DRN-3942231

Complaint

Mr and Mrs B complain that Shawbrook Bank Limited ("Shawbrook"), has rejected the claim they made under sections 75 and 140 of the Consumer Credit Act 1974 ("the Act") in relation to a solar panel system ("the system").

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

Background

In November 2016, Mr and Mrs B bought the system from a supplier (which I'll call "P") using a fixed sum loan agreement with Shawbrook Bank Limited, which was repayable over 15 years.

In December 2021, the CMC sent Shawbrook a letter of claim alleging that P had misrepresented the system, breached its contract with Mr and Mrs B, and that Mr and Mrs B's relationship with Shawbrook was unfair on them because:

- The system was sold on the basis that the consumers would make substantial profit, and that the system would be a great investment. But in reality, the loan repayments, greatly exceed any benefits received from the system.
- The savings in relation to the voltage optimisers have been overestimated
- The self-consumption rate of 75% is unreasonably high.
- The cost of credit was omitted from the "putting it all together" section and the profit calculations.
- The figures used to calculate the benefits of the system over its lifetime did not match the ONS data on which P claimed it was based. The CMC said this was evidence that P was systematically and fraudulently inflating the figures to make the system appear more attractive to customers.

Shawbrook didn't agree the system had been misrepresented to Mr and Mrs B or that there were any other reasons for the claim to be upheld.

One of our investigators looked into what had happened. Having considered all the information and evidence provided, our investigator didn't think that P had misrepresented the system to Mr and Mrs B. But she did agree that P had used incorrect EPR/RPI rates when calculating the benefits and felt Shawbrook should offer compensation for this.

Shawbrook didn't respond to our investigators view so, 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.

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.

What happened?

If there is a dispute about what happened, I must decide on the balance of probabilities - what I think most likely happened, given the evidence that is available and the wider surrounding circumstances.

There are several documents that have been provided by both the CMC and Shawbrook. These include the credit agreement and solar quote. The quote is a detailed document that sets out key information about the system, the expected performance, financial benefits and technical information. The quote and the credit agreement have been signed by the consumers.

So, I think the quote and credit agreement provide important evidence of what was likely discussed before Mr and Mrs B agreed to the purchase.

The cost of the system

I'm satisfied that Mr and Mrs B were told that the cost of the system was £9,890. The quote and credit agreement set this out clearly. The quote and credit agreement further sets out that the monthly payment was £104.61, The total amount of credit is £9,790 (after deducting a deposit of £100, and goes on to show that the total amount payable would be £18,929.80 (including the charges associated with the finance). .

Having considered all the evidence, including the consumer'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 £9,890, it would cost Mr and Mrs B more than this as they had decided to pay for it with an interest bearing loan.

Mis-leading profit figures

I appreciate there are sections in the quote that set out the estimated benefits without including the costs associated with the finance – mainly in the "putting it all together" section. But this section specifies these figures do not include finance charges. And I've explained above, I think Mr and Mrs B were aware that they would be paying more than the cash price of the system because they were using an interest-bearing loan to make the purchase. So I think it would have been clear to them that these profit figures would need to be considered alongside the additional finance charges they had taken on.

I also have to bear in mind, that there were sections such as the repayment tables (further set out below), that did compare the full costs with the benefits. I have to consider the quote in its entirety not just this section in isolation – as I'm satisfied that Mr and Mrs B were provided with all the information in the quote. Overall, I'm not satisfied that the section setting out the estimated benefits and profit without including the finance charges was mis-leading in the way the CMC suggests.

Benefit covering the monthly costs

Mr and Mrs B say they bought the system on the basis it would make them a substantial profit, that it was a great investment – but, the loan repayments greatly exceed the benefits received. This suggests Mr and Mr B believed the benefits produced by the system, would outweigh the monthly costs, and therefore the system would more than pay for itself leaving them with a profit.

I've considered the quote that was provided by P as well as the consumer'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 and Mrs B 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	£	80
Generation tariff in year 1	£	102.24
Export tariff in year 1	£	60.05
Total income in year 1	£	162.29

I think the table is clear that Mr and Mrs B could expect to receive a total FIT income in year one of £162.29, which results in an average monthly income of £13.52. The quote also sets out that the expected year one electricity savings is £285.63 and, when taking into account the optional extra's chosen by Mr and Mrs B the combined income and savings in year one is shown as £639.92. This is shown in a table titled 'Putting it all together'.

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 £104.61 (which is £1,255.32 annually). As a result, it seems to me that it was made clear the amounts Mr and Mrs B would receive per year would be far less than the monthly loan costs. Overall, I don't think it's likely that the system was sold on the basis that it would provide sufficient benefits to cover the monthly costs or that it would provide Mr and Mrs B with substantial profit from the outset.

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 since this is the length of the loan that Mr and Mrs B entered into with Shawbrook. This table shows the loan as repayable in 180 monthly payments of £104.61. 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 £104.61, to give an average difference between the monthly return from the system and the monthly loan repayment in each year.

180 payments of £104.61 p/m

Yr	Acc. grand total	Est. monthly return	Average monthly repayment diff.
1	£639.92	£53.33	£-51.28
2	£691.66	£57.64	£-46.97
3	£747.78	£62.31	£-42.30
4	£808.66	£67.39	£-37.22
5	£874.71	£72.89	£-31.72
6	£946.39	£78.87	£-25.74
7	£1,024.18	£85.35	£-19.26
8	£1,108.63	£92.39	£-12.22
9	£1,200.32	£100.03	£-4.58
10	£1,299.89	£108.32	£3.71
11	£1,408.02	£117.33	£12.72
12	£1,525.48	£127.12	£22.51
13	£1,653.08	£137.76	£33.15
14	£1,791.71	£149.31	£44.70
15	£1,942.37	£161.86	£57.25

I think the table above 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. There is a deficit between the monthly benefits received and the monthly outgoings for the first 9 years.

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 provide Mr and Mrs B with a substantial profit from the outset or that it would cover the monthly loan payments as Mr and Mrs B appear to have expected. 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.

<u>Profit over a period of time</u>

That said, I do accept that Mr and Mrs B were told by P that the system would eventually provide more benefit than their initial outlay and provide some profit after a certain duration of time.

The 'system performance and returns' page of the quote has a table detailing the performance over 25 years. This shows that by year 16 the overall benefits that Mr and Mrs B could expect to receive would have exceeded the total amount payable under the loan agreement. So I'm satisfied, that they were told that they would likely make some profit during the lifetime of the system but after the loan term had passed.

Estimated performance over **25** years

Panel degradation	Yr	Income: Generation Tariff	Income: Export Tariff	Elec. savings	Energy saving optional extras *: 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	£102.24	£60.05	£285.63	£192.00	£0.00	£0.00	£0.00	£0.00	£639.92	£639.92	£53.33	6.47%
100.0%	2	£107.45	£63.11	£311.62	£209.47	£0.00	£0.00	£0.00	£0.00	£691.65	£1,331.57	£57.64	6.99%
100.0%	3	£112.93	£66.33	£339.98	£228.53	£0.00	£0.00	£0.00	£0.00	£747.77	£2,079.34	£62.31	7.56%
99.6%	4	£118.22	£69.43	£369.44	£249.33	£0.00	£0.00	£0.00	£0.00	£806.41	£2,885.75	£67.20	8.15%
99.2%	5	£123.75	£72.68	£401.43	£272.02	£0.00	£0.00	£0.00	£0.00	£869.89	£3,755.64	£72.49	8.80%
98.8%	6	£129.54	£76.09	£436.20	£296.77	£0.00	£0.00	£0.00	£0.00	£938.59	£4,694.24	£78.22	9.49%
98.4%	7	£135.60	£79.64	£473.96	£323.78	£0.00	£0.00	£0.00	£0.00	£1,012.97	£5,707.21	£84.41	10.24%
98.0%	8	£141.92	£83.36	£515.00	£353.24	£0.00	£0.00	£0.00	£0.00	£1,093.52	£6,800.73	£91.13	11.06%
97.6%	9	£148.56	£87.25	£559.57	£385.39	£0.00	£0.00	£0.00	£0.00	£1,180.77	£7,981.50	£98.40	11.94%
97.2%	10	£155.49	£91.33	£607.99	£420.46	£0.00	£0.00	£0.00	£0.00	£1,275.27	£9,256.77	£106.27	12.89%
96.8%	11	£162.75	£95.59	£660.58	£458.72	£0.00	£0.00	£0.00	£0.00	£1,377.64	£10,634.41	£114.80	13.93%
96.4%	12	£170.35	£100.05	£717.72	£500.46	£0.00	£0.00	£0.00	£0.00	£1,488.58	£12,122.99	£124.05	15.05%
96.0%	13	£178.29	£104.72	£779.78	£546.01	£0.00	£0.00	£0.00	£0.00	£1,608.80	£13,731.79	£134.07	16.27%
95.6%	14	£186.60	£109.60	£847.20	£595.69	£0.00	£0.00	£0.00	£0.00	£1,739.09	£15,470.87	£144.92	17.58%
95.2%	15	£195.29	£114.71	£920.42	£649.90	£0.00	£0.00	£0.00	£0.00	£1,880.32	£17,351.19	£156.69	19.01%
94.8%	16	£204.40	£120.05	£999.96	£709.04	£0.00	£0.00	£0.00	£0.00	£2,033.44	£19,384.64	£169.45	20.56%
94.4%	17	£213.91	£125.64	£1,086.36	£773.57	£0.00	£0.00	£0.00	£0.00	£2,199.47	£21,584.11	£183.29	22.24%
94.0%	18	£223.87	£131.49	£1,180.19	£843.96	£0.00	£0.00	£0.00	£0.00	£2,379.51	£23,963.62	£198.29	24.06%
93.6%	19	£234.29	£137.61	£1,282.11	£920.76	£0.00	£0.00	£0.00	£0.00	£2,574.77	£26,538.39	£214.56	26.03%
93.2%	20	£245.18	£144.00	£1,392.80	£1,004.55	£0.00	£0.00	£0.00	£0.00	£2,786.53	£29,324.93	£232.21	28.18%
91.2%	21-25	£0.00	£0.00	£8,988.08	£6,572.10	£0.00	£0.00	£0.00	£0.00	£15,560.18	£44,885.10	£259.34	31.47%
Repair/Replace													
Totals		**£3,290.63**	**£1,932.71**	**£23,156.01**	**£16,505.75**	**£0.00**	**£0.00**	**£0.00**	**£0.00**	**£44,885.10**	**£44,885.10**	**Ave. ROI:**	**18.15%**

As I've set out above, I'm satisfied that P told Mr and Mrs B that the system would pay for itself by year 16, and then would provide them with a profit. 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.

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 and Mrs B.

<u>FIT data</u>

The MCS certificate and quote sets out that the system is expected to produce 2446 kWh a year. I have looked at Mr and Mrs B's FIT statements and can see what the solar panels are generating on average annually. Based on the FIT data provided, it seems the system is generating slightly more than P predicted at the time of sale, so I'm satisfied that the system is performing as expected in line with the MCS certificate and sales quotation document.

<u>Savings estimates</u>

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 B 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.

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 tailoring it to each customer.

Voltage optimiser

The CMC has suggested the estimated voltage optimiser savings were inaccurate and mis-leading. 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.

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."

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.

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 B's home and how they used electricity. I am not persuaded that P's estimate of the benefit of the voltage optimiser was unreasonable.

Reliance on ONS data

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 are fair and reasonable.

P used Office of National Statistics (ONS) data 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 explain why they 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 has been correspondingly lower.

As I have explained, the assumptions used by P were based on the information available from the ONS. 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 Mr and Mrs B could've 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 and Mrs B entered into the contract.

Overall, I think P's method for calculating an assumed inflation rate was reasonable. And I don't think it was a breach of contract or misrepresentation just because actual inflation has not matched P's assumption. I would add that I find nothing unreasonable about P quoting the source of the data it was using to calculate the estimates.

<u>RPI/EPR rate used</u>

The CMC has pointed out that it has seen several cases where the inflation data used did not match the underlying inflation data it referred to. This does not strike me as a systemic issue which would lead me to think that P misled customers in every case. It appears likely to have been a result of human error rather than fraudulently or deliberately done to mislead. Some of those errors resulted in a lower inflation rate being used – thereby making the potential benefits of the system appear less than would've been the case if no error had occurred, which would make the system less attractive to customers, not more.

However, as explained by our investigator, I can see the actual rates used by P in this particular sale were not accurate. P said it used ONS data from 2006 to 2015 to estimate Mr and Mrs B's benefits over the expected lifetime of the system. However, looking at the rates that ought to have been used, it seems P overstated the RPI/EPR. This would have had the effect of inflating the income, savings and benefits which the solar panel system might reasonably have been expected to deliver over the loan term. As explained above, I think this was done in error rather than an intentional manipulation of the estimates.

This does not change my overall assessment of whether the system was sold on the basis that the benefits produced by the system would cover the monthly costs or that the system will produce a substantial profit from the outset or within the term of the loan. However, it does look like the benefits have been overstated due to an error made by P when it selected the rates to use to calculate the estimated benefits. So I think that Shawbrook should make up the difference between the income, savings and benefits which the customer was expecting to make based on the overstated RPI/EPR as compared to the correct figures in line with our investigators view of the complaint.

I also think that Shawbrook should have noted this error and offered compensation in line with its usual approach to this issue when the complaint was first raised. Shawbrook should therefore pay £100 compensation for the trouble and upset caused by this issue.

<u>Unfair relationship</u>

I've also gone on to consider whether a court may conclude that there existed an unfair relationship under section140A the Act.

A sufficient inequality of knowledge and understanding is considered a classic source of unfairness in a relationship between a creditor and a consumer. Considering that I haven't found any misrepresentation and I'm of the view that the underlying assumptions used by P were reasonable, I think a court is unlikely to conclude that there is an unfair relationship under section 140.

<u>Summary</u>

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 and Mrs B to enter into the contract for the system. So overall, I'm satisfied that Shawbrook did not act unreasonably or unfairly when declining the claim.

However, I do think that P made an error when selecting the RPI/EPR rates applicable for this sale. And Shawbrook should put things right like I've set out below.

Putting things right

- Shawbrook should work out the difference between the income, savings and benefits which Mr and Mrs B were expecting to make based on the overstated RPI/EPR as compared to the correct figures and pay the difference to Mr and Mrs B.

- Shawbrook should pay £100 compensation to Mr and Mrs B for the trouble and upset caused.

My final decision

My final decision is that I uphold Mr and Mrs B's complaint in part. And 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 Mr B and Mrs B to accept or reject my decision before 17 March 2023.

Asma Begum
Ombudsman