boiler optimiser savings are not supported by any reports or other evidence. So, it says they should be viewed as being "too good to be true". However, as with my comments on the voltage optimiser, P's estimate seems to be based on what it knew about the product it was selling and warned that the quoted benefits may be higher or lower.

So, I don't think there is sufficient evidence for me to conclude that its estimate for the boiler optimiser savings were unreasonable.

Heating controller savings

The CMC has made similar arguments about the heating controller. P's estimate seems to be based on what it knew about the product it was selling and warned that the quoted benefits may be higher or lower. So, I don't think there is sufficient evidence for me to conclude that its estimate for the boiler optimiser savings were unreasonable.

Summary of findings regarding savings

Overall, I think the underlying assumptions used to calculate the savings were reasonable, but P's estimate of how much electricity the system could generate has been shown to be incorrect. I have dealt with this above and set out below how it should be put right.

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 between 10% and 30% of cases it had seen. That does not strike me as a systemic issue. Nor do I 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 have checked the inflation figures used by P in this case to see if there was an error. In this case it appears P used inflation figures that were in line with the underlying data it referred to in the quote. So, it appears that the issue the CMC has highlighted does not apply in this case.

I don't think how P calculated the predicted annual inflation of the FIT payments or energy savings was unreasonable. 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 inflation figures used 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."

Allegation – 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 £127.33, FIT export income of £86.43 and electricity savings from the solar panels only of £385.20 in year one – a total of £598.96. As far as I'm aware, Mr and Mrs N did not make a claim under that guarantee even though they say they were unhappy shortly after installation.

Overall, I'm not persuaded that the estimated benefits over 25 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, but they did not 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

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

Mr and Mrs N said in their statement that they were convinced the system was a good investment following the discount being offered to them.

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 N paid for it. That is, in time I think it is likely that the system will be self-funding and they won't suffer a loss overall.

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 N will overall suffer a loss due to the purchase.

For Mr and Mrs N, 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.

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 N in an attempt to avoid any misunderstandings and allow them to ask questions if they were unsure.

Allegation – 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.

It appears there may have been a breach of contract because the system has not generated electricity in line with the quote. I set out below how this should be put right.

Allegation – Mr and Mrs N' 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, voltage optimiser savings and boiler optimiser savings were unreasonably high; Pressurised sales tactics were used.

I have explained my findings on the self-consumption rate, voltage optimiser savings and boiler 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 N 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 25 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 period of the loan. And the "estimated performance" table showed it would be about 12 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. I think the information provided to Mr and Mrs N before they agreed to the purchase showed the cost and expected benefits of the system. The expected benefits were set out over 25 years, with warnings that those benefits were not guaranteed. I think it is likely that this was discussed with Mr and Mrs N before they agreed to the purchase.

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

Summary

In summary, my findings are that:

- There was a misrepresentation or breach of contract in terms of the ability of the system to generate electricity and the FIT payments and potential electricity savings that would follow from that. Shawbrook should put this right as set out below.
- I do not think that a court would find that there was an unfair relationship between Shawbrook and Mr and Mrs N due to the way P sold the system to them.

Putting things right

Shawbrook should work out what the quote would've shown as the FIT payments and electricity savings from the solar panels only if the quote had shown the system generating 2,939 kWh in year one (with the following years generation figures extrapolated from that figure). And, up until the date of settlement, Shawbrook should pay Mr and Mrs N the difference between the FIT payments and electricity savings from the solar panels only that is shown on the quote, and what is shown on Shawbrook's calculation.

The under-generation may be the result of a faulty part such as an inverter. So, Mr and Mrs N should allow Shawbrook to inspect the system. If there is a faulty part or other reason causing the under-performance which can be fixed, then Shawbrook should fix it. This ought to mean that the system will generate electricity in line with the quote going forward. So, no further compensation would be necessary as part of this claim and complaint if Shawbrook is able to fix the problem – although Mr and Mrs N would not be prevented from making a further claim if the repair did not resolve the problem, since it would take at least a year to judge if the repair successfully resolved the under-generation issue.

If the system has no faults, that will indicate that there was an error in the generation figure shown on the quote and MCS certificate, and the under-generation can be expected to continue. In that case, Shawbrook should work out the percentage under-generation to the date of settlement and assume that will continue. It should then recalculate the FIT payments and electricity savings that should've been shown on the quote for future years and pay Mr and Mrs N the difference between this figure and the amounts shown on the quote.

My final decision

For the reasons I've explained, I've decided to uphold this complaint. Shawbrook Bank Limited should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N and Mrs N to accept or reject my decision before 24 February 2023.

Phillip Lai-Fang
Ombudsman