

## The complaint

This complaint is brought by Ms B in her capacity as a director of a limited company I will refer to as J Ltd. The complaint is against Crowd Property Limited (CPL). Ms B says that CPL unfairly charged interest on a tranche of borrowing that J Ltd neither requested nor used. She would like CPL to refund the interest of £13,306.85 charged on that drawdown.

## What happened

I don't 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 Ms B or J Ltd being identified. So for these reasons, I will instead concentrate on giving a brief summary of the complaint, followed by the reasons for my decision.

Briefly, J Ltd was undertaking a commercial development and in November 2023 CPL had agreed to provide funding to a total of £1,580,000 to be drawn down in five tranches, and payable after 18 months. The loan agreement sets out (amongst other things) the terms and conditions in relation to future drawdowns, and in respect of J Ltd's obligation to proceed with the development and to provide CPL with updates. Phase 1, £200,000, was drawn down on 23 November 2023.

On 3 January 2024 CPL informed J Ltd that Phase 2 - £350,000 – was ready to be drawn down from 25 January 2024. J Ltd's Operational Lead responded to say *"I will get in touch as soon as we're ready"*.

Unfortunately, J Ltd had problems with its contractor, as a result of which the development hadn't progressed as anticipated. J Ltd didn't explain this to CPL, or say that the second phase drawdown wasn't needed at that stage. There was no further contact between CPL and J Ltd until April 2024, when J Ltd said it wanted to redeem the loan. J Ltd redeemed the loan on 22 May 2024. The redemption statement included interest of £13,306.85 on the £350,000 phase 2 drawdown.

J Ltd complained, saying it hadn't requested the second drawdown and so didn't think it was fair to be charged interest on it. CPL rejected the complaint, stating that J Ltd hadn't told it until April 2024 that the project wasn't going ahead and that the contractor hadn't even started on site. CPL said that J Ltd hadn't kept it updated on the status of the works, or that no further drawdowns would be required. CPL also said that J Ltd had never asked for the suspension of funds, and so it had acted in good faith. As a result, no refund of interest would be made.

Dissatisfied with CPL's response, Ms B referred the complaint to our service on behalf of J Ltd. An Investigator looked at what had happened. Having done so, he thought that a fair outcome would be for CPL to refund 50% of the interest paid on the second drawdown, which would be £6,653.43. This was because he thought there'd been miscommunication on both sides – with a lack of clarity from CPL in early January 2024 that interest would start accruing on the second drawdown from 25 January 2024, and a lack of transparency from

J Ltd about the progress of the development, nor any indication that J Ltd wouldn't require any further drawdowns.

CPL didn't respond to the Investigator's findings, but J Ltd did, reiterating that it considered the outcome to be unfair, and asking for an Ombudsman to review the matter.

### **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 the Investigator, for broadly the same reasons. I think a 50% refund of the interest paid on the second drawdown is a fair way to resolve the complaint. These are my reasons for deciding this.

I've taken careful note of what both parties have said. I agree with the Investigator that there was poor communication on both sides which led to the second tranche being paid to J Ltd on 25 January 2024.

This complaint really turns on what happened in early January 2024.

CPL claimed in its final response *"Our Portfolio Manager emailed [J Ltd] on 3 January 2024 advising that the second phase of funding would be called on 11 January 2024"*. However, I'm satisfied its email of 3 January 2024 says nothing of the sort. It simply says *"I trust progress will be picking back up after the festive break – I recall phase 2 is in the pipeline to be available to draw from 25/1/24. Do let me know when you are expecting the IMS visit."*

I think at that point CPL ought to have told J Ltd that, from 11 January 2024, once the funds were raised, interest would begin to accrue on them from 25 January 2024 onwards. If it had done so, I think the response from J Ltd might have been different.

As it was, J Ltd's Operation Lead simply said in his email dated 8 January 2024 *"I will get in touch as soon as we're ready."* CPL wasn't told that the development hadn't started and never would, or that a second drawdown wouldn't be required. I think if J Ltd had been transparent about what was actually happening, CPL would have been able to cancel the raising of funds from its investors, which wasn't due to start until 11 January 2024.

Notwithstanding there was no inspection report, on 25 January 2024 the funds were available to be released to J Ltd. But it wasn't until April 2024 that J Ltd told CPL that the development wasn't viable.

### **Putting things right**

In the circumstances, given there was poor communication on both sides which led to the second tranche being raised and available on 25 January 2024, I think a fair outcome would be that each party bears equal responsibility for the situation that arose.

I direct CPL to reimburse J Ltd with 50% of the £13,306.85 interest charged on the second drawdown – the amount of £6,653.43.

I also direct CPL to pay J Ltd interest on £6,653.43 at 8% per annum simple on £6,653.43 from 22 May 2024 (when it was paid by J Ltd) to the date of reimbursement.

### **My final decision**

My final decision is that I uphold this complaint. I direct Crowd Property Ltd to settle the complaint as set out above. I make no other order or award.

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 Ms B on behalf of J Ltd to accept or reject my decision before 25 February 2025.

Jan O'Leary  
**Ombudsman**