

## **The complaint**

A company which I'll call 'E' complains that Social Money Limited behaved unreasonably when it withdrew its loan offer causing a financial loss.

The complaint is brought on E's behalf by its director, Mr B.

## **What happened**

Mr B told us:

- E wanted to purchase a property and had negotiated a discount with the seller. To make the purchase, it needed to take out a loan against an existing property. In May 2023, using a broker, E applied for a secured loan with Social Money which was based on the existing property being worth £445,000 with a current mortgage of around £221,000.
- In early July 2023, Social Money sent E a loan offer based on these figures. Shortly after, E paid the valuation fee and the lock-in fee for the secured loan.
- In August 2023, Social Money received notification that the property value had been decreased to £360,000 and the outstanding mortgage was actually £226,000. It didn't take any action with this information or contact E to make it aware.
- In November 2023, Social Money suddenly withdrew the loan offer, shortly before the property purchase was due to exchange and complete. This meant E lost around £60,000 from the property discounted price, the valuation fee, lock-in fee, and legal fees.
- Social Money had provided poor customer service as it had known for around three months that E didn't meet its lending criteria due to the decrease in the property value, but it didn't take any action. This meant E had incurred extra legal fees and hadn't been able to find another lender so close to the purchase completion date. So, E wanted Social Money to refund the costs and pay compensation for the inconvenience caused.

Social Money told us:

- It received a borrowing request for E via a broker in May 2023 based on a property which was worth £445,000 and an existing first charge against the property of around £221,000. An initial offer was made to E and the broker in July 2023 based on these figures.
- Shortly after it sent the offer to E, it received the application and valuation fees. The valuation was instructed, but when it received the valuation report on 27 July 2023, the surveyor had reduced the value of the property to £360,000.

- On 10 August 2023, it received confirmation from the first charge lender that the outstanding balance was around £226,000 rather than £221,000. A new loan offer was issued on 16 August 2023, but in error this only included the updated property valuation amount, not the updated first charge borrowing amount.
- On 3 November 2023, it identified that E's request no longer met its lending criteria and withdrew its loan offer. It agreed that it could have told E in August 2023 that it no longer met the lending criteria and agreed that it would consider compensation for the legal costs incurred by E after 10 August 2023, and it had asked Mr B for a breakdown of the legal costs incurred. However, this hadn't been received so it hadn't refunded these. It also offered E £250 compensation as a gesture of goodwill, but this hadn't been accepted.
- It didn't think the lock-in fee or valuation fee should be refundable as the terms and conditions of the loan were clear that these were non-refundable. It also noted that E and its broker could have said that the first charge amount was incorrect earlier in the process, but they didn't do so either.

Our investigator thought that Social Money had taken too long to tell E that because of the existing charge and the decrease in the valuation, that the loan no longer met its lending policy. He thought this delay meant E had incurred legal costs it wouldn't have done had this been communicated on 10 August 2023 when Social Money received this information. The investigator recommended that Social Money refund the legal costs incurred after this date, along with any reasonable costs incurred by E to obtain this breakdown and pay £250 compensation for the inconvenience caused to E. However, he didn't think Social Money was responsible for the other fees and costs incurred by E as these would always have been payable. He also didn't think Social Money was responsible for E's loss because it couldn't purchase the property at the price agreed as the loan agreement wasn't guaranteed.

Mr B didn't agree with the investigators opinion and asked for an ombudsman to review E's complaint. In summary, he thought our service should hold Social Money more accountable for the loss incurred by E, and said that he didn't think the fees payable to Social Money were fair and believed that the lender had no intention of providing the loan. Mr B also said that he'd provided Social Money with the breakdown of legal costs as requested and he didn't think £250 was enough compensation for the inconvenience caused to E.

I issued a provisional decision on 17 October 2024. I said the following:

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

Social Money has accepted that it made an error in not communicating to E in August 2023 that it was no longer willing to offer E a loan based on the updated valuation and first charge lending amount. So, the focus of my decision is how I think Social Money should put things right.

I acknowledge Mr B feels strongly about what's happened. He's provided a lot of information and testimony in support of E's complaint. I've read and considered everything Mr B has provided, however, in this decision I've not commented on each and every point he's raised. I don't mean this as a discourtesy, it's simply that the informal nature of our service allows me to do so. However, in summary, I'm not persuaded that Social Money should refund E all the costs it incurred from the loan application.

I recognise Mr B feels that Social Money weren't ever going to grant a loan for E, and

therefore, the lender should refund the valuation and lock-in fees. However, I'm not persuaded that's the case. I say that because I've seen that Social Money provided E with several loan offers, including one after the property had been reduced in value, which I don't think it would have done if it wasn't prepared to lend to E. But in any event, I'm satisfied that the terms of the offer from Social Money are clear that the valuation and lock-in fees are payable upfront, and that the valuation fee is non-refundable at all times, and the lock-in fee isn't refundable if the loan doesn't complete. Therefore, I don't think Social Money made an error in charging the fees and then choosing not to refund them.

Mr B also feels that Social Money should refund E the £108.00 fee that it paid to the first charge lender. But I don't agree. The loan offer is clear that E will be responsible for paying its own legal costs and any legal costs that Social Money incurs. Given that Social Money would have been unable to provide E with the new offer of 10 August 2023 without this information, I agree with our investigator that this would always have needed to be paid by E for the loan to progress.

Mr B says that Social Money has treated E unfairly because it hasn't paid the legal fees incurred by the company. Mr B says he has provided a breakdown of the legal costs incurred by the company between 10 August 2023 and 3 November 2023 as requested by the lender, along with an invoice for £210.00 to provide a breakdown of the legal costs incurred, and therefore it should refund these costs. I agree with our investigator that it would be reasonable for Social Money to refund E's legal costs between 10 August 2023 and 3 November 2023, as E wouldn't have incurred these costs had Social Money cancelled the offer as soon as it was aware E didn't meet its lending criteria. I also think it's fair that Social Money cover the cost incurred by E to obtain this breakdown, as this is a cost which has been caused by Social Money's actions.

However, I'm not persuaded that Social Money has behaved unreasonably in not refunding the fees based on the evidence E has provided. Firstly, the invoice provided by E says that the fee period is from August 2023 to January 2024 – not the specified dates, but it also doesn't provide a sufficient breakdown of the legal costs involved. I've also looked at both the original invoice and the additional invoice for providing a breakdown of the legal costs incurred by E, and these haven't been provided in the usual format that I'd expect to see when a legal cost breakdown is provided.

I can see that when Social Money said it would look to refund E's costs, it gave clear direction to E on what it would need to arrange the refund, which included the chronological schedule of time costs and any disbursements. I'm satisfied that Social Money's request for the cost breakdown was reasonable and I don't think it's acted unfairly towards E by refusing to pay the legal costs until this is provided. Once the breakdown is received in the required format, I would expect the lender to refund the legal costs incurred by E within a two-week period.

Based on the information that Mr B has provided to our service about E's legal fees I'm not persuaded that I have sufficient evidence for me to tell Social Money that it should pay those costs. As an ombudsman my role is to settle disputes quickly and informally based on the evidence available, and to make a decision, which if accepted by the complainant becomes legally binding. It therefore wouldn't be fair on either party for me to make an ambiguous decision about how E's legal fees should be settled because once a final decision is issued, I can't change it to consider more evidence. Therefore, both parties need to give me any evidence they want me to consider before the deadline of this provisional decision. In particular, if I don't

receive a more detailed breakdown from E of the legal fees it has incurred, then I intend to say in my final decision that Social Money does not need to refund any legal fees to E.

I recognise it would have been frustrating for Mr B to have E's mortgage offer withdrawn when it was close to completing the loan. I acknowledge the effect this would have had on the company, and I don't doubt that this has caused distress to Mr B, but I agree with our investigator that £250 compensation feels reasonable here. I recognise that Mr B doesn't feel this is enough compensation to put things right. However, our service can only award compensation to the eligible complainant. In this case, that's E not Mr B and a company cannot experience distress. Furthermore, I can only look at the inconvenience caused to E, which doesn't include any speculative loss caused to the company from the potential loss of profit from buying a property at a discount. Therefore, having taken the circumstances into account, considered our guidance and applied my own judgement, I consider that compensation of £250 is fair in respect of the inconvenience the company has incurred.

I invited Mr B and Social Money to give me any more evidence and information they wanted me to consider before issuing my final decision. Social Money didn't say whether it agreed or disagreed with the decision. Mr B didn't agree. He said in summary that:

- He'd like an example of a cost breakdown that could be provided to his solicitors.
- That businesses could be distressed and provided examples of this such as cash flow difficulties. Social Money's error caused substantial inconvenience to E including frustration and reputational damage and fair compensation was warranted.
- The distress experienced by E had directly impact him and his staff, particularly from the financial loss incurred. His trust in professional services had been damaged and he'd personally been caused distress because of the impact to E.
- The loss E incurred from not purchasing the property was not speculative as the sale price had been agreed in writing with the company's solicitor. E had also not been able to proceed with another purchase through the same seller due to the issue with this purchase.
- E had incurred legal fees of £728 for the proposed purchase and £210 to provide a breakdown of the legal costs.

### **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 I did in my provisional decision and I'm sorry to disappoint Mr B but there isn't much more that I can add to what I have already said.

Mr B is unhappy as he requested a further extension until 29 November 2024 to allow E to submit further evidence of the legal fees he says were incurred. However, I'm satisfied that I have given sufficient opportunity for both parties to make any submissions that they wish me to consider, and that I have sufficient information for me to make my decision. My role, in line with the DISP rules, is to make a decision fairly, informally, and quickly. This means that

both parties are given the same opportunity to provide any information they want our service to consider, and that we resolve complaints at the earliest possible stage. So, I don't think it's fair or reasonable for me to continue to extend the deadline for providing information to one of those parties.

DISP 3.5.15 says that if one of the parties to a complaint fails to comply with a time limit, that the ombudsman can proceed with consideration of the complaint. As I have chosen to do here. Mr B provided a response to my provisional decision on 24 October 2024 which included a request to provide an example of the legal fee breakdown. Our investigator explained why this wasn't possible on 25 October 2024, Mr B then added further comments for me to consider on 29 October 2024. On 8 November 2024, I agreed an extension until 15 November 2024 for Mr B to provide further information about the legal fees and the legal fee breakdown invoice which had been submitted. I provided an explanation on why this wasn't sufficient for me to say Social Money should refund those costs.

On 14 November 2024, Mr B asked for a further extension to provide more information about the legal fee breakdown. I agreed another week, until 22 November 2024, to provide this information but I explained that I would not agree a further extension. E has had five weeks since the issue of my provisional decision to provide further evidence. Given the time that E has had a complaint with our service, I think that E has had ample opportunity to provide evidence to support the losses it has claimed, and I have therefore based my decision on the submissions received from both parties up to and including 22 November 2024.

It's not for our service to provide Mr B with a sample breakdown of legal fees for his solicitor to follow. Our role is to consider the evidence provided by both parties to support their position, not to say what this should look like. I have considered the amounts that Mr B says E incurred as legal fees, however the detailed breakdown for the appropriate period in question hasn't been provided, such as the dates that work was undertaken, what work was undertaken, and the time required to undertake this work. The evidence submitted by E's solicitors also isn't for the correct period. Therefore, I'm unable to direct Social Money to refund E's legal fees.

Mr B has explained why he feels a business such as E can suffer distress, and I do not dispute the circumstances in which this may occur such as unsustainable debt levels or cashflow issues. However, when our service considers distress and inconvenience, we view this as emotional distress and a limited company cannot suffer emotions. Therefore, I cannot make an award to E for the distress Mr B says the company has been caused. I also do not dispute that Mr B has been caused personal distress here or that this issue has had an impact on him personally. He is E's director, and it is reasonable that he would be impacted by issues which have affected his company. However, I cannot award compensation to Mr B personally for the distress he says he was caused as he is not the eligible complainant here.

I recognise that Mr B says that the loss caused to E was not speculative as there was an agreement with the seller to sell the property at a lower value. He's also said that E was caused reputational damage because the seller was going to sell other properties to E, prior to this issue occurring. I don't dispute that E had signed a contract with the seller to purchase the property at the reduced price, but I'm not persuaded based on the evidence provided that a loss occurred, or that Social Money should be responsible for the loss Mr B says has occurred. I also haven't seen sufficient evidence of the reputational damage that Mr B says E suffered here, so I cannot make an award for this.

I'm sorry to disappoint Mr B, but as insufficient evidence was provided to support E's legal costs or the consequential losses he says were incurred, my decision remains unchanged that Social Money's offer of £250 compensation is enough to put things right.

**My final decision**

Social Money Limited has already made an offer to pay £250 to settle E's complaint and I think that offer is fair in all the circumstances.

So, my final decision is that Social Money Limited should pay £250.

Under the rules of the Financial Ombudsman Service, I'm required to ask E to accept or reject my decision before 24 December 2024.

Jenny Lomax  
**Ombudsman**