

## **The complaint**

Mr and Mrs W are a partnership. They complain that RECOGNISE BANK LIMITED ("Recognise") failed to honour an agreement to lend them £480,000 by way of a second tranche of a loan.

## **What happened**

In June 2021, Recognise provided Mr and Mrs W with Heads of Terms for a commercial property loan for £980,000. Mr and Mrs W's plan was to borrow this amount in two tranches, the first being £500,000.

In July 2021, Mr and Mrs W signed a facility letter for a £500,000 loan. This loan was drawn down in September 2021.

In August 2022, Mr W contacted Recognise to say the partnership was ready to draw down the remaining £480,000. Recognise initially said it was only willing to lend £280,000, then agreed to lend £480,000 but subject to a rental assignment and the provision of various other financial information.

Mr W thought Recognise's lending terms were unacceptable. He complained and said he would be forced to remortgage elsewhere.

Recognise didn't uphold the complaint as it said it had followed its procedures correctly and done nothing wrong. But it offered to reduce its early repayment charge from 3% to 1% if Mr and Mrs W chose to remortgage.

Mr and Mrs W remortgaged and referred their complaint to the Financial Ombudsman. They told us they had incurred around £29,000 of fees because they had to move to a new lender.

One of our investigators looked into what had happened, but didn't recommend upholding the complaint.

Mr W disagreed and asked for an ombudsman's decision. He felt our investigator had overlooked the intentions of the parties at the time of the original drawdown. He said:

- They had always intended to borrow £980,000. If they had only wanted £500,000, they could have borrowed that from a high street lender at a more competitive interest rate.
- The loan of £980,000 was only to be secured against one property, as detailed in the Heads of Terms.
- Before drawdown, when it became clear that they hadn't yet identified a suitable asset for the full amount, Recognise said they would split the loan into two. There was no mention of additional security for the second tranche.
- The second tranche was mentioned regularly by Recognise following initial

drawdown.

- When a suitable asset was identified, Recognise demanded so much additional security, they effectively made it impossible to draw down.
- It was well known in the commercial finance industry that Recognise effectively withdrew from the market between the first drawdown and the second request. This was the key driver in Recognise's decision.

### **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.

Having done so, I've reached the same conclusion as our investigator, for essentially the same reasons. I know this will be a disappointment to Mr and Mrs W, who have had to spend a considerable amount, for which they hadn't budgeted, to borrow what they wanted. But my role is to decide whether Recognise has done anything wrong. I'd like to explain why I've concluded that the bank hasn't acted unfairly or unreasonably.

To uphold this complaint, I would need to be satisfied that Recognise had unfairly reneged on a formal commitment to lend. I haven't seen evidence that this clear commitment existed.

There's no doubt that the second tranche was discussed with Recognise, or the Heads of Terms letter would never have been issued for £980,000. This letter said that "this loan is to be drawn at an amount of £500,000 initially with the remainder to be drawn once a further target business acquisition is located". This seems very clear about what was discussed in June 2021.

However, I think all parties would probably accept that there is no written evidence of a contractual commitment to lend £480,000. The Heads of Terms document is headed up "Indicative" and says it is only valid for 14 days, so I think it's clear that it wasn't intended to form a binding commitment. The later Facility Letter, which, together with the Key Terms and the security documentation, forms the contract under which £500,000 was lent, makes no mention of a second tranche.

Where there are disputes like this about what was agreed between parties, I need to make a decision on the balance of probabilities – in other words, I must decide what I think is most likely to have happened. In this case, I am not persuaded that a contractual agreement ever existed. I don't doubt that discussions took place about the bank's willingness to lend more, and even the terms under which this might happen. But I think if a formal agreement had been reached over the terms of that lending, then it is more likely than not that it would have been documented in some way.

My finding is that Recognise might well have mentioned a willingness to lend more, but this didn't constitute a commitment. And in the absence of any commitment, I consider that the bank was able to change its mind and didn't make any error by doing so.

I also note that in June 2021, after the Heads of Terms were produced but before the Facility Letter, there was an exchange between Mr W and his broker, in which Mr W queried why the Heads of Terms specified an arrangement fee on the whole £980,000 when they were only drawing £500,000 initially. Mr W asked if this could be restructured and his broker replies "Absolutely – we'll structure it as two loans so the 1.5% will be payable on the actual

drawdown amounts". It therefore seems to me that Mr and Mrs W wanted the lending to take the form of two loans at that stage in order to save on the upfront fee. I say this, because if Mr and Mrs W had signed a Facility Letter for £980,000, then Recognise would have wanted an arrangement fee for the whole amount upfront.

In my view, where there is no contract between the parties, banks are entitled to make a commercial decision to change their risk appetite. So whether Mr W is correct about Recognise's change of policy or not wouldn't alter my decision as to whether the bank has acted fairly in the individual circumstances here.

I appreciate that what has happened has been both frustrating and expensive for Mr and Mrs W. They may well have been unfortunate in the timing of their acquisitions. But I'm afraid I think this is a risk they took and is not due to any error on the part of Recognise.

### **My final decision**

My final decision is that I don't require Recognise to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs W to accept or reject my decision before 2 January 2024.

Louise Bardell  
**Ombudsman**