

## **The complaint**

N, a limited company, complains that Shawbrook Bank Limited withdrew an offer of a commercial mortgage and charged it fees even though the mortgage never completed.

## **What happened**

In 2024 N applied to Shawbrook for a commercial mortgage. The application was originally submitted in October 2024, when Shawbrook indicated it might be able to lend subject to further checks.

N then submitted a full application and Shawbrook assessed the application through its normal underwriting procedures. It issued a formal mortgage offer on 23 December. The offer was subject to the following conditions precedent:

- 1) Confirmation of insurance for the property.
- 2) Signed guarantee from N's director.
- 3) Evidence of funds for the deposit for the purchase of the property.
- 4) Satisfactory energy performance certificate (EPC) or commitment to obtain satisfactory rating.

N and Shawbrook both instructed solicitors. N also provided further evidence of the funds to be used for the deposit, which were reviewed by Shawbrook's underwriter.

On 29 January, Shawbrook decided it didn't want to proceed and withdrew the offer. Its solicitors asked N's solicitors to cover their costs in accordance with an undertaking given. N's solicitors paid the costs to Shawbrook's solicitors.

N complained about the withdrawal of the offer. It said Shawbrook had issued a binding offer and withdrawing it was a breach of contract. It hadn't properly considered information it had been given and had been misled by its solicitors. If Shawbrook had any concerns, it should have asked N for more information. Or if the loan fell outside its lending criteria, that should have been clear from the start. N said that Shawbrook's failings had led it to incur legal and administrative costs, other expenses, wasted time and financial loss through not being able to proceed with the transaction.

Shawbrook said it would only lend if all conditions precedent were satisfied, and it didn't consider they were. It didn't think it had sufficient evidence of the source of funds for the deposit. It said the offer was not binding and could be withdrawn if the conditions weren't satisfied.

Our investigator said she didn't think it was fair that N had to pay Shawbrook's legal fees when the loan didn't complete. She said Shawbrook should refund £1,080.

Shawbrook didn't accept that. It said that its solicitors had only charged £780. And in any case it didn't agree that any refund should be offered at all. It said the legal fees were

payable by the applicant whether or not the loan went ahead.

N also didn't agree. It said that Shawbrook had not acted fairly in withdrawing the offer. It would not have transferred funds to its solicitor had it not been misled into believing completion was imminent. It said Shawbrook had not acted in good faith or with transparency, and N had suffered substantial losses as a result.

As no agreement could be reached, the case comes to me for a decision. Having reviewed the evidence, I didn't think it should be upheld. I issued a provisional decision explaining why.

### **My provisional decision**

I said:

"N has referred to the regulator's Consumer Duty in support of its argument that Shawbrook didn't act fairly. But the Consumer Duty is not relevant in this case, because it only covers products and services provided to retail customers as part of regulated financial activities. N is not a retail customer and a commercial mortgage is not a regulated product, so this case falls outside the scope of the Consumer Duty.

However, although this is an unregulated product, I can still consider whether Shawbrook acted fairly and reasonably in all the circumstances, taking into account relevant law and what I consider to be industry good practice. With that in mind, I've started by looking at the loan documents.

The offer letter says:

We are pleased to offer You a loan on the terms set out in this letter (the 'Offer Letter') and Shawbrook Bank Limited's commercial mortgage terms and conditions (the 'Commercial Mortgage Terms and Conditions'), a copy of which is enclosed...

Please also refer to Condition 6 of the Commercial Mortgage Terms and Conditions which enables us to withdraw the offer before [the expiry date] in certain circumstances.

If the offer expires or is withdrawn by use as described above or if You decide not to proceed with the Loan at any time before the Loan, or any part of it, has been released, You will lose any non-refundable fees...

Once You have signed and returned this Offer Letter and the Loan, or part of it, has been released, You will have no right to withdraw.

The rules of mortgage regulation say that a regulated mortgage offer is binding and cannot be withdrawn by a lender (unless conditions in the offer allow it to be withdrawn). But, as I've said, this is not a regulated mortgage and so that rule doesn't apply. There's no general rule or principle that says a commercial mortgage offer is binding and cannot be withdrawn.

In any case, the offer letter itself says that the offer *can* be withdrawn, as set out in Condition 6 of the terms and conditions. It also says that N is not bound by the offer until the loan funds are released – so it is at that point, not at the point the offer is issued, that a binding contract is created.

The offer letter goes on to say that N will be required to pay Shawbrook's solicitors' costs via a deduction from the mortgage advance on completion and that the fee will be £1,080 plus VAT plus transfer fee and disbursements. And it says that this might require an undertaking from N's solicitors, and for N to provide funds to its solicitor at the outset.

Finally, the offer letter says:

Until You have satisfied (to our satisfaction) the following conditions precedent, You will not be entitled to draw down all or any part of the Loan:

1. Written confirmation from the insurer or a copy of the buildings insurance policy schedule to confirm there is a valid buildings insurance policy in place for the security...
2. Original signed Deed of Guarantee(s) £50,000
3. Proof of deposit monies to cover the difference between the loan amount and the purchase price, legal fees, stamp duty and VAT if applicable. Where there is a gift element to the deposit, the borrower and donor must also sign a separate questionnaire. Our solicitors will confirm if there are additional legal requirements such as an indemnity policy and statutory declarations.
4. [provision about EPCs]

This makes clear that the loan will not go ahead unless Shawbrook is satisfied the conditions are met.

Condition 6 of the terms and conditions says:

The Lender reserves the right to withdraw the offer contained in the Offer Letter at any time prior to the Completion Date or decline to pay out any part of the unpaid Loan in the event that:

There follow various reasons the offer can be withdrawn, including fraud or misrepresentation; defective legal title of the mortgage property or inability to obtain security; a change in N's circumstances which could affect its business, its ability to comply with the loan agreement, or could render it unenforceable; concerns about financial crime; failure to provide information requested; or "any other matter comes to the Lender's attention which is inconsistent with the basis on which a mortgage offer is made".

Condition 6 therefore gives Shawbrook additional powers to withdraw the offer, as well as failure to meet the conditions precedent in the offer letter.

Therefore, Shawbrook was entitled to withdraw the mortgage offer – if one of the conditions precedent wasn't met, or if one of the events in Condition 6 occurred.

Shawbrook has explained that its reason for withdrawing the offer was that it wasn't satisfied with the information it was provided with around the funds to be used for the deposit on the property. I appreciate N doesn't agree that Shawbrook had reason to be concerned about what it was told. But this was a commercial transaction. No lender is ever required to lend, and it's fair and reasonable for a lender to assess what it's told and take into account the results of its own underwriting checks, lending

criteria and risk appetite. Before it would lend, Shawbrook needed to be satisfied with the information it was given. It wasn't, so it decided not to lend. I'm not persuaded that was an unreasonable decision it wasn't open to Shawbrook to make.

I don't therefore think that Shawbrook acted unfairly in deciding not to lend – even after it had issued an offer letter. As a result, I don't think it would be fair to require Shawbrook to compensate N for any losses it may have incurred because the loan didn't go ahead. Those are costs incurred in its business, spent in the hope (but not the certainty) that it would in due course be able to profit from the property bought with the mortgage. But no lending is ever guaranteed, and costs incurred as part of a mortgage application are costs at risk and part of the costs of doing business.

Finally, I've thought about whether Shawbrook should refund the legal costs its solicitors incurred and which were paid by N's solicitors using funds provided by N. Our investigator said it should refund £1,080 plus VAT – but that's not correct. That would have been the cost had the loan completed, and that was the amount N transferred to its own solicitor to cover the undertaking. But the actual sum N's solicitors had to pay was only £650 plus VAT (£780 in total). So it wouldn't be fair to require Shawbrook to refund more than was actually paid out by N's solicitors.

In any case, I don't think Shawbrook is fairly required to refund even £780. I've set out above that the offer letter says that N will be required to pay Shawbrook's legal costs. In addition, Condition 5 of the terms and conditions says:

5.1c. You agree to pay all other reasonable costs, charges and expenses (including legal, valuation, surveyor's and other out-of-pocket fees and expenses) reasonably and properly incurred by the Lender from time to time in respect of the Loan (whether or not the Loan or any part of the Loan is advanced).

This makes clear that Shawbrook is entitled to recover "legal...fees...whether or not the Loan...is advanced".

In circumstances where it wasn't unfair that Shawbrook decided not to proceed with the loan, and where the offer and terms and conditions make clear that its legal fees are payable whether or not the loan goes ahead, I don't think it was unfair that Shawbrook's solicitors relied on the undertaking N's solicitors had given to request payment of its fees. And I don't think it would be fair and reasonable in all the circumstances to require Shawbrook to refund the fees."

### **The responses to my provisional decision**

Shawbrook said it had nothing further to add. N said it didn't agree with my provisional decision. It said:

- The reason the loan was refused was because Shawbrook didn't lend to first-time buyers. It knew that from the start, so it could have rejected the application at the outset – failing to do so was negligent, and resulted in N incurring costs.
- The costs Shawbrook's solicitors did charge were not reasonably incurred, but were due to confusion and inefficiency. The solicitors should provide a full itemised bill, cross-referenced with Shawbrook's own lending file.
- The provision in the contract about recovering legal fees should not be used to shift the consequences of Shawbrook's mistakes to the applicant. If the solicitors did futile

work, that is Shawbrook's fault and Shawbrook should bear the costs.

- The term is also an unfair term. Like any business, Shawbrook should accept the costs of transactions that don't proceed as standard commercial risk.
- It agreed that the fee paid was £780.
- Although this is an unregulated loan, I can still consider whether Shawbrook acted fairly and reasonably.
- To put things right, the fee should be refunded, along with compensation for wasted time and disruption. Shawbrook should also acknowledge its failings.

### **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'm sorry N wasn't happy with my provisional decision, and I've thought carefully about what it's said. But I haven't changed my mind. The evidence shows that the application wasn't refused because this was N's first property, it was refused because Shawbrook wasn't satisfied with the information it was given or the results of its underwriting checks. This wasn't something that could have been identified at the outset and so I don't think it was unreasonable that Shawbrook didn't immediately refuse the application.

This isn't a consumer contract, so the unfair terms rules in the Consumer Rights Act don't apply. It's not unusual in my experience for lenders to require borrowers to cover their costs, and I don't think there was anything unfair about Shawbrook doing so in this case. I appreciate N doesn't agree that the costs were reasonably incurred, but they were less than they would have been had the loan completed, and I have no reason to conclude that they don't reflect work actually done.

I have thought about whether Shawbrook acted fairly and reasonably in all the circumstances. I appreciate N doesn't agree, and is very unhappy that its application was refused at the last minute. But I'm afraid I don't think Shawbrook acted unfairly, so I don't uphold this complaint.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask N to accept or reject my decision before 10 November 2025.

Simon Pugh  
**Ombudsman**