

The complaint

Mr W complains that Shawbrook Bank Limited ("Shawbrook") took an excessive amount of time to complete a Deed of Postponement ("DOP") in relation to his second charge mortgage in order for him to complete a remortgage with his first charge lender, which meant he paid a lot more interest.

What happened

Mr W took out a second charge mortgage with Shawbrook for £367,475 (including fees) in December 2020 over a term of 240 months at an interest rate of 4.7%. He made an application for a re-mortgage with his first charge lender and was given a mortgage offer on 14 April 2021. The purpose of the remortgage was to get a better rate and also to reduce his second charge mortgage with Shawbrook as this was costing him around £50 a day in interest. The remortgage completed on 2 September 2021.

Mr W says that Shawbrook took over six months to complete the DOP in order for his first charge remortgage to be able to complete, which he says is excessive. Mr W also says that he had to chase Shawbrook repeatedly and that he was provided with a number of excuses in relation to the delay. He also says that Shawbrook made it difficult to communicate and that it refused to discuss the matter with the solicitors for the first charge lender ("the FCL Solicitor") on a number of occasions.

Mr W says he has incurred additional solicitors' fees for underwriting a second charge payment on completion of the first charge remortgage and that he has paid £50 interest a day for approximately six months whilst waiting for the DOP to be completed. He would like compensation for this in addition to compensation for the distress and inconvenience of having to make repeated calls to Shawbrook.

In its final response to Mr W on 10 November 2021, Shawbrook said that the initial request for a DOP was made on 17 May 2021 and its records showed that it had received all relevant documentation on 9 June 2021 in order for the application to be sent to its head office for a decision to be made. Shawbrook says the process for a response from head office can take up to four weeks if all documentation had been completed successfully but that due to unforeseen circumstances it was unable to process the request within its timescales and the DOP was executed on 19 September 2021.

Shawbrook said that it had received a response from its head office on 12 June 2021 advising that the DOP request had been declined. On 14 June 2021 it asked the head office for the reasons and on 18 June the head office responded to say the proposed DOP request did not meet its lending criteria.

Shawbrook upheld Mr W's complaint about the time taken to process the DOP, the fact he was not initially provided with a reason the DOP was declined and the delay in the time taken for it to resolve his complaint and made a payment of £150 to reflect that. However, it said that it would not refund the fees required to process the DOP as this was a standard charge. It also requested further information in response to Mr W's request to refund the interest charged as a result of the delays. Mr W has confirmed that he did not provide this as he referred the matter to this service.

Our investigator looked into this complaint and agreed that there were some avoidable delays but said that she hadn't seen evidence to suggest that this was for a period of six

months. She noted that the DOP form had not confirmed that the purpose of the DOP was to partially reduce the second charge mortgage with Shawbrook. The investigator set out that, based on Shawbrook's quoted timescales, the DOP process should have completed on 9 July 2021. She allowed a further two weeks for the completion of the first charge mortgage and recommended that Shawbrook should calculate the difference in interest from 23 July 2021 to 2 September 2021 (when the first charge loan completed). She also recommended that Shawbrook pay Mr W an additional £150 (making a total of £300) in respect of the distress and inconvenience caused.

Shawbrook disagreed with the view so the case has come to me to make a decision. It said that it was not aware initially that the DOP was to reduce the amount of borrowing on the second charge mortgage. It says that although it initially agreed there was a delay, the original DOP request did not confirm that the second charge mortgage would be partially reduced which prompted questions from head office. This omission meant that the loan did not meet the lending criteria and was therefore declined, causing a delay. Shawbrook also says that the £150 already paid for distress and inconvenience is fair and reasonable in light of the fact that the original DOP form did not contain all the relevant information. It calculated that the interest charged on the £61,537.16 between 23 July 2021 and 2 September 2021 was £319.09.

I set out in my provisional decision dated 5 April 2023 (reproduced below) why I was minded to uphold Mr W's complaint. I invited both parties to let me have any further comments and evidence by 3 May 2023.

Mr W confirmed that he accepted the provisional decision. Shawbrook responded to say that it had previously provided its submissions disagreeing with the view and that it didn't have anything further to add.

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.

In my provisional decision I set out the following:

"Having carefully considered all the evidence and arguments, I agree with the investigator's view in relation to the fact that there were avoidable delays. However, I disagree in relation to how Shawbrook should put this right. I've explained my reasons further below.

Delay Prior to Application Going to Shawbrook Head Office

Whilst Mr W's mortgage offer from the first charge lender was received by Mr W on 14 April 2021, I can't see that Shawbrook was asked to complete the DOP until 17 May 2021.

I've seen an email from the FCL Solicitor to Shawbrook dated 17 May 2021 explaining that Mr W was proposing the remortgage and enclosing a copy of the mortgage offer and redemption statement. The solicitor also enclosed a DOP and requested that this was executed and returned as soon as possible if Shawbrook agreed to the postponement of the charge. I've seen a further email dated 25 May 2021 from the solicitors noting that they were still awaiting a response from Shawbrook and enclosing a further copy of the documentation.

I've listened to the call made by Mr W to Shawbrook on 25 May 2021. During this call he said that the FCL Solicitor was not getting a response and that this was causing a delay. He was told by the advisor that Shawbrook had sent the FCL Solicitor a letter on 19 May and again earlier that day setting out what it needed for the DOP as the FCL Solicitor had also called to chase the matter earlier that day.

Mr W asked if there was anything he needed to do and was told to “fill it in and send it back and go from there pretty much”. It was then Mr W who raised the fact that on the FCL Solicitor’s online portal it said that there may be a fee to pay for the DOP. Mr W was then transferred to another advisor and paid the fee immediately over the phone.

Mr W then explained that he was borrowing more money on his first charge mortgage which puts him in a position where he could reduce the second charge loan with Shawbrook and he wanted to understand the process for doing that. The advisor told him how he could do this and I can see that Shawbrook sent a letter to Mr W on 25 May 2021 thanking him for his enquiry about making an additional payment and providing him with its bank details.

So I am satisfied that, although it was not included on the DOP request, Shawbrook was aware at this stage that Mr W intended to use some of the money he was borrowing on his first charge remortgage to reduce the loan with Shawbrook.

Mr W called Shawbrook again on 2 June 2021 to chase the matter up as he said the FCL Solicitor was still waiting for the letter and this was causing lots of delays. The advisor said that the form had been sent on 25 May 2021 and that it was just waiting for two things: the signed authority and first charge settlement figure. Mr W asked if an email could be sent but Shawbrook said that it couldn’t send emails so he asked if it could be sent by post as well as fax which the advisor said he would do.

I can see that Shawbrook then sent a fax to the FCL Solicitor on 2 June 2021 requesting payment of the fees of £185, a signed authority from Mr W, a settlement letter from the first charge mortgage provider, copy of the new mortgage offer and the complete DOP the new lender wanted them to sign.

Shawbrook also sent Mr W a letter on 2 June 2021 regarding his recent DOP application stating that if he gives authority to speak with his solicitors then it could deal directly with them. The letter also said he needed to pay the fees and requested a signed authority from all parties, a settlement letter from the first charge mortgage provider, copy of the new mortgage offer and the complete DOP the new lender wanted them to sign. The letter stated “We won’t be able to approve the application if the total lending secured against the property is too high.”

It is unclear why some of these items were requested on 2 June 2021 as all of the documents apart from the authority appear to have already been sent by the FCL Solicitor on 17 May 2021 and then again on 25 May 2021. In addition, Mr W had phoned directly to chase the matter over a week earlier on 25 May 2021 and paid the fee directly on that date. So the only thing outstanding by 25 May 2021 was the signed authority.

I note that the FCL Solicitor had requested a redemption statement by fax on 28 April 2021 to include a daily rate of interest. This was sent by Shawbrook to the FCL Solicitor on 20 April 2021, showing the redemption balance of £364,439.73 as at 4 May 2021 with a daily rate of interest of £47.50. Shawbrook had neither requested nor received any signed authority from Mr W at this stage confirming that it could deal directly with FCL Solicitor, yet it still provided the information.

Further, it was clear from the conversation on 25 May 2021 that Mr W had given the FCL Solicitor authority to act and it was also apparent that Shawbrook had already spoken directly to the FCL Solicitor in relation to Mr W’s account on 25 May 2021.

So it seems to me that either (1) it was not necessary for Shawbrook to obtain any written authority from Mr W to deal with the FCL Solicitor – as it had dealt directly with them in previous correspondence and phone calls by this stage without any such authority – or, alternatively, (2) it was necessary – in which case Shawbrook should

have asked for it before sending the redemption statement and speaking with the FCL Solicitor over the phone. Either way, if it was a requirement it should have been sought much earlier by Shawbrook. And there doesn't appear to be any reason why Shawbrook could not have progressed the application from 25 May 2021.

In light of the above, I am minded to find that Shawbrook had everything it needed to progress the application by 25 May 2021.

Delay Following Application Going to Shawbrook Head Office

In any event, the FCL Solicitor sent Shawbrook an email on 8 June 2021 thanking it for the letter of 2 June 2021 and enclosing the authority from Mr W, stating fees were paid directly and requesting confirmation of receipt and enclosing a further copy of the mortgage offer, DOP and redemption statement which had already been sent on two occasions. Shawbrook has confirmed that the application was formally submitted on this date.

On 11 June 2021, the FCL Solicitor called to chase Shawbrook as she said the documents for the DOP had now been sent three times by post and email so was questioning the delay. Shawbrook advised that the documents had gone to its head office on 9 June and were being assessed. The solicitor informed Shawbrook that Mr W was chasing every day and it said that it would probably call Mr W and write to him but it was unable to respond by email.

On 17 June 2021, the FCL Solicitor called again to chase the DOP and was told that it had been declined as it didn't meet the criteria. She asked for the reasons and questioned why it would be declined as it was just postponing a charge whilst the new mortgage was put in place. Mr W also called Shawbrook himself on the same date to ask why the DOP had been declined and explained that he was trying to reduce his debt and that the delay was costing him money.

On 18 June 2021, Shawbrook told Mr W that the DOP did not meet its lending criteria but that it could reconsider providing there was an overpayment made of around £61,357.16 from the balance. Mr W explained that there had been a breakdown of communication and explained that he was now in a position where he was able to borrow nearly double the amount on his first charge mortgage, so the DOP was to change his first charge mortgage company which would put him in a position where he can reduce his Shawbrook loan by nearly two thirds. So he said he was looking to pay far more off than £61,000. He explained that it was a lot more economical for him to have the bulk of the loan on the first charge mortgage rather than the second charge mortgage. So Mr W said it seemed to him that this information hadn't necessarily come across or hasn't been appreciated in this decision.

The advisor said Shawbrook's position was that – for it to be able to agree the DOP – the balance needed to be reduced by £61,000 or the mortgage offer made by the new first charge lender needed to be reduced down to £536,962.84. Mr W said that he was not interested in the second option as he wanted to borrow as much as possible on his first charge loan but that it would only be possible to make the payment of £61,000 once the DOP had happened. He explained that once the first charge was dealt with, the remainder of the funds would be paid off of his second charge loan with Shawbrook (up to around £200,000) but that was the only way it could happen. Mr W said that he was happy to put this in writing. The advisor said that she could understand Mr W's frustration and asked for Mr W to send the information by email. It would then be resent to head office to explain that he was looking to make a vast overpayment but that this couldn't be done until the DOP was agreed.

Mr W followed up this call with an email the following day on 19 June 2021, where he clarified the two options discussed - to pay off a lump sum of approximately £60,000

of his second charge loan or to request a lower mortgage offer from the first charge lender of approximately £535,000. Mr W indicated that the second option was not viable as he was in a position where he could increase his first charge borrowing and reduce his second charge. Therefore, he would like to take the first option but that this was only possible once the deed of postponement was complete. He therefore recommended that – in order to complete the DOP – once the new first charge lender had transferred the funds to the FCL Solicitor he would ask them to transfer £100,000 to Shawbrook to take off of his second charge loan. He also indicated that he was looking to further reduce his second charge loan following this with additional payments.

In light of the above, I think that, in addition to Mr W informing the advisor by phone on 25 May 2021 that he was borrowing more money on his first charge mortgage in order to reduce the second charge loan, it was also made clear to Shawbrook on 18 June 2021 that this was his intention. So I think Shawbrook was aware of the situation both before the application was sent to head office and this was clarified again only nine days after the request had been sent to head office. In light of this, I do not accept what Shawbrook says about not being aware that the DOP was needed to reduce the amount of borrowing on the second charge mortgage and that it was this which caused a delay.

Given that Mr W suggested in his email of 19 June 2021 that he would ask the FCL Solicitor to transfer some of the money to Shawbrook once it had received the funds from the first charge lender, it is surprising that an undertaking wasn't suggested by Shawbrook at that stage.

However, from the calls and correspondence I have seen, Mr B chased the matter repeatedly over the next few weeks asking for updates. The calls referred to below are only a selection of the calls made and there were many others where Mr W was simply told that there was no update or that things hadn't been progressed as, for example, people hadn't been in the office due to COVID (call of 20 July 2021), there was only one agent in the DOP department (call of 30 July 2021), and that the deed had been sent by Shawbrook's to its solicitor but had gone missing as it was addressed to the FCL Solicitor rather than Shawbrook's solicitor (call of 12 August 2021).

On 28 June 2021, Shawbrook called Mr W back to say that the DOP didn't meet its lending criteria and that any payment would need to be made before the DOP would be agreed.

On 30 June 2021, Shawbrook called Mr W asking if he wanted to pay off £100,000 before the DOP or after and Mr W explained again that he could only make the payment after the funds have arrived from the first charge lender (and that he was told previously it was only £60,000). The advisor said that this would mean Shawbrook would need to get consent with an undertaking from its solicitors but that would incur a fee and they would let Mr W know what this cost was.

Given that Mr W had made Shawbrook aware on 25 May 2021 of his intention to use some of the first charge funds to pay off some off the second charge loan and his suggestion on 19 June 2021 that he was happy to consent to an undertaking to pay the required funds off of the loan with Shawbrook, it is not clear why it took until 30 June 2021 for Shawbrook to propose this as a way forward.

During the call on 8 July 2021, Shawbrook's advisor said that its solicitors would need to write a letter for Mr W to sign saying that he would pay an amount off when the funds were released on the first charge mortgage. Given the delay in progressing this up until this point, Mr W asked if he could get his own solicitors to write the letter.

He also spoke about the possibility of getting personal loans and a bridging loan to make the payment just to get the DOP signed off.

Mr W followed this up in an email on 9 July 2021, stating that the FCL Solicitor had confirmed that it should not be a problem for them to make an undertaking to pay £100,000 off his loan with Shawbrook upon receipt of the first charge funds in order for Shawbrook to complete the DOP. Mr W said that the solicitor required this in writing from Shawbrook and asked for Shawbrook to provide this today.

Mr W also chased this in another call on the same date explaining that the FCL Solicitor needed a letter from Shawbrook's solicitor regarding what was required so that they could do the undertaking letter rather than Shawbrook's solicitor. He was told it would take 24-48 hours to deal with his email.

On 12 July 2021, Mr W called for an update and was told the DOP had all been agreed by Shawbrook's solicitors so it would need to be signed but the advisor wasn't sure of timescales.

The FCL Solicitor called Shawbrook on the same date asking for it to specify in writing what it needs from them regarding the undertaking. On 12 July 2021, the FCL Solicitor also followed this up in a letter to Shawbrook asking it to confirm its request for an undertaking in writing, providing its bank details and the amount to be paid upon completion. The solicitor also stated that they would require Shawbrook's undertaking to return the sealed DOP on receipt of the amount it required to be repaid or return the deed prior to completion.

It appears from Shawbrook's internal notes that the DOP was executed on 20 July 2021 and it was then sent to its solicitor. However, the solicitor didn't receive it until 10 August as it appeared to have been sent with the wrong address (which is apparent from the call between Shawbrook and Mr W on 12 August 2021).

Despite Mr W and the FCL Solicitor chasing this information repeatedly, it took until 18 August 2021 for Shawbrook's solicitor to issue the undertaking letter to the FCL Solicitor, which indicated that they would have until 22 September 2021 to make payment. Although the advisor told Mr W over the phone on 17 August 2021 that the letter was being sent that day, it is clear from the internal notes that it wasn't in fact sent until 18 August 2021.

The completion of Mr W's first charge mortgage took place on 2 September 2021 and £61,357.16 was paid off of his loan with Shawbrook by the FCL Solicitor on this date. The internal notes are unclear as to when the DOP was executed following the receipt of the funds but Shawbrook has said in its final response letter that this was on 19 September 2021.

Given my findings above, it is my provisional view that Shawbrook had all of the information it needed to progress the application by 25 May 2021. It was also aware at that stage that Mr W intended to use some of the funds from the first charge mortgage to pay off some of his second charge loan with Shawbrook. So, taking Shawbrook's own timescales that it could take up to four weeks for this to be processed by head office, I think it would have been reasonable to expect the DOP to have been completed (based on the undertaking) by 22 June 2021.

The undertaking was provided on 18 August 2021, with the completion of the first charge mortgage and payment from that being made towards the second charge loan on 2 September 2021. So this took a total of 15 days. I think it is reasonable to assume that it would have taken a similar amount of time had the undertaking been provided earlier. So, had the DOP and undertaking been completed by 22 June 2021, I think Mr W would have been able to make the part repayment of £61,357.16 towards his second charge mortgage by 7 July 2021.

In light of this I think Shawbrook should refund the additional interest Mr W paid on this portion of the loan between 7 July 2021 and 2 September 2021 compared to what he would have paid if he had been able to complete the new first charge mortgage on 7 July 2021. I have seen the mortgage offer for the first charge loan which sets out the interest rate was fixed at 1.23%. I think this is reasonable as Mr W still would have had the debt, just on a lower interest rate.

As set out above, Mr W (and the FCL Solicitor) had to chase Shawbrook repeatedly for updates both by phone and in writing. He was also told he would be called with updates which did not happen and given timescales which were not met. It seems that there was insufficient communication between different parties at Shawbrook which meant Mr W also had to explain the situation in relation to wanting to use the first charge mortgage to pay off some of the second charge mortgage on a number of occasions despite making his intention to do so clear at the outset. There were also significant periods where no progress appeared to have been made.

So I think the whole application could have been handled a lot more efficiently by Shawbrook and Mr W was put to considerable inconvenience in having to try and progress matters. It is clear that these delays would have been extremely frustrating for Mr W at what was a stressful time when he was trying to reduce his second charge loan. In light of this, I think that Shawbrook should pay Mr W a total of £300 for the distress and inconvenience caused (including the £150 it has already paid)."

Mr W has indicated that he accepts the provisional decision. Shawbrook responded to say that it had previously provided its submissions disagreeing with the view and that it didn't have anything further to add. I confirm that I considered these earlier submissions when coming to my provisional decision. In light of the fact that neither party has provided any further information or submissions, I see no reason to depart from my reasoning in the provisional decision.

Putting things right

For the reasons set out above, I uphold this complaint and require Shawbrook to:

- Pay Mr W the difference between the interest he paid on £61,357.16 of his mortgage with Shawbrook between 7 July 2021 and 2 September 2021 and the interest he would have paid on this figure over this period had he taken out the first charge mortgage on 7 July 2021 at a rate of 1.23%.
- Pay Mr W 8%* simple annual interest in respect of the above, calculated from 2 September 2021 until the date of settlement.
- Pay Mr W £300 in respect of the distress and inconvenience (including the £150 it has already paid).

* HM Revenue & Customs requires Shawbrook to take off tax from this interest. Shawbrook must give Mr W a certificate showing how much tax it's taken off if he asks for one.

My final decision

For the reasons I've explained above and in my provisional decisions I uphold this complaint against Shawbrook Bank Limited and require it to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 1 June 2023.

Rachel Ellis
Ombudsman