

The complaint

A partnership, which I'll refer to as F, complain that Handelsbanken plc treated their business unfairly, failing to honour its promises and forcing them to refinance and sell properties for less than they were worth. One of the partners also says that the bank bullied her and discussed the partnership's situation with her MP without permission.

The partners are legally represented in bringing this complaint, but for ease of reading, I'll refer to any comments from their representative as being from F.

What happened

In August 2017, Handelsbanken provided F with a three year term loan of £1.9 million to refinance existing borrowing. An overdraft facility was also in place.

During 2018, the bank wrote to the partners more than once expressing its concerns regarding arrears, unpaid items and poor financial performance and its desire to see the partnership refinance elsewhere.

In August 2020, F was unable to repay the loan when it expired. Handelsbanken agreed not to take immediate enforcement action while F pursued various property sales. The bank set F a deadline of 31 March 2021 to repay, later extending this to 30 June 2021.

In July 2021, F completed the sale of one property, reducing its debt by £300,000. Other property sales were said to be imminent. The bank, through its legal representatives, said that it would need to begin legal action in the absence of further progress.

In August 2021, another property sale was completed. In December 2021, F's borrowing was repaid in full by refinancing the remaining balance with another lender.

F made two formal complaints about the bank's treatment of the partnership in July 2021. The bank didn't uphold these complaints. F asked the Financial Ombudsman to look into the matter in March 2022.

One of our investigators looked into what had happened and concluded that the bank hadn't done anything wrong. She pointed out that the bank told the partnership it had concerns in 2018, agreed multiple extensions after the loan matured and ultimately waited until December 2021 without making formal demand.

F disagreed with our investigator and asked for an ombudsman to issue a final decision. The partners made the following points, in summary:

- The loan was mis-sold at the start. It was never made clear that there was any expectation other than renewal at the end of the term.
- The debt was being fully serviced until the pandemic began and effectively shut down F's trade.
- Our investigator had decided it was Handelsbanken's right to decide whether to renew the lending or not. This wasn't quite the case, given that emergency Government pandemic legislation had made repossessing property unlawful at that time.
- What the bank said in writing wasn't consistent with what they were saying verbally. This is why F's partners appointed a lawyer.
- In conversations with F's relationship manager ("RM"), one of the partners was frequently reduced to tears.
- Whilst putting pressure on F to achieve property sales, the bank had also obstructed these sales and caused delays.
- Handelsbanken had breached General Data Protection Regulation ("GDPR") by communicating with the partners' MP's office before any partner had given their consent. The bank had also later told the MP that they were about to appoint receivers before they told the partners.
- The bank had given assurances that they wouldn't pursue exiting the relationship once the debt got below £1 million.

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.

First, I will explain that I don't have the power to look into the circumstances of the sale of the original loan in 2017. This is because the partnership is a small business as defined by our rules and small businesses only became eligible to refer complaints to the Financial Ombudsman from 1 April 2019, and then only about events that occurred after 1 April 2019. Whilst I have reviewed correspondence from before 2019, in order to inform my understanding of the events that occurred later, I won't make any findings on the actions of the bank before this date.

Did the bank treat F unfairly when its loan matured?

In reaching this decision, I have been mindful of the exceptional backdrop to the events here. I need to decide, not only if the bank's actions were reasonable, but whether they were reasonable given the unprecedented nature of the pandemic, which completely shut down the type of business F operates for periods, as well as slowing down property sales generally.

Based on what I have seen, I don't think it is fair to suggest that everything was in order with the bank's facilities before the start of the pandemic in 2020. I say this because there is correspondence from the bank as far back as 2016 raising concerns regarding performance issues and it's clear that in 2018, there had already been discussions about the need for property sales and refinancing elsewhere. So I don't think the pandemic was solely responsible for F's problems, although I don't doubt that it exacerbated them.

I think our investigator was correct to say that it was up to Handelsbanken to decide whether to renew the lending or not. The loan documentation made the expiry date clear and I think the bank's letters were also clear that they wanted to be repaid, whether by property sales or a refinance or both. There was no contractual commitment to prolong the connection.

That said, I would expect a bank to treat their customers fairly by giving them a reasonable amount of time in which to formulate and carry out a repayment plan – and with a pandemic going on, I think it would be fair to say that it might be appropriate to allow more leeway than normal.

I'm satisfied that Handelsbanken behaved responsibly and fairly after F's loan matured. It made its desire to be repaid clear, but didn't take any immediate action, recognising that property sales were likely to be a prerequisite for a successful refinancing. It set a deadline of March 2021 and then extended this for a further three months, ultimately allowing more time beyond this too. I think this showed a reasonable degree of forbearance and I don't consider that it demanded unreasonable levels of updates or valuations. The lending was ultimately not repaid until December 2021, around sixteen months after the limits expired.

I haven't seen any evidence that the bank forced the partners to sell assets. As our investigator noted, the bank never made a formal demand, even when the loan was in default, and it never appointed receivers, although it mentioned doing so at various points. The correspondence suggests that it was F's proposal to sell some of their properties to reduce their debt and the bank agreed to this proposal.

F has pointed out that it would have been difficult, if not impossible, for the bank to call in its security during the pandemic, certainly for the properties occupied by family members. But I don't think this made it wrong for the bank to ask for repayment proposals. I appreciate that the partners would probably have preferred the bank just to accept the status quo until the pandemic ended and trading could make up for lost time, but the bank had no obligation to do so. Indeed, banks are expected to lend responsibly, so arguably, where the bank had clear concerns about a business, it would have been irresponsible to continue lending without asking the partnership to bring down its debt levels.

A major thrust of the argument that the bank was treating the partnership unfairly rests, in my view, on the allegation that the bank was saying different things in face-to-face meetings from in its written correspondence. I can see that this is one of the reasons stated for instruction of the partners' legal representative in the first place in August 2020.

The partners seem to be alleging two somewhat contradictory behaviours on the part of the bank – on the one hand, that the RM adopted a bullying manner to one of the partners, often reducing her to tears – and on the other hand, that the bank was being more conciliatory in person, suggesting that a lending renewal might be possible and that the bank might stop putting F under pressure if the partnership got its borrowing below £1 million, only to say the opposite in writing.

I can't know what was said at meetings, but I don't doubt that the bank declining to renew facilities created a very stressful situation for the main partner running the business, especially during the pandemic when there were enforced non-trading periods. But I haven't seen any evidence aside from her lawyer's recollections that the bank behaved inappropriately. There is a large amount of written correspondence in this case and I consider the vast majority of the bank's letters to be very clear and to set out the bank's position unequivocally. Everything I've seen is in my view very professional in tone. Given this, I don't think I can reasonably conclude that the bank bullied one of the partners.

I also haven't seen any evidence that the bank unreasonably changed position or that its employees contradicted themselves. Banks are in any case entitled to change their appetite for lending over time. Just because a RM may have thought it likely that lending might be renewed when a facility began doesn't mean that this will be the case when it expires. In this instance though, I have seen evidence that the bank had concerns about F and their debt levels even before the loan renewal in 2017, so I don't think it's likely that the bank's RM ever indicated the bank was likely to renew.

On the specific claim regarding the bank's position once borrowing was below £1 million, I have not seen any evidence that the bank saw this as anything other than a necessary step to enable F to refinance elsewhere. F's solicitor's own Attendance Notes reflect this. Although there is a reference to "leeway" if the debt falls below £1 million, this is only in the context of further time to complete refinance negotiations.

I am not persuaded that the bank put obstacles in the way of the completion of the property sales. I can see that there was a substantial miscommunication over the land, which the partners thought was unencumbered but actually turned out to be charged to the bank. But I don't think this miscommunication was Handelsbanken's fault. F told them it was unencumbered land without identifying the actual land to which it referred. The bank took this at face value until later on when the land registry title was actually identified. I don't think an error was made by any party. In terms of other property sales, I don't think it was unreasonable for the bank to want more details, for example, prices, before agreeing to release security.

Did the bank act improperly in communications with the partners' MP?

I have also looked at F's specific charge that the bank contravened GDPR regulations in its communications with an MP's office. It does appear that the bank has made an error here in initially speaking to the MP's office before getting the partners' consent. Although the bank shouldn't have done that, I can't see that it caused any detriment or loss to the partners, who had presumably wanted the MP to get involved and were prepared to consent when asked (because they did so). So I don't think it would be fair for me to award any compensation for that error.

Later, F says the bank spoke to the MP's office to inform them of their intention to appoint receivers before they had spoken to the partners. So the partners learnt of the bank's intention from the MP's office rather than from the bank. Whilst I can agree that this isn't an ideal way of communicating such a significant decision, I think any distress caused was really caused by the news itself rather than the source from which it was delivered. So I don't think it warrants any compensation, particularly as the bank never in fact appointed receivers.

Summary

In summary, I don't doubt that the partners in this case have been through an extremely difficult time. But I have carefully considered all the evidence and I have not found that Handelsbanken acted unreasonably. I think it demonstrated enough forbearance and communicated clearly.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask F to accept or reject my decision before 3 August 2023.

Louise Bardell
Ombudsman