

## **The complaint**

This complaint's about a commercial mortgage that Mr V and Mr V hold with Shawbrook Bank Limited. Mr V and Mr V are unhappy that when they made additional lump sum payments to the mortgage, Shawbrook insisted they provide information about the source of funds (SOF) that Mr V and Mr V consider irrelevant and excessively intrusive. They're also unhappy that Shawbrook held onto a payment for several months, and then returned it when Shawbrook wasn't satisfied with the SOF information provided. A similar situation then arose when they tried to redeem the mortgage entirely.

## **What happened**

The above summary is in my own words. The basic background to this complaint is well known to both parties so I won't repeat the details here. Instead I'll focus on giving the reasons for my decision, rounding the figures to avoid the risk of identification by including information that is overly-specific. If I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint.

## **What I've decided – and why**

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. But in doing so, we have to work within the rules of the ombudsman service, and the remit those rules give us.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having no regulatory function means that it's not open to me to determine what Shawbrook's policy requirements on SOF should be in cases like Mr V and Mr V's. My role is to determine if Shawbrook has applied its policy fairly and in accordance with the terms of the mortgage offer.

The first test for me to consider is whether Shawbrook had the right to request the information that Mr V and Mr V objected to providing. Having considered the mortgage terms and conditions, and having taken account of the legal framework currently in place, I'm satisfied it did have that right.

I've very carefully read everything that Mr V and Mr V have said about the information requested, and why they believe Shawbrook wasn't justified in asking for it. I understand their frustration and strength of feeling. But in the end, this is a dispute about Shawbrook's commercial judgement on what constitutes satisfactory proof of SOF. Mr V and Mr V clearly have a different opinion from Shawbrook on this, but what they're effectively asking me to do

is substitute my commercial judgement (or indeed their own) in place of Shawbrook's. It's not in my remit to do that.

Shawbrook was the party being asked to accept money, and it's not for me to second guess how Shawbrook should have satisfied itself that the SOF was acceptable. Shawbrook exercised its discretion as it was entitled to do. This put Mr V and Mr V in the position of having to choose whether to comply or not. A choice between two unwelcome options is still a choice, and each option had consequences. How they made their decisions was up to Mr V and Mr V, and it is for them to accept the consequences of the choices they made..

Having set the framework, I've next considered the events themselves; in broad terms, there were two. The first was during the spring and summer of 2023 and was what led to Mr V and Mr V referring the complaint to us in October 2023. The second was over the end of 2023 and early 2024, whilst we were considering the complaint about the first. Shawbrook issued a final response on the second event allowing us to consider both together.

### The first event

Mr V and Mr V made several lump sum payments between February and August 2023, totalling a little under £133,500. Shawbrook had already informed them about its SOF requirements; indeed the August payments were made *after* Shawbrook had already issued a final response to a complaint about the payments made between February and April 2023, and explaining why the information it had received thus far was not sufficient.

I don't think it was unreasonable of Shawbrook to hold money received in a suspense account whilst it was waiting for the information it needed in order either to credit the payments to the mortgage account or reject and return them. I note that Shawbrook has admitted there were shortcomings in some of its communication with Mr V and Mr V during August and September 2023. Overall, I find that its offer of £50 compensation for the trouble caused is fair and reasonable in the circumstances.

### The second event

Shawbrook accepted that it failed to respond in good time to emails received in December 2023 and a follow-up phone call in February 2024. It's to Shawbrook's credit that it recognised this and offered compensation for the inconvenience to Mr V and Mr V. However, I agree with the investigator that £150 (Shawbrook offered £30) better reflects the trouble and upset Mr V and Mr V experienced as a result of this.

What all this led to was Shawbrook issuing a termination notice; in effect, it ordered Mr V and Mr V to repay the mortgage in full, because they were in breach of a term in the contract that required them to produce information when requested. But this was at a time when they were trying to redeem the mortgage voluntarily, but were unaware – because Shawbrook hadn't told them – of the remaining information it needed to satisfy itself on SOF.

Mr V and Mr V told our investigator they would have provided the outstanding information if Shawbrook had told them in a timely manner what it needed. This is what prompted the investigator to suggest a four-week window during which Mr V and Mr V could provide the remaining information, on receipt of which Shawbrook would then allow them to redeem the mortgage on their own terms rather than have it terminated.

That was a sound proposal based on what the investigator could reasonably have known at the time, However, despite indicating to the investigator that they would have submitted the missing information had they known Shawbrook needed it before it could accept their money to redeem the mortgage, Mr V and Mr V have subsequently proceeded to do the exact

opposite. They sent the redemption money to Shawbrook on 26 July 2024 without first providing the SOF documentation, thus re-creating the same set of circumstances that applied to the first event. Unsurprisingly, and not unreasonably, Shawbrook has not applied the funds to the account, instead holding the money in suspense, and has continued to take monthly instalments since.

The effect of this is to render the investigator's recommended settlement null and void, and both parties have been informed that it will not feature as part of my decision on how the case should be settled.

In summary, it's clear to me that Shawbrook was at fault in its communication with Mr V and Mr V in respect of both events. But without wishing to be unkind, it seems to me that, at the same time, at almost every step of this case the consumer have gone out of their way to make their own lives harder and more complicated by not providing what the business has asked for.

I said at the outset that I wouldn't be commenting on every single point, and I haven't. I have, as I said I would, confined myself to those matters that I consider have a material effect on the outcome.

My remit requires me to be objective, impartial, and to decide what is fair, reasonable and pragmatic in all the circumstances of the case. It also means that I'm not required to provide answers to every specific question that comes up if I don't consider doing so will affect the overall outcome.

I will however make a further observation. There's more (and sometimes less) to complaint resolution than simply deciding who's right or who's wrong. It's not just about winning the argument or indeed pursuing the argument to its ultimate legal conclusion; sometimes it's about compromising to reach a *fair* conclusion which both parties can accept in a spirit of conciliation, I've done that here.

All I can do further is express the hope that both parties can move on from here without recrimination over what has gone before, and somehow find a way to deal with the residual balance on the mortgage.

### **My final decision**

My final decision is that I uphold this complaint in part. In full and final settlement, I direct Shawbrook Bank Limited to pay Mr V and Mr V £200 compensation, made up of £50 for the first event and £150 for the second event. I make no other order or award.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V and Mr V to accept or reject my decision before 2 October 2024.

Jeff Parrington  
**Ombudsman**