

## **Complaint concerning Shawbrook Bank Limited**

**Complaint Reference: 21518476**

**Ombudsman: Will Culley**

**7<sup>th</sup> November 2018 - Complaint was submitted.**

**15<sup>th</sup> March 2024 - Investigator issued a decision.**

**1 April 2026 - Ombudsman provisional decision.**

In total, the process has taken over seven years.

Seven years in which:

- Evidence was provided
- Submissions were made
- And central questions were repeatedly raised.

Seven years, and yet the final decision still fails to answer the most basic question at the heart of the case.

Time has not produced clarity.

It has exposed that clarity is absent.

### **Regulated decision-making: obligation, not discretion**

The Financial Ombudsman Service operates within a binding framework set by the Financial Conduct Authority.

In particular:

- DISP 3.5.2R — duty to give adequate reasons
- DISP 3.4.1R — duty to act fairly
- DISP 3.6.1R — decisions must be fair and reasonable
- DISP 3.6.4R — duty to consider relevant law and facts

These are not optional standards.

They are legal obligations.

A failure to comply is not simply poor practice.  
It is unlawful.

### **A determinative assertion without explanation**

At the centre of the decision lies the following passage:

“Fractional Club membership was also asset backed... [and] included a share in the net sale proceeds...”

This paragraph is determinative.

It underpins the rejection of the complaint in its entirety.

Yet the same wording appears, in materially identical form, in other Ombudsman decisions concerning the same product, including those in which complaints have been upheld.

### **Absence of any evidential foundation**

The Ombudsman’s reasoning depends on a single, determinative proposition: that the product conferred a right to participate in the net sale proceeds of an allocated property.

Yet the Decision:

- identifies no contractual provision creating such a right;
- describes no legal mechanism by which such a right arises;
- explains no method by which any proceeds would be calculated or distributed;
- and refers to no instance in which such a right has ever been realised in practice.

This is not a case in which evidence is disputed.

It is a case in which no evidence has been identified at all.

The Ombudsman has therefore:

- asserted the existence of a right;
- relied upon that assertion as a determinative fact;
- and declined to explain its source when asked.

Despite repeated requests made during the course of the complaint process, including following the Investigator’s decision in March 2024, no explanation has been provided.

In those circumstances, the conclusion reached is not one supported by evidence.

It is one reached in the absence of it.

The Decision does not merely rely on disputed evidence. It proceeds in circumstances where no identifiable evidential foundation for the asserted right has been provided at all.

### **Inconsistent and arbitrary reliance on an unproven premise**

The same assertion, that the product is “asset backed” and confers a share in sale proceeds, appears across multiple Ombudsman decisions concerning the same product.

However:

- In some cases, that assertion is relied upon to support a finding that the product was marketed as an investment.
- In others, it is relied upon to reject allegations of misrepresentation or unfairness.

No evidential basis is identified in either case.

The same unproven premise is therefore deployed to support contradictory outcomes.

That is not a matter of evaluative judgment. It is the application of an unproven premise in a manner that produces arbitrary and contradictory outcomes.

### **Failure to give reasons (DISP 3.5.2R)**

A lawful decision requires more than conclusions.

It requires:

- Identification of evidence
- Explanation of reasoning
- Engagement with material issues

Here, a determinative finding is made, but no reasoning is provided to support it.

This is a clear breach of DISP 3.5.2R.

### **Procedural unfairness (DISP 3.4.1R)**

The complainants asked simple questions:

- Where is this right defined?
- How does it operate?
- Has it ever been realised in practice?

These questions go to the heart of the decision.

They remain unanswered.

That failure:

- prevents understanding of the reasoning
- prevents meaningful challenge
- and undermines the fairness of the process

This constitutes a breach of DISP 3.4.1R.

### **Failure to apply relevant law (DISP 3.6.4R)**

The Ombudsman states that the legal context is “no different” from other cases.

This is a misdirection.

DISP 3.6.4R requires:

- consideration of relevant law
- application of that law to the facts of the individual case

It does not permit reliance on:

- generic reasoning
- or repeated formulations

The absence of any legal analysis of the alleged “asset-backed” right is a failure to comply with this obligation.

### **Judicial authority: evidence required, not assumption**

In R (Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd,

Mrs Justice Collins Rice emphasised that fractional ownership products must be assessed:

- By reference to their actual characteristics
- Based on evidence
- And not on assumed or theoretical features

The present decision does the opposite: it proceeds on an asserted characteristic of the product without identifying any evidential or contractual foundation for it.

### **Irrationality (Wednesbury)**

Under Associated Provincial Picture Houses Ltd v Wednesbury Corporation, a decision is unlawful if it lacks a rational evidential basis.

That threshold is met where:

- A determinative conclusion is reached
- Without evidence
- And without explanation

Here, the central finding is unsupported.

The reasoning is absent.

The conclusion is therefore irrational in the Wednesbury sense.

In those circumstances, the Decision falls outside the range of conclusions open to a reasonable decision-maker.

### **Absence of any real-world evidence**

The decision identifies:

- No instance of such a right being realised
- No example of proceeds being distributed
- No evidence of practical operation

If such a right exists, it should be capable of demonstration.

No such demonstration is provided.

### **Refusal to engage with material questions**

Instead of engaging with these issues, the Ombudsman adopts a position of finality.

The practical effect is clear:

- The conclusion stands
- Further questions will not be addressed

The implicit message is:

accept the decision or pursue judicial review

Judicial review is not a substitute for reasoning.

It is a remedy where reasoning is absent.

### **Prolonged delay and absence of explanation**

After more than seven years, the expectation is not perfection.

It is an explanation.

Delay followed by failure to answer central questions is not administrative inefficiency.

It is a failure of function.

### **Failure to meet minimum legal standards**

At its most basic, lawful decision-making requires:

- identification of evidence
- explanation of reasoning
- engagement with material issues

These are minimum standards.

They have not been met.

### **Conclusion**

The issue is not whether the Ombudsman's conclusion is right or wrong. It is that the reasoning necessary to support any lawful conclusion has not been provided.

This is not a disagreement about the outcome.

It challenges the legality of the reasoning process.

Where:

- A determinative assertion is made

- No evidential basis is identified
- No reasoning is provided
- The same unproven premise is applied inconsistently
- And questions are not answered

The decision cannot stand.

Because a public decision-maker cannot simply assert and refuse to explain.

If it cannot demonstrate the reasoning that underpins its conclusions, the law will intervene.

And when it does, the question will not be whether the decision was correct.

It will be whether it was lawful at all.