

The complaint

This complaint's about an application made by K, a limited company, to re-finance a short-term bridging loan it holds with Shawbrook Bank Limited onto a long-term commercial mortgage.

What happened

K took out the bridging loan in 2019, on the advice and recommendation of a third party intermediary, a broker firm I'll refer to here as P. The directors say that K wanted a long-term commercial mortgage from the outset, but was forced to take the bridging loan as it was already legally committed to the purchase. In October 2020, K applied to change the bridging loan into a long-term commercial mortgage, but the directors say this process was beset by problems and delays, which they attribute to Shawbrook. During this time, Shawbrook issued a number of extensions on the bridging loan.

K made several complaints over the period; Shawbrook addressed each one in a series of final responses, issued between August 2020 and June 2022. In the most recent of these, Shawbrook confirmed the application for the long-term commercial mortgage was no longer under consideration.

In July 2022, K contacted our service; the investigator who looked into the complaint didn't recommend it be upheld; The directors of K remain unhappy so the case has come to me for review.

By way of a jurisdiction decision dated 2 October 2023, I confirmed that this service's remit to consider this complaint is confined to the subject matter covered in Shawbrook's final response dated 22 June 2022. These were, in summary:

- a subsequent valuation being no different from its predecessor
- the application being declined and requiring further negotiation;
- a mix up between K, Shawbrook and P over the expiry date of the most recent valuation;
- three months' worth of delays;
- the charging of an arrangement fee; and
- why solicitors were being instructed for an internal product switch.

All other aspects of K's complaint that were addressed in final responses issued by Shawbrook prior to 20 January 2022 are time-barred under our rules.

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.

Mindful of the rules, an important point I need to make is about the directors' belief that they have been the subject of discrimination on a personal level. I've read everything they've said in that regard, and whilst I have no doubt of their strength of feeling, I have to keep in mind at all times that the eligible complainant here is K the limited company and not the directors themselves.

The directors merely bring the complaint on the company's behalf, so I can't consider their personal feelings, however much they would wish me to. I can only consider the impact of Shawbrook's actions on the company, and aside from anything else, a limited company is an inanimate entity, not capable of suffering from discrimination or distress.

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

The first observation to make here is that the transaction at the heart of this dispute is not, as K has characterised it, a product transfer on an existing lending facility. Rather, it was request for an entirely new lending facility - a long-term commercial mortgage – to repay a short-term bridging loan. These are two completely different types of lending, involving very different underwriting criteria and risk assessments, an entirely new contract and possibly a new legal charge. In that context, it isn't relevant that the same lender was involved. It was a new transaction requiring a new lending decision and the execution of a new mortgage contract, hence the arrangement fee and the need for solicitors to be instructed.

The circumstances in which K came to have a bridging loan first, and then find itself having to apply for the new facility, fall outside my remit here, as they aren't covered in the final response of 22 June 2022. All I can deal with is how Shawbrook handled the application, but even then only those elements that were addressed in the same final response.

My starting point here is that no one, whether they be a private individual or a commercial entity, is entitled to borrow money; and even when they've borrowed before, they're not automatically entitled to do so again. But a lender must treat customers fairly. In the context of an application for a new loan on entirely different terms, that means assessing it fairly in accordance with the bank's lending criteria and appetite for risk, and being mindful of what good practice requires of it.

Lenders' criteria are commercially sensitive and not generally made public. Meanwhile, I don't need to take account of the provisions of the Mortgage and Home Finance Conduct of Business rules (MCOB). Both the existing bridging loan and the proposed long-term commercial mortgage were unregulated.

Having considered everything that both parties have said and provided, it's quite apparent that the biggest stumbling block to the commercial loan being approved for release was that Shawbrook was not satisfied that key conditions specified in the offer regarding the physical state of the proposed security premises had been met. I don't reveal the details here, as to so might be a potential identifier, but in simple terms K is adamant that it had done all that was required of it to allow funds to be released, but Shawbrook didn't agree.

Shawbrook wasn't acting on a whim, or simply saying no for the sake of being obstructive. It was relying on the expert opinions of the surveyor it had instructed to assess the premises' suitability as security for the proposed lending, and the solicitors it instructed to act for it in the transaction. Each time the surveyor issued a valuation, it had a limited time span, and expired before Shawbrook was satisfied all conditions had been met.

I haven't considered whether the surveyor's assessments of the suitability of the security were fairly reached or the subject of error; these were the opinions of an independent third party over whom I have no jurisdiction. However much K's directors might have disagreed with the view that the premises weren't up to the required standard, the surveyor thought otherwise and Shawbrook was reasonably entitled to rely on the opinion of the expert.

Throughout the whole period I am able to consider, I think Shawbrook took reasonable steps to keep K's broker firm P apprised of developments, as they occurred. I also consider that Shawbrook made sure P understood what documents its solicitors needed to receive before it would be willing to release funds. Before it had received all of the necessary items, in March 2022, the most recent valuation had once again expired. If there was a mix-up over the exact date the valuation expired, I'm not persuaded that was a mistake on Shawbrook's part, and I've no remit to consider if P did anything wrong.

In summary, the decision whether to release the funds for the commercial mortgage was Shawbrook's to make, only if and when it was satisfied, based on the expert opinions it was entitled to rely on, that all of its lending conditions had been met. The responsibility to ensure those conditions were met were K's and K's alone. In all the circumstances, I'm not persuaded, on the basis of the evidence before me, that delays or omissions on Shawbrook's part are the sole or even primary reason this transaction did not complete.

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. I can see how strongly K's directors feel. They see error or wrong-doing in almost everything Shawbrook has done (or not done).

That's a natural, subjective reaction, and entirely understandable. It's also natural to emphasise individual statements or comments that appear to support a particular viewpoint, whilst at the same time paying less attention to those that support the opposite viewpoint. But look hard enough and it's possible to find inconsistencies and/or anomalies in what both sides have said and done from time to time.

Be that as it may, I have to take a different approach. I'm impartial and I have to look at things objectively, sometimes taking a step back from the minutiae, focussing on the broader picture. That's what I've done. Having done so, for all the reasons I've set out, I can't find in K's favour.

My final decision

My final decision is that I don't uphold this complaint.

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 K to accept or reject my decision before 6 November 2023.

Jeff Parrington

Ombudsman