

The complaint

This complaint has been brought by Mr S in his capacity as sole director of a limited company, which I will refer to as AD. Mr S says that West One Loan Limited misrepresented the terms of a bridging loan.

What happened

AD, through Mr S, wanted to buy a property, for which AD needed bridging finance. Mr S obtained a quote from West One, for a loan. AD needed £115,121, and the quote was for a loan over a period of six months.

The total amount was £126,000. Of this, £115,121 was the loan amount, and the balance was made up of fees and six months' interest, which was held back by West One and which would be paid by West One on behalf of AD.

Mr S said that he was told by West One that AD would only need to pay back £115,121 at the end of the term, but was later told by the underwriter that he'd need to pay back £126,000. Mr S challenged this, and said he was told by West One that a mistake had been made and the amount due was actually £126,000.

West One agreed to reduce the interest by £500 by AD ultimately didn't go ahead with the loan. Mr S complained on behalf of AD, but West One disagreed that it had misled Mr S.

The complaint was brought to the Financial Ombudsman Service. Initially the complaint was made in the individual names of Mr S and his partner, Miss P. This is because if the loan had gone ahead, part of the security offered was to have been a charge over their residential property. An Investigator looked at the complaint and thought it should be upheld, and asked West One to refund a valuation fee of £965 that had been paid by AD, and to pay £100 compensation for distress and inconvenience.

West One didn't agree with this, and asked for an Ombudsman to review the complaint.

The case was passed to me, at which point it was identified that the intended borrower was the limited company, AD, and not Mr S or Miss P. Our records were therefore amended to reflect this.

Provisional decision of 13 February 2024

I issued a provisional decision in which I reached the following findings:

I can see that in an email dated 6 March 2023 Mr S said "to be clear to my understanding the terms to gross loan is £126,000 of which I will received the sum of £115,121, after the interests and fees are deducted from the total sum. Could you please confirm how much I will be paying back at the end of my loan term."

On 6 March 2023, West One said that the gross loan was £126,000 and with fees and interest deducted, Mr S would receive £155,121 net, which was the amount

needed to be paid back at the end of the term, as fees and interest would have been deducted and retained. This was quickly corrected, explaining that the net loan amount is £115,121, not £155,121.

However, this too was incorrect, as the fees and interest *weren't* deducted and retained, they were funds that would have been paid out by West One on behalf of AD and added back to the loan amount over the six-month term as and when they were paid out.

On 20 March 2023 West One correctly confirmed that the net amount received on drawdown would be £115,121, and that the amount repayable at the end of the term would be £126,000.

I can see from the email exchange between Mr S and West One that, following this, Mr S was weighing up his options. After being asked on 3 April 2023 if he was still going ahead, Mr S said he still hadn't made a decision. West One chased Mr S again on 18 April 2023 and 25 April 2023. However, Mr S confirmed on 25 August 2023 that the vendor changed their mind about selling, as Mr S couldn't guarantee a quick completion.

I've looked at the loan quote, and I've listened to the original phone call Mr S made to our service, as well as a call between the Investigator and West One, when the structuring of the loan was discussed. The loan operated in the following way.

West One bridging loans are funded by institutional funding – that is, investors willing to lend on residential or commercial property on a short-term basis. So although the loan agreement would say West One is the lender, the underlying funding would be provided by a third party. This is perfectly standard in this type of market. So West One would borrow the funds from its institutional investors to lend to bridging finance borrowers, and as a result fees and interest would be payable.

AD needed £115,000 for the purchase of the property. The loan also came with an arrangement fee of £1,760, a product fee of £790, a telegraphic transfer fee of £35, and estimated legal fees of £1,490. AD was not intending to pay these fees up front, so they were added to the loan amount. West One would pay the fees on behalf of AD.

In addition, there were monthly interest payments of £1,134 due under the loan – which over the six-month loan term added up to £6,804. Instead of AD making these monthly payments, West One would instead pay them, drip-feeding £1,134 per month out of the £6,804 over the six-month term.

Therefore, the fees and monthly interest were not pre-paid upfront; they were borrowed from West One, which would make the payments of fees and monthly interest on behalf of AD. This meant that at the end of the loan term, AD would be required to pay back the amount borrowed for the property purchase - £115,121 – and also reimburse West One for the fees and interest it had paid on behalf of AD, making a total of £126,000.

There is nothing untoward in the loan operating in this way; bridging loans of this type enable a developer (in this case, AD) to fund a purchase and/or renovations without the need to worry about paying fees up front, or making monthly interest payments.

I think Mr S may have misunderstood how the loan operated, and this wasn't helped by him being given incorrect information when he was told the fees and interest had been deducted and retained.

I don't think it was made sufficiently clear to Mr S that the fees and interest wouldn't be prepaid from the £126,000, leaving only £115,121 to pay at the end of the term. Indeed, the terms dated 9 March 2023 on which West One agreed to lend refers to "*prepaid interest*", so I can understand why Mr S might have thought this had already been prepaid by AD.

But in fact the fees and interest would actually be retained and paid out by West One on behalf of AD, meaning they would need to be added back to the loan. Therefore rather than AD having paid these fees and interest in advance, West One was actually funding them on behalf of AD, and so AD was therefore required to reimburse West One.

In this regard, I must bear in mind that AD as a limited company is a legal entity in its own right, and is separate from Mr S, who runs it. Therefore I have no power to compensate Mr S personally, or pay the company compensation for distress, as a limited company cannot experience distress. However, I can make an award for inconvenience caused to AD, because Mr S, as its only director, was caused some inconvenience by being given incorrect information for a short period of time.

In the circumstances, I think West One should pay AD £100 compensation for the inconvenience caused to the company as a result of the incorrect information Mr S was given on 6 March 2023, which was corrected by 20 March 2023.

It was Mr S's decision, on behalf of AD, not to go ahead with the loan. From the evidence, I'm not persuaded that this was entirely due to Mr S not understanding the terms of the loan, as it appears the vendor changed his mind. I therefore don't intend to award any additional compensation for any financial losses claimed on behalf of AD.

West One accepted my provisional decision. Despite a reminder, Mr S on behalf of AD has not replied.

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.

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I've reviewed the file in its entirety from the beginning, and revisiting my provisional decision. Having done so, and in the absence of any further evidence or arguments from the parties, I can see no reason to depart from the conclusions I reached in my provisional decision.

Putting things right

I think West One should pay AD £100 compensation for the inconvenience caused to the company as a result of the incorrect information Mr S was given on 6 March 2023, which was corrected by 20 March 2023.

My final decision

My decision is that West One Loan Limited must pay AD £100 compensation.

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 Mr S on behalf of AD to accept or reject my decision before 27 March 2024.

Jan O'Leary
Ombudsman