

The complaint

S, a limited company, complains that West One Loan Limited wrongly claimed it had defaulted on a secured loan and applied additional interest. S is represented by its director, who I'll refer to as Mr S.

Mr S asks that West One refunds the additional interest it applied.

What happened

S took out a bridging loan with West One in December 2022. This had an 18-month term which expired on 22 June 2024. It was a term of the loan agreement that the property was marketed for sale at market conditions within 12 months of the completion date.

S started to market the property for sale in late 2023. In March 2023 West One queried the price at which the property was offered for sale. It said the asking price was substantially more than the value of the property and therefore the property wasn't being marketed for sale at market conditions. West One said S was in breach of the loan contract and applied an increased interest rate for one month. S repaid the loan on 7 June 2024.

Mr S says West One was incorrect to say they didn't market the property in accordance with the loan terms and to apply the higher interest rate. He says West One used solicitors to threaten them. Mr S says West One applied interest at double the agreed rate and wouldn't remove its charge until this had been paid.

Our investigator said S provided evidence it was marketing the property for sale. He said the loan was repaid two weeks before the due date. And West One benefitted from receiving interest for all of June 2024. Our investigator said West One applied the default prematurely and unnecessarily and it should refund the additional interest of about £4,000.

West One didn't agree. It said it was at risk if the property wasn't marketed for sale at a realistic price for a feasible timeframe. It said it was entitled to apply the higher interest rate sooner but didn't do so until late May 2024 when it was still uncertain as to how the loan would be repaid.

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.

I think a fair starting point here is the terms and conditions of the bridge loan that S took out in December 2022. The loan terms said the loan was for an 18-month term from the completion date. The terms said while the loan was repayable on demand West One didn't anticipate asking for repayment before the due date or until there was an unremedied event of default.

The loan terms and conditions said interest was payable monthly in advance. This would be at a reduced rate unless there was an event of default when it would be applied at the

standard rate. West One retained a sum to cover interest at the reduced rate.

In the application form, the broker said the exit strategy was the sale of the property. The property was valued on behalf of West One (by a RICS qualified surveyor) in September 2022 at about £850,000 for a sale within 180 days.

A special condition was added to the loan terms, saying:

You acknowledge and accept the Property will be marketed at a level in line with market conditions within 12 months of completion of the loan. Failure to do so will be considered an event of default.

Mr S says they met the terms of the special condition. The property was marketed for sale via two property (estate) agents at about £1.5 million – the price recommended by the agents. West One said S was in breach of the special condition as this price was significantly higher than the valuation carried out in 2022 and its own assessment of the property value.

This service provides an informal dispute resolution service. We aren't a court and don't have the same powers as a court. Only a court can decide if a contract is valid and enforceable and whether a contract has been breached. We take relevant law, regulation, guidance and good industry practice into account to decide what's fair and reasonable in all of the circumstances of a complaint.

I've taken the following into account when considering this matter.

- Setting aside West One's demand for repayment on the basis there'd been an event of default, there was no payment default here. Interest was paid when due (from the sum retained by West One). The loan capital was repaid before the end of the 18-month term.
- West One made a lending decision on the basis that the loan would be repaid by the sale of the property – the exit strategy stated in the application. West One said it was at risk when S's directors changed their repayment strategy. I can't see though that it was a term of the loan that it could only be repaid by the sale of the property.
- The special condition didn't require S to instruct a valuation from a RICS surveyor or say the property had to be marketed at the price specified by a RICS surveyor. The special condition didn't say that S couldn't rely on the opinion of property agents as to the price at which to market the property.
- West One says the opinion of its asset management team who have RICS qualifications was that the marketing price was too high and not in line with the last valuation and market conditions. The special condition doesn't say the property had to be marketed at a price approved by West One's asset management team or in line with the last valuation.
- If the loan remained unpaid after the term expired, it might be reasonable for West One to approve the marketing price and strategy as a condition of any forbearance. But that wasn't the case here. The loan was repaid before the end of the term.
- The property was marketed for sale for six months without an acceptable offer from a purchaser. Mr S says they did receive offers but these were too low and not acceptable. That could suggest the price at which the property was marketed for sale was too high, or that S's directors had unrealistic expectations as to the value of the property. It could be that there wasn't much interest in the property at that time.

- The special condition didn't require S to accept an offer. It only required it to market the property at a level in line with market conditions. S could have satisfied the special condition (as interpreted by West One) by marketing the property at a lower price and still not sold the property. It might not have received a credible offer. And there was no requirement that it accept an offer if it did.
- When West One spoke to Mr S on 30 April 2024, Mr S said they were in the process of refinancing. They had a decision in principle and were awaiting a formal offer. West One said it would hold action until the due date to give the re-financing time to complete.
- West One's solicitors sent a letter before action on 2 May 2024. This said S was in breach of the loan facility as the property had not been marketed for sale within 12 months of the completion of the loan. I don't think that was right. The property had been marketed for sale. The dispute was whether it was marketed at a level in line with market conditions.
- West One says it applied standard rate interest in late May 2024 when it was still uncertain as to how the loan would be repaid. However, S's directors had told West One they intended to repay the loan through a refinancing. While I appreciate West One couldn't be certain that the refinancing would complete, there would be similar uncertainty with a sale of the property.
- Interest was paid monthly in advance. So West One had the benefit of receiving interest for a whole month when the loan was repaid part way through the month.

I think West One had genuine concerns about the loan being repaid by the end of the term. It thought the price at which the property was being marketed was unlikely to result in a sale by mid-June 2024. I don't think it was wrong or unfair for West One to contact S's directors to raise its concerns and ask them about their strategy to repay the loan. But I don't think it was fair and reasonable in the circumstances for West One to apply the standard rate of interest and instruct solicitors to start or threaten to start legal action.

The parties have very different views about the value of the property and whether it was marketed in line with market conditions. I can't fairly make a finding as to whether S was in breach of the loan agreement – that would be for a court to determine. But I do think, if West One wanted S to market the property at a price within set parameters (such as at a value set by a RICS surveyor), it ought fairly to have said this in the special condition. That would have avoided uncertainty about what the special condition required S to do.

Presumably, the aim of the special condition was to encourage S's directors to take steps to ensure S was able to repay the loan by the due date. The special condition assumed S would do this by selling the property – the exit strategy stated in the application. But S wasn't obliged to repay the loan that way. If S had no strategy to repay the loan I might have reached a different outcome. But S's directors told West One they intended to repay the loan through a re-financing, which was in progress. I don't think it was reasonable or fair for West One to then send a letter before action and increase the interest rate from May 2024 on the basis the property wasn't being marketed for sale at what it considered to be the right price.

Putting things right

I don't think it was fair and reasonable in the circumstances for West One to apply the standard rate of interest or start legal action in May 2024. I think West One should refund:

- any costs related to starting legal action (such as the letter before action) applied to the

- loan account, and
- the difference between the interest applied to the loan account at the standard rate of interest and the amount of interest that would have been applied at the reduced rate of interest.

West One should add interest at 8% simple to the full amount of the refund from the date the loan was repaid to the date of settlement. If it considers that it is required by HMRC to deduct tax from this interest, it should provide a tax certificate to S on request.

My final decision

My decision is that I uphold this complaint. I order West One Loan Limited to make the payments set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 13 February 2025.

Ruth Stevenson
Ombudsman