

The complaint

D, a limited company, applied for a Buy To Let (“BTL”) mortgage with Shawbrook Bank Limited. Mr D complains on behalf of D, that Shawbrook accepted mistaken conclusions from its surveyor about D’s property. Mr D wanted Shawbrook to pay the valuation fee back

What happened

Mr D told us he wanted to remortgage the property D owns. He applied on behalf of D to Shawbrook. D paid £1,950 for a valuation. But the surveyor said D’s property was a House in Multiple Occupation (“HMO”). This conclusion meant D would need a licence to continue letting properties within the building, and it significantly affected the valuation of the property.

Mr D said this was wrong. He sent us the previous survey on the property, from a few years ago, and a more recent survey he’d obtained after deciding not to go ahead with the mortgage with Shawbrook. Neither of these surveys suggested the property was an HMO.

Mr D said that because Shawbrook’s decision about the property was wrong, it should pay back the valuation fee to D.

Shawbrook sent our service the valuation report it received, which sets out clearly the surveyor’s opinion that this is an HMO, and a licence is required. Shawbrook said it had discussed this conclusion with its surveyor, who remained of this view. It also said it had contacted the relevant council itself, and hadn’t been able to confirm that an HMO licence would not currently be required for the property.

Shawbrook said if Mr D could obtain confirmation from the local authority that an HMO licence is not required, it would review its position. But for the moment, it said it had to rely on the decision of its qualified chartered surveyors. Shawbrook said that firm has the appropriate experience, qualifications and expertise in valuing properties.

So Shawbrook wouldn’t change its mind. And Shawbrook wouldn’t pay back the valuation fee that D had paid.

Our investigator didn’t think this complaint should be upheld. He said Shawbrook had relied on the professional opinion of an appropriately qualified surveyor. And it acted fairly, agreeing to reassess the application if D could provide evidence from the council to say that the property didn’t need an HMO license after all.

Our investigator said the valuation fee D paid was applied fairly for a service that was correctly executed. Shawbrook didn’t make a mistake, in charging this, or in assessing D’s application. Just because a different bank then reached a different conclusion, didn’t mean Shawbrook had done something wrong. So our investigator didn’t think Shawbrook had to refund the fee it had charged.

Mr D replied on behalf of D, to disagree. He said our service had ignored the evidence he’d sent us, to show the property wasn’t an HMO. He wanted to know why Shawbrook thought

this was an HMO. He said no one suggested that a couple of years ago, when the same surveyors valued the property. And he repeated how seriously this classification affected the property. So he wanted this complaint to be considered by an ombudsman, and said that if things weren't resolved through our service, he would take legal action against Shawbrook.

Our investigator explained again that our service simply doesn't have the power to say that a valuation report was incorrect. He said Shawbrook had obtained a valuation from a surveyor who was both appropriately qualified and acting independently from the bank. Our investigator said we couldn't ask Shawbrook to do more than that.

As no agreement was reached, this case was then passed to me for a final decision.

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.

I've reached the same overall conclusion on this complaint as our investigator.

Shawbrook commissioned a valuation of D's property. I can see the surveyor that Shawbrook used does hold the appropriate professional qualifications, and, as our investigator said, works for a firm which is separate to Shawbrook. I think this was a reasonable action for Shawbrook to take.

Shawbrook then received a valuation which said that D's property was an HMO, and would require a licence.

Mr D objected to this conclusion. He appears to have done so both because it would require D to get a licence to continue to let out parts of the property, and also because it significantly affected the valuation of the property.

I can see that Shawbrook then pressed the surveyor on this, querying his conclusions. The surveyor remained confident this property would need an HMO licence.

Our investigator has explained that our service can't comment on the surveyor's opinion on this matter. Surveyors don't fall under the jurisdiction of our service. I can only look here at what Shawbrook did.

Mr D said a survey carried out by the same firm only a few years ago hadn't suggested the property required a licence. But Shawbrook's surveyor said the legislation had changed in early 2022. That means previous conclusions on this point wouldn't assist in deciding if a property requires an HMO licence now.

I have also listened to a call that Shawbrook had with the local council. Shawbrook rang the council, to see if the conclusion the surveyors had reached was, as Mr D said, clearly wrong. Shawbrook wasn't able to get that reassurance from the council. The matter doesn't appear to have been beyond any doubt – apparently the council was actively considering this issue, and hadn't yet reached any decision either way on whether the limited amount of shared amenities or facilities which Mr D acknowledges exist in his property, do make this property subject to HMO licensing.

Mr D has sent a considerable amount of documentation to our service, to show the property ought not to be classed as an HMO by Shawbrook. It appears that what Mr D would like, is for our service to overturn the decision of Shawbrook's surveyor. But, as our investigator

explained, our service isn't able to do that for him. All I am able to do here is consider what Shawbrook did.

I have to think about whether, with the information we know of in front of it, Shawbrook acted reasonably.

As part of that, I note that Shawbrook itself doesn't claim to have expertise in property valuations or the status of buildings which provide homes for more than one household. It relies on the expertise of others, for a conclusion on those issues.

As I've said, the council wasn't able to provide a firm answer either way as to whether this property ought to be treated as an HMO or not. But what I need to consider here is whether Shawbrook has acted reasonably. And, with a firm indication from its surveyor that D's property was an HMO, and unfortunately no support from the council for Mr D's counter argument, I think it's reasonable for Shawbrook to have treated this property as an HMO.

Shawbrook has said that it would review this conclusion if Mr D could obtain confirmation from the local council that an HMO licence wasn't required for the property. But Mr D doesn't appear to have sent that to Shawbrook, or to our service.

Mr D wanted Shawbrook to pay back the substantial valuation fee D had paid. Mr D hasn't suggested that he was misled by Shawbrook into believing that the valuation fee he paid was refundable. Shawbrook has said that D applied through a broker, and its broker ought to have explained to Mr D that the valuation fee wasn't refundable.

In the circumstances of this case, I don't think Shawbrook has to make the refund that Mr D would like. I know that Mr D, on behalf of D, will be disappointed, but I don't think this complaint should be upheld.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D, on behalf of D, to accept or reject my decision before 7 August 2023.

Esther Absalom-Gough

Ombudsman