

The complaint

Mr J and Mrs A complain about the advice they were given by Capital B Property Finance Limited (CBPF), a mortgage broker, to take out bridging loans in 2019. CBPF was an appointed representative of Positive Lending (UK) Limited at the relevant time.

Mr J and Mrs A's complaint is that CBPF gave them bad advice which caused them significant financial loss, stress and upset.

What happened

Mr J and Mrs A exchanged contracts to purchase a property for residential purposes in January 2019 and paid a deposit of £80,000. The purchase contract had a delayed completion date of 30 April 2019, by which date Mr J and Mrs A needed to pay the remaining purchase price.

In late March 2019 Mr J and Mrs A were exploring options to raise the finance they needed to complete on the purchase. By this time, they had moved into the property ahead of completion and spent around £100,000 refurbishing it.

Mr J and Mrs A also have a limited company, of which they are joint directors. As well as buying a property for residential purposes, they wanted to refinance borrowing which their limited company had taken out secured on a property they were in the process of developing, and also increase the borrowing on the development property.

Mr J's and Mrs A's circumstances were unusual, and the broker they initially approached referred them to CBPF. CBPF recommended a 12-month bridging loan of £810,000, which would be secured against both their new home and the development property. The proposed lender, which I'll call Lender A, was prepared to lend using two different properties as security. CBPF has told us that Lender A was also prepared to lend where different properties were owned by separate entities – in this case, Mr J and Mrs A were to be the owners of one property and their limited company owned the other property.

Mr J and Mrs A agreed to go ahead, and valuations on both properties were completed on 23 April 2019. However, the surveyor considered that the development property wasn't suitable security because of the stage of development it was at (the surveyor noted it had no roof at the time), and it didn't meet Lender A's lending policy.

Lender A was prepared to lend against the residential property Mr J and Mrs A wanted to buy. It issued a mortgage offer on 26 April 2019, although this was for around £100,000 less than the amount Mr J and Mrs A needed to complete on the purchase.

Mr J and Mrs A say they were under a huge amount of pressure because they needed to complete on their purchase in a few days' time, on 30 April 2019. They had also already spent around £180,000 on their new home and moved into it.

CBPF recommended Mr J and Mrs A take out a second bridging loan secured on the development property with another lender, which I'll call Lender B. The money raised

through this loan was to cover the shortfall for the new property purchase and to refinance the existing borrowing on the development property. The 'exit strategy' for both loans was the sale of the development property, which Mr J and Mrs A estimated would be worth around £1million on completion.

Mr J and Mrs A went ahead with the two loans. They were able to complete on their residential property purchase and repay the existing loan on the development property. But work on the development property didn't go to plan and it didn't go on the market until January 2020, later than expected. It didn't then sell.

Mr J and Mrs A say they were finally able to repay the bridging loan secured on the development property in April 2020 by taking out a buy-to-let mortgage. Some time later, in January 2022, they refinanced the bridging loan they had with Lender A. Mr J and Mrs A say they incurred additional costs and interest amounting to around £150,000 across both bridging loans by the time the loans were repaid.

In March 2022 Mr J and Mrs A complained to CBPF. They said it should never have sold them the loans given the pressure they were under, it should have been clear at an early stage that their repayment strategy might not be viable, and the full potential costs of the loans weren't made clear to them. They complained that they had suffered financially and personally as a result of CBPF's poor advice and said it should compensate them.

CBPF said it had done nothing wrong and its recommendation had been suitable in Mr J's and Mrs A's unusual and difficult circumstances. Mr J and Mrs A didn't accept that and referred their complaint to the Financial Ombudsman Service.

Our Investigator said that we couldn't look into the advice CBPF had given about the unregulated bridging loan secured on the development property, but that we could consider Mr J's and Mrs A's complaint about the advice it gave about the bridging loan on the residential property. He went on to look into that, and didn't recommend that the complaint should be upheld.

Mr J and Mrs A asked for an Ombudsman to make a 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.

First of all, I note that Mr J and Mrs A have questioned Positive Lending's involvement in their complaint. It isn't unusual for a broker to be an appointed representative of a wider network; the network will then take responsibility for complaints. At the time of the advice in 2019 CBPF was an appointed representative of Positive Lending (UK) Limited. Positive Lending (UK) Limited is therefore the correct respondent to this complaint.

CBPF initially advised Mr J and Mrs A on a regulated mortgage contract; its initial recommendation was that they take out a regulated first charge bridging loan secured across both their new residential property and on the development property. I can consider their complaint about that. I can also consider their complaint about the advice in respect of the regulated first charge bridging loan that they went on to take out, secured on their residential property.

I can't, however, consider Mr J's and Mrs A's complaint about the separate advice CBPF gave them in respect of the unregulated bridging loan taken out with Lender B. As our

Investigator explained, the advice CBPF gave about that loan wasn't regulated and so a complaint about it falls outside the jurisdiction of the Financial Ombudsman Service.

Turning now to the merits of this complaint, the starting point is that Mr J and Mrs A had already exchanged contracts and agreed to a completion date for the purchase of their residential property before they were put in touch with CBPF. They had also paid a deposit of £80,000 and spent around £100,000 on the property – and if they were unable to complete on the purchase in time they stood to lose all of that. At the time of their first contact with CBPF, there was around a month left before completion was due.

CBPF initially recommended a bridging loan to Mr J and Mrs A which was to be secured on both their home and the development property. This was to provide the amount Mr J and Mrs A wanted to complete their property purchase, and refinance the development property.

Not every lender will agree to lend one loan secured against multiple properties. Lender A was prepared to do so, and CBPF has also said that Lender A was one of the few lenders which would lend against two separate properties even where the properties were owned by separate legal entities. Given Mr J's and Mrs A's situation and requirements – including that they only wanted short-term borrowing, and at a lower interest rate than the rate on the existing loan on the development property – I don't think CBPF's recommendation was unsuitable.

I also don't think that CBPF could reasonably have known in advance that Lender A would decline Mr J's and Mrs A's initial application. That only came to light following the valuation of the development property in late April 2019. The valuer found that work on the property wasn't as advanced as expected, which meant the property wasn't acceptable security for Lender A to agree a regulated loan against it. The stage work was at (the property was still without a roof at the time of the valuation) is at odds with the schedule of works Mr J and Mrs A provided at around the same time, which said the property should be completed in around six weeks. Mr J and Mrs A have since said that the development didn't go to plan and as a result they were unable to put the property on the market until January 2020.

By the time the valuation had been done, there was a week left for Mr J and Mrs A to complete on the purchase of their residential property by the deadline. The maximum amount Lender A was willing to lend through a regulated bridging loan on the residential property was around £100,000 short of what they needed to complete. So CBPF looked for another solution. Options were very limited given the stage of work on the development property, and CBPF has said this meant the development property was only suitable for unregulated bridging finance.

CBPF recommended that Mr J and Mrs A go ahead with a regulated bridging loan with Lender A secured on their new home and borrow the extra money they needed with an unregulated bridging loan secured against the development property.

As I've said above, I can't consider the recommendation about the unregulated loan with Lender B. I can look at the recommendation to go ahead with the loan with Lender A. Having considered that carefully, I think it's clear that there was some risk involved, given that the loan with Lender A wasn't enough to enable Mr J and Mrs A to complete on their residential purchase. Mr J and Mrs A needed some of the additional finance on the development property as well.

Importantly, though, CBPF's advice meant that Mr J and Mrs A were able to complete on the purchase of their new home. They had already invested £180,000 in their new property before completing on the purchase and before consulting CBPF. They were in a difficult position and under significant time pressure to raise finance, and I think it should reasonably

have been clear to them what they were agreeing to in going ahead with short-term finance. They had no real option but to go ahead; had they not done so they stood to lose the £180,000 they had invested in the residential property.

While I'm sorry that things didn't turn out as Mr J and Mrs A had hoped with their development property and this had significant knock-on effects for them, I don't think CBPF could reasonably have foreseen what would happen when it advised them. Mr J and Mrs A had said they planned to repay the borrowing when they sold the development property, which they expected to be worth around £1million. A valuation at that level on completion of the work was confirmed by the valuer acting for Lender B. So I don't accept Mr J's and Mrs A's argument that CBPF should have known there was a problem with their repayment strategy. The fact that Lender A didn't accept the property as suitable security didn't mean it was worthless or that it was clearly unreasonable to expect it to be finished and sold well within the 12-month term of the loans.

The costs of the regulated bridging loan, including the interest, fees, and charges, were set out in the offer documents. Those were the terms on which Lender A was willing to lend to Mr J and Mrs A and reflected the fact that this was short-term bridging finance. Mr J and Mrs A accepted those terms.

Ultimately, CBPF was able to find a solution for Mr J and Mrs A in difficult and unusual circumstances. In all the circumstances, I don't find that its advice was unsuitable or that I can fairly require it to compensate Mr J and Mrs A.

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 Mrs A and Mr J to accept or reject my decision before 27 March 2024.

Janet Millington
Ombudsman