DRN-4941882

The complaint

Mr and Mrs B 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 with hot water converter and voltage optimiser ("the system").

What happened

In February 2014, 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 fifteen years. The installation of the system was completed on 21 March 2014.

In February 2020, Mr and Mrs B engaged a claims management company ("the CMC"), which sent Shawbrook a letter of claim/complaint alleging that P had misrepresented the system to Mr and Mrs B, and that Mr and Mrs B's relationship with Shawbrook was unfair on them because:

- Mr and Mrs B were told they could have system at no cost – it would be fully self-funding so they would not have to contribute to the loan repayments.

- Mr and Mrs Bs relationship with Shawbrook was unfair on them because:
  - No creditworthiness assessment was carried out.
  - Shawbrook paid commission to the supplier but didn't tell Mr and Mrs B about this.
  - No cooling off period was provided to Mr and Mrs B.
  - Mr and Mrs B were not notified of their cancellation rights.

The CMC also pointed to a Renewable energy Consumer Code ("RECC") non-compliance panel hearing which confirmed that the supplier had breached the code in relation to high pressure sales techniques and misleading statements amongst other things.

Shawbrook did not respond to the claim, so Mr and Mrs B referred the matter to the Financial Ombudsman Service. When sending us its file Shawbrook acknowledged that it had not responded within a reasonable time and offered £200 compensation in recognition of this. But in relation to the claim/complaint, Shawbrook said that the sales documents included clear estimates of the benefits of the system These made clear that although the system would pay for itself over time, there would initially be a shortfall between the benefits and the loan repayments. So, it did not think the complaint should be upheld.

During the course of the complaint, the supplier inspected the system, replaced the hot water converter, and confirmed the solar panel system was in good working order.

Our investigator initially upheld the complaint. This was because they thought the system had not generated as much electricity as expected. She recommended that Shawbrook compensate Mr and Mrs B for the shortfall between the benefits received and the benefits shown in the quote, for the duration of the original loan term. Plus pay an additional £100 compensation in recognition of the distress and inconvenience caused.

Both Shawbrook and Mr and Mrs B initially accepted this outcome. But when Shawbrook came to calculate the compensation it found that there had been no shortfall in the electricity generated. And the Feed-In Tariff ("FIT") income was in line with what was shown in the sales documents. Shawbrook concluded that no compensation was payable under the recommendations made by our investigator. But it said – given its initial agreement and that it had not picked this up sooner, that it would pay the additional £100 compensation.

The CMC disagreed. In summary, it said:

- The sales documents relied on were unsigned and should not have been relied upon. The CMC suggested that the supplier's sales process would've either been paper-based or digital, not both. And in this case there was a handwritten sales document that had been signed.

- In seven years, Mr and Mrs B has received FIT income of around £4,110 and energy savings of £1,700 (based on a self-consumption rate of 37%), which is far less than the loan repayments they have made.

- The electricity savings are greatly exaggerated, using a self-consumption rate of 60% and an electricity unit rate of 20p per kWh, when 37% should be used and at the time electricity cost 16p per kWh.

- The information given to Mr and Mrs B at the time of sale was inaccurate and induced them to enter into the contract.

Because the investigator has been unable to resolve the complaint, I've been asked to make a decision.

I issued a provisional decision explaining I was not planning to uphold this complaint. But I asked Shawbrook to confirm if it was willing to make a payment or £300 as a gesture of goodwill – since it had previously offered to make compensation payments totalling this amount in relation to its failure to respond to the claim and complaint within a reasonable time and that it did not realise sooner that the system was not underperforming.

Shawbrook responded to say it agreed with my provisional decision and was willing to make the £300 payment. Neither Mr and Mrs B nor their representative responded within the deadline given.

So, my final decision is in line with my provisional one.

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

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 sales documents

The handwritten quote was signed by Mr and Mrs B. So, I know they saw this. It showed the following information about the benefits of the system:

	unit rate per kWh	1st year total
FIT generation income	14.9p	£568.41
FIT export income	4.6p	£88.50
Electricity saving	20p	£381.48
	Total	**£1,038.39**

In addition to this the handwritten quote indicated the purchase price of the system was £9,995.00.

Shawbrook has provided a more detailed quote which is not handwritten. This is unsigned, but I do not think the information it holds should be ignored when reaching my decision.

The CMC suggests this document was "fabricated" after the complaint was made. But the Financial Ombudsman Service (including in other complaints I have decided) has seen similar documents from this supplier in a many other complaints relating to sales from 2014 and before, prior to a new form of quote being consistently produced at a later date. It seems to me that a more plausible explanation would be that this was simply a document that the supplier used when selling solar panel systems around that time, but that Mr and Mrs B did not retain a copy of it.

Some figures on the more detailed quote match those on the handwritten quote. But the more detailed quote includes far more information, including projected benefits for 25 years and a direct comparison between the annual benefits and the loan repayments. I'm satisfied that the more detailed quote is an important piece of evidence from the time of sale that can give an insight into what is likely to have been discussed with Mr and Mrs B.

Misrepresentation

Mr and Mrs B have alleged in their letter of claim/complaint that the system was misrepresented to them because they were told:

- The system would come at absolutely no cost to them – it would be fully self-funding and no cost would be incurred.

- They were told the system would cost £9,995.00, but this was misleading as it would actually cost £19,483.20 when the loan interest was taken into account.

- They would receive a tax-free year one benefit of £1,298.88.

I am not persuaded by Mr and Mrs B's allegations because:

- They signed a credit agreement which clearly set out that they would be paying £108.24 per month for 180 months, with a total amount payable of £19,483.20. So, what they were agreeing to pay was clear. This equated loan repayments of £1,623.60 per year for 15 years.

- The handwritten quote they signed showed the first-year benefit of the system would be £1,038.39. This would leave a shortfall of £585.21 when compared to the annual

loan repayment. So, it seems implausible that the salesperson would've provided the information in the handwritten quote while simultaneously telling Mr and Mrs B something very different.

- If Mr and Mrs B had been told the system would come at no cost to them, and that is why they agreed to the purchase, it is doubtful that they would've waited almost six years to do anything about this. I say this because it would've been obvious after a few months that the benefits were not completely offsetting the loan repayments, which they were still having to pay. The supplier is still in business today so could've been contacted at any time – even if Mr and Mrs B were not aware of being able to make a claim to Shawbrook.

In light of the available evidence, particularly what is shown in the handwritten quote which Mr and Mrs B signed, I am not persuaded that the alleged misrepresentation took place.

Breach of contract

Mr and Mrs B have not alleged in their claim/complaint that there was a breach of contract. But for completeness I have also thought about this.

Our investigator initially thought the system was underperforming – by which she meant it had generated significantly less electricity each year than it was supposed to. This could constitute a breach of contract if the contract was to supply a system that could generate a certain amount of electricity each year.

In this case the handwritten quote does not indicate the expected annual electricity generation of the system. But I've worked out from the FIT income and unit prices shown on the document that the calculations were based on the system generating 3,814 kWh per year. This is confirmed on the more detailed quote, where it indicates the system should generate 3,814.8 kWh per year.

So, if the system had generated significantly less than 3,814.8 kWh of electricity per year, I might conclude there was a breach of contract. But, based on the FIT statements provided by Mr and Mrs B, in this case the system has generated on average 3,862 kWh each year up until 31 March 2021. So, the system is generating as much electricity as was promised.

Unfair relationship

Mr and Mrs B have also alleged their relationship with Shawbrook is unfair. Their claim stated a number of reasons for this. But, thinking about how the courts would consider such a relationship, I think I'm free to look further than those allegations and consider their relationship with Shawbrook more widely, including what happened at the time of sale – bearing in mind that Section 56 of the CCA means the supplier can be considered as an agent of Shawbrook during the sales process.

As the complaint has gone on the CMC has focussed on the unfairness arising from the benefits of the system not matching what Mr and Mrs B were told they would be at the point of sale. So, to compare those two things I must consider what Mr and Mrs B were told.

At the very least Mr and Mrs B were told the first-year benefits of the system would be £1,038.39. Within this the expected FIT income was £568.41 from the generation tariff and £88.50 from the export tariff. That gives a first-year income of £656.91.

The FIT statements show that Mr and Mrs B received FIT income of £649.30 by 11 March 2015. This is just under a year and is only about £8 less than they had been told to expect. So, what they had been told was accurate.

In terms of savings, Mr and Mrs B had been told they could expect a saving of £381.48 in the first year. This was based on a self-consumption rate of 50%. This would require Mr and Mrs B to use 50% of the electricity generated by the solar panels in the first year – estimated in the sales documents to be 1,907.4 kWh. The handwritten note made clear this savings amount was based on an electricity unit rate of 20p per kWh.

50% was a standard self-consumption rate in the industry at the time. This was derived from the fact that the FIT scheme assumed that 50% of electricity generated would be exported to the grid and 50% would be used in the home. So, it would be hard for me to conclude that using a self-consumption rate of 50% was unreasonable when it came to estimating the savings Mr and Mrs B might receive.

The CMC has said the unit rate of 20p per kWh was too high. Electricity unit rates paid by consumers can vary significantly depending on their electricity supplier and electricity tariff. The unit rate used was clearly shown on the handwritten quote, so I think Mr and Mrs B ought to have understood where this savings figure came from – and that their savings would be different if they were not paying 20p per kWh.

Electricity savings will depend on many things, not least how a consumer uses electricity in their home. I don't think there can be a reasonable expectation that the stated savings would exactly match the savings a consumer would make.

I'm aware that research in the years since 2014 has shown that the assumption of 50% savings is unlikely to be accurate in most cases – although for some a higher rate is achievable. But that was not known at the time of sale. The supplier at that time calculated the savings based on what was good industry practice at that time. While the supplier could've used a lower electricity unit rate in its calculations, it did tell Mr and Mrs B the unit rate it had used. So, overall, I do not think the estimated savings stated in the quote would render Shawbrook's relationship with Mr and Mrs B unfair.

In respect of the other points the letter of claim/complaint said made the relationship unfair, I am not persuaded that was the case because:

- Shawbrook has confirmed that it did carry out a creditworthiness check. And there has been no suggestion that the lending was irresponsible or unaffordable in this case.

- Shawbrook paid no commission to the supplier in relation to the credit agreement.

- The credit agreement set out Mr and Mrs B had the right to withdraw for up to 14 days after the agreement was executed.

- The supplier has pointed out that Mr and Mrs B could've changed their mind in the period between agreeing to the purchase and the installation taking place. And that there was a 14-day cooling off period where there would've been no penalty for doing so. While there is insufficient evidence for me to say this was made clear to Mr and Mrs B, nor is it clear to me that this would've made any difference to whether they went ahead with the installation. There is nothing to suggest they were unhappy until they made their claim/complaint almost six years later.

- The RECC non-compliance hearing was in December 2013. This was before Mr and Mrs B purchased the system. So, its relevance is limited. While the published information about the hearing indicates that the supplier had some issues with its sales processes, conditions were imposed on it and a further audit was to take place. No information was published by RECC about any further disciplinary action being taken prior to the supplier ceasing to be a member of RECC in January 2017. Overall, I think the information available from the time of sale is more relevant and persuasive in helping me make my decision in this case.

Overall, I do not think there is sufficient evidence for me to conclude that the relationship between Shawbrook and Mr and Mrs B was unfair on them.

Summary

Having considered all the available evidence, I am not persuaded there was a misrepresentation or breach of contract by the supplier that means Shawbrook ought to have accepted Mr and Mrs B's Section 75 claim. And I have not concluded that an unfair relationship was created between Shawbrook and Mr and Mrs B. So, I am not upholding this complaint.

Shawbrook has confirmed it is still willing to make a payment of £300 to Mr and Mrs B as a gesture of goodwill and it is free to do so now.

My final decision

For the reasons I've explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr B to accept or reject my decision before 9 September 2024.

Phillip Lai-Fang
Ombudsman