

The complaint

This complaint has been brought by Mr G in his capacity as director of a limited company which I will refer to as TPL.

The complaint concerns two properties mortgaged to Cambridge & Counties Bank Limited (CCB), one owned in Mr G's sole name (41HS) and one in the name of TPL (39HS). Mr G is unhappy that when the properties were sold, CCB took the entire proceeds of sale of 41HS to reduce the borrowing liability of TPL. Mr G has also queried why an early repayment charge (ERC) was charged when the original loan had been drawn down in 2018.

Mr G says CCB had no right to do this and that the proceeds of sale of 41HS should not have been used to reduce TPL's liability but instead should have been paid to him.

What happened

I do not need to set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat the details here.

In addition, our decisions are published, so it's important I don't include any information that might lead to TPL or Mr G being identified. Therefore, I will instead concentrate on giving the reasons for my decision. If I don't mention something, it won't be because I've ignored it; rather, it'll be because I didn't think it was material to the outcome of the complaint.

Mr G has explained that 39HS was purchased with a loan of £135,000 in December 2017. In December 2022 it was sold for £150,000, along with 41HS, which was sold for £210,000.

Mr G says that the £150,000 sale price was more than sufficient to repay the loan on 39HS, as the redemption amount would be around £112,850 plus fees. Mr G owed about £138,000 on 41HS, so there was a surplus of just over £72,000 which Mr G believed was due to be paid to him.

However, Mr G says that "*at the final hour*" CCB decided it wanted the entire sale proceeds to reduce TPL's overall liability. Mr G says CCB had no right to do that and that the sale proceeds of 41HS were due to him or, at the very least, should have been used to pay off other borrowing in his sole name.

CCB didn't uphold the complaint, saying it was entitled to use the entire sale proceeds in line with the cross-collateral agreement entered into by Mr G and TPL. CCB also explained that the borrowing was re-scheduled in 2020 and 2021, with increased borrowing, reduced terms and an ERC which applied within five years of redemption.

Mr G brought his complaint to our service. An Investigator looked at what had happened. He was satisfied that CCB had acted within the terms of the lending facility and so didn't think the complaint should be upheld.

Mr G asked for an Ombudsman to review the Investigator's findings. Mr G said that he understands that the borrowing of TPL and the borrowing in his sole name are subject to a cross-collateral agreement, but maintains that CCB should not have taken the sale proceeds due to him to reduce TPL's borrowing. Mr G also says, however, that this has worked to TPL's advantage, because since interest rates increased, he is now happy with the reduced borrowing the company has.

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 note that the Investigator explained to Mr G that we couldn't consider a complaint in his own name about the actions of CCB in relation to 41HS. That's because Mr G didn't meet the definition of a "consumer" set out in our rules.

I agree with the Investigator's findings on this point. When Mr G took out the mortgage on 41HS it was for business purposes. This meant that Mr G was not *"a natural person acting for purposes outside his trade, business or profession"*. Therefore in relation to his complaint about the mortgage on 41HS, Mr G doesn't fall within the category of a consumer, nor is he a sole trader or a partnership. TPL is a micro-enterprise, and so I can consider a complaint against CCB brought on behalf of TPL, but I can't consider a complaint brought by Mr G in his sole name.

This decision is therefore limited to consideration of CCB's actions in relation to TPL only.

I'm satisfied that the various loans in the names of TPL and Mr G as an individual are on a cross-collateralised basis, and that the legal charges securing the lending are "all monies" charges. This means that CCB's lending is secured against all properties, regardless of whether the property is held in the name of TPL or Mr G as an individual.

I note that when Mr G was initially provided with redemption figures for 39HS and 41HS, he was told that these figures were *"indicative"* and that all figures would need to be approved prior to redemption. *"These figures may change subject to the bank's requirements"*.

CCB has explained the reason why it required payment of the entire proceeds of sale – a valuation of a different property, serviceability of the overall debt, and payment history. CCB is entitled to determine the level of risk to which it is prepared to be exposed in relation to commercial lending. I appreciate Mr G disputes the issue around the valuation of the other property, and raised a complaint about that to the surveyors.

However, I'm satisfied that CCB took into account what it considered to be relevant factors when reaching its decision. I don't have any power to interfere in the legitimate commercial decisions taken by CCB where it has fairly exercised its discretion.

I'm also satisfied that the ERC was fairly charged, given that the borrowing had been re-scheduled in 2020 and 2021 onto new facilities, with ERCs payable within the first five years. I'm therefore not persuaded that CCB unfairly charged the ERC when it took the entire proceeds of sale of 39HS and 41HS.

In the circumstances, I find that CCB was acting within the terms and conditions of the cross-collateral lending facilities which TPL and Mr G had agreed to, and that it fairly exercised its commercial judgement when deciding TPL's overall exposure. Indeed, I note that Mr G has acknowledged that, given the increase in interest rates, the reduced level of

borrowing is to TPL's advantage. TPL has therefore suffered no financial loss as a result of CCB's decision to reduce the company's overall borrowing.

My final decision

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

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask TPL to accept or reject my decision before 12 June 2024.

Jan O'Leary
Ombudsman