

The complaint

K L (Cardiff) Limited's (K) complaint about Shawbrook Bank Limited (SBL) relates to changes made to the monthly amount SBL collected in relation to K's commercial mortgage. K are also unhappy with the time it took to deal with their complaint, and as a resolution, want SBL to waive the early repayment charge it levied when K redeemed the mortgage. It would also like a refund of the interest applied to their account because of the changes.

What happened

In 2017 K obtained a commercial mortgage from SBL. In November 2019 K made a large overpayment to the mortgage. Towards the end of 2020, having received a statement, K noticed that the monthly repayments they had been making since February 2020 had changed, and were less than the monthly interest which was accruing. As a result, the balance on the mortgage was increasing rather than decreasing. K say this change occurred as a result of something SBL did.

K raised their complaint with SBL in January 2021. They received acknowledgements stating the matter was being investigated, but despite frequent chasing calls trying to resolve the matter, K said matters simply dragged on to the point K felt, in March 2021, it had to bring a complaint to this service. And, around this time, SBL also increased the monthly repayment amount without notifying K that they were doing so.

In May 2021 SBL, in the final response letter (FRL) SBL accepted there had been an error made when applying the November 2020 overpayment which had resulted in the monthly repayments being incorrectly rescheduled. They told K that any financial detriment to the mortgage account would be reversed so that it wouldn't be prejudiced. SBL also apologised for the length of time it had taken to provide the FRL, acknowledging that K had made numerous attempts to obtain updates, but none had been forthcoming.

SBL also accepted that these delays had also caused K's multiple requests for a redemption statement (RS) to be delayed. In recognition of these errors SBL paid £100 compensation to K.

K were unhappy with SBL's final response and so approached this service to see if we could assist in resolving the dispute. Our investigator thought that there had been poor service by SBL, and the amount of compensation offered to be insufficient. She thought £250 would be a fair and reasonable in terms of compensation. She also thought SBL should rework K's account on the basis that K had made the correct repayments from 21 February 2020 (the date the first incorrect repayment amount was taken) to the date the account was closed. She also thought that K should pay SBL 8% simple interest on any refunded amount from the date the loan was redeemed until the date of the settlement.

SBL accepted the investigator's view, but K didn't and asked for the complaint to be passed to an Ombudsman 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 issued my Provisional Decision on the 5 May 2022 and K responded saying it agrees. I have heard nothing further from SBL.

SBL have accepted they made a mistake when, without notifying K, they changed the monthly amount due in February 2020 and set the monthly repayment to an incorrect amount. Further, they then increased that amount at a later date without telling K. SBL have explained this was due to an administrative oversight and quite clearly all of this translates to poor customer service. SBL also accept that K had repeatedly asked for a RS which had not been provided for six months. A number of issues arise out of this.

First, there is the issue of K paying more interest because the monthly payments were set too low. The effect of this meant that more interest was accruing to their account since the capital element of the mortgage wasn't reducing as it would have done had the correct payment been made. SBL have accepted the investigator's view that the account should be reworked so as to put K back in the position it would have been in but for the error. I agree that that is the sensible approach.

The second issue relates to the ERC. K would like this to be waived on the basis that there has been a breach of the mortgage contract. I don't agree. There has been a mistake made, and the effect of that mistake can be corrected as I have described above to put K back in the position they ought to have been in. In any event the ERC was always a charge K would have had to pay had they elected to repay the mortgage early. K did make that election and so it's fair that the charge should apply. And there was no difference in the amount paid by way of ERC had it been paid in January 2021.

The final issue concerns K's request for a RS. It seems from the timeline that this was overlooked. I have been able to ascertain that the following requests were made;

1. 4 January 2021 - K requested a RS to be provided by the 31 January 2021. SBL received this request since they acknowledge so in their letter of 13 January.
2. 11 February 2021 - a further request was made and K indicated that they were wishing to redeem the mortgage on 28 February. Although SBL wrote to K on 4 March, the issue of a RS was not mentioned.
3. 10 March 2021 - K wrote again indicating they were looking to redeem the mortgage on the 31 March.
4. 6 April 2021 - K wrote again indicating they were looking to redeem the mortgage by the 30 April.
5. 22 July 2021 – SBL provided a RS and K redeemed their mortgage on the 29 July 2021.

It is clear from this evidence that K were very keen to get a RS. One of the reasons for obtaining an RS is so that the mortgage might be redeemed. This is precisely what K were trying to do as is set out in their correspondence. This is also supported by the fact that when they were ultimately given an RS in July the mortgage was redeemed within seven days.

It follows from this that had SBL provided the RS in early January, when first asked, the overwhelming likelihood is that K would have redeemed the mortgage then. That would have reduced the amount K ultimately paid to redeem the mortgage since it would have avoided paying six months of interest to the account.

K say that in the six-month delay in being able to redeem their mortgage it cost them £4,236.28 in interest. K have told me they redeemed the mortgage from their own funds. In other words, they did not obtain a further mortgage to replace the one they had with SBL. Those funds used to redeem the mortgage, they say, had been invested and were earning interest at the rate of 0.01% from 6 July 2020.

Putting things right

Our investigator thought that SBL should rework K's account as I have outlined above. However, I think that doesn't go far enough because it doesn't take account of my finding that K would have redeemed their mortgage much sooner.

So, I think in addition to that which our investigator thought SBL should do, I think it should also rework K's account on the basis that the mortgage was redeemed on 31 January 2021. Naturally K would then not have had the benefit of the funds used to redeem the mortgage which were at that time earning 0.01% interest. So, the sum they earned in interest, should be set off against the adjustment to the account as I have described above, to produce a net sum which should be repaid to K. SBL should also pay 8% simple interest on that sum from the 31 January 2021 to the date payment is made to K as they have effectively been kept out of that money.

Finally, our investigator thought £250 would be a fair and reasonable in terms of compensation, but that doesn't take into account the issues in not providing the RS. So, in my view I think the compensation ought to be increased to £450 in total to reflect the time spent by K in dealing with this issue. For the avoidance of any doubt this is a further £200 on top of the £250 our investigator suggested.

My final decision

My final decision is that Shawbrook Bank Limited shall

- (a) pay to K the sum of £450 in compensation in total.
- (b) rework K's account from the date of the first incorrect repayment amount was taken from 21 February 2020 to the date the account was closed as if the right repayments had been taken
- (c) then rework K's account on the basis that the mortgage had been redeemed on 31 January 2021 rather than the actual date it was redeemed six months later. That calculation will produce a lower redemption figure and thus a figure which K is entitled to be refunded (fig A). A sum equal to the interest K would have earned, at the rate of 0.01%, on the amount K would have paid to redeem the mortgage on 31 January, shall be calculated (fig B). From fig A should be deducted fig B to arrive at fig C to which the sum of 8% simple interest shall be added (running from 31 January 2021 to the date of payment) to produce fig D and it is that sum, fig D, shall be the amount paid to K.

Under the rules of the Financial Ombudsman Service, I'm required to ask K to accept or reject my decision before 6 July 2022.

Jonathan Willis
Ombudsman