DRN-4746276

The complaint

This complaint's about an approach made by a limited company I'll call A to Yorkshire Building Society (YBS) for a commercial mortgage to fund the acquisition of business premises. A is presented here by its director, Mr I.

YBS issued a non-binding decision-in-principle (DIP) indicating a general willingness to lend, subject to a valuation and full underwriting. The valuation was carried out, prompting extensive discussions between YBS, A and the local authority over the leases for the premises. Eventually YBS decided it wouldn't be able to lend after all.

A believes YBS had enough information to reach its decision much sooner, in particular without having to go to valuation. Had that happened, Mr I says A would not have incurred abortive costs which he estimates to be in the region of £16,000.

What happened

The above summary is in my own words. The basic background to this complaint is well known to both parties so I won't repeat the details here. Instead I'll focus on giving the reasons for my decision. If I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint.

What I've decided – and why

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. But in doing so, we have to work within the rules of the ombudsman service, and the remit those rules give us.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having no regulatory function means that it's not open to me to determine what YBS' policy requirements and appetite for lending risk should be in cases like A's My role is to determine if YBS has applied its policy fairly and reached a fair decision as soon as it reasonably could have done.

I'll start with the lending decision itself. First of all, the DIP wasn't a commitment to lend; it didn't in any way bind YBS to lend or even to issue a mortgage offer. I understand Mr I's frustration, and his strength of feeling, but in the end, this is a dispute about YBS's commercial judgement on what constitutes satisfactory security. Mr I clearly has a different opinion from YBS on this, but for me to say YBS should have agreed to lend in accordance

with the DIP effectively means me substituting my commercial judgement (or indeed Mr I's) in place of YBS's. It's not in my remit to do that.

YBS was the party being asked to consider lending money, and it's not for me to assess the application for risk or second guess how YBS should have assessed it. YBS exercised its discretion as it was entitled to do.

Having concluded YBS' exercise of commercial judgement was *fair*, what I must decide next is whether it was *timely*. On balance, and after considering everything that both parties have said and provided, I'm persuaded it was.

It's not in dispute that YBS was in possession of a copy of the Headlease – a key document in its eventual decision – before the case went to valuation. Mr I's argument on A's behalf, is that YBS' staff should have been able to deduce the relevance of the information in the Headlease on which the decision ultimately turned without referral to a valuer. I appreciate his position but don't agree with it. In my view, it was necessary for YBS first of all to seek the expert opinion of the valuer on the extent to which the issues in the Headlease might impact on the suitability of the proposed security.

Having obtained that expert opinion, it was then reasonable for YBS to follow the valuer's recommendation to pursue enquiries with the local authority, and thereafter to seek further expert opinion from the valuer and its inhouse legal team on what the local authority had said. Only when all that had been carried out was YBS in a position to make a fully reasoned and informed decision not to lend.

I said at the outset that I wouldn't be commenting on every single point, and I haven't. I have, as I said I would, confined myself to those matters that I consider have a material effect on the outcome.

I can see from his submissions how important this is to Mr I. But my remit requires me to be objective, impartial, and to decide what is fair, reasonable and pragmatic in all the circumstances of the case. It also means that I'm not required to provide answers to every specific question that comes up if I don't consider doing so will affect the overall outcome.

My final decision

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

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask A to accept or reject my decision before 29 October 2024.
Jeff Parrington
Ombudsman