

The complaint

A, a limited company – represented by its directors Mr K1 and Mr K2 – complains that Redwood Bank Limited didn't act fairly when A asked for a payment holiday and other forbearance in connection with its commercial mortgage.

What happened

Mr K1 and Mr K2 have two property development companies, both of which took out two loans with Redwood, and which encountered difficulties around the same time. Throughout the management of the lending relationship, and the subsequent complaint, both companies and all four loans were dealt with at the same time, with Mr K1 taking the leading role in managing the relationship with Redwood.

When the complaint came to our service, again all four loans were considered together by the same investigator, who was therefore aware of all the circumstances. Now that the complaint has been referred for an ombudsman's decision, I've also looked at all the circumstances in the round and I've taken everything into account in deciding what's fair and reasonable in all the circumstances.

However, as the eligible complainants are not Mr K1 and Mr K2 but their companies, I am issuing two separate decisions – since they are not joint borrowers on the lending, each company makes its own separate complaint. But in deciding this complaint I've taken into account the broader circumstances. I'm issuing a separate decision in respect of the other company, but as I am deciding whether Redwood acted fairly to both companies together, my decisions will largely be the same (though there are some points that are relevant to one only).

In 2021 A took out a commercial mortgage with Redwood. It borrowed around £1.64million over a term of 30 years – with the first year on interest only terms, switching to repayment thereafter. In 2022 A borrowed a further £271,000, also over 30 years. The loans were secured over a mixture of commercial and residential property, as well as by Mr K1 and Mr K2's personal guarantees, and included the following covenants:

- The 2021 loan – a maximum loan to value (LTV) of 71.4% and a minimum rental cover of 130% of the payments, to be tested annually or at the bank's discretion; and regular updates to the bank on income and other matters.
- The 2022 loan – a maximum LTV of 74.1% and a minimum of 130% rental cover, to be tested annually or at the bank's discretion.

Both loans were lent at variable interest rates, at 4.75% and 4.7% over Bank of England base rate respectively. When base rate rose significantly during 2022 and 2023, A had difficulty meeting the increased monthly payments. So Mr K1 engaged with Redwood to discuss forbearance. This complaint arises out of those discussions and the bank's subsequent actions. Mr K1 says that Redwood didn't act fairly – and in particular that while it initially agreed forbearance the terms of that weren't set out in writing, leading to later misunderstandings; that there have been errors in processing payments; that Redwood has

given Mr K1 misleading information and has reported that it is not in good financial standing; that it didn't agree further forbearance and tried to take recovery action; and that it had tried to value the properties without A's consent.

Redwood said it hadn't done anything wrong. Mr K1 contacted it in 2023 to discuss what assistance it could provide. Redwood said it was concerned that this wasn't just a case of financial difficulty – that Mr K1 was choosing to use funds for other purposes ahead of prioritising repayments to Redwood. But it agreed to a three month payment break, to give Mr K1 time to develop a plan to get the loan back on track or refinance.

The payment break in respect of these loans went ahead without issue. But Redwood still called for the direct debit in respect of one of the other loans held by the other company, even though it had said it wouldn't. The direct debit was returned unpaid. Redwood immediately apologised and said it would not have any wider impact because it was not reporting the lending to the credit reference agencies. But Mr K1 says that the failed direct debit prevented both companies re-financing the lending with another lender.

At the end of the three month period, Redwood said it discussed the loans with Mr K1. It was willing to consider further options, such as paying only the interest for a period – but before it could agree to a further arrangement it needed financial information from A, including details of current rent receipts. Redwood says A didn't provide that information, so no arrangement was agreed.

A resumed making payments from January 2024, but didn't pay the full amount due each month or make any contributions to reducing the arrears that had accrued.

Also in January 2024, Redwood says it checked the loan to value to make sure the covenants were still being met. It says that this is outsourced to a surveyor but normally done via a desktop valuation without any contact with customers. But due to an error the surveyor emailed Mr K1. Mr K1 complained about this – Redwood said it was an error and apologised.

In March 2024, Mr K1 made this complaint to Redwood, and later brought it to us. While the complaint was in progress, discussions between A and Redwood continued. In September 2024 Redwood agreed to a proposal to repay the arrears and said it would stop enforcement action in return.

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'm not persuaded to uphold this complaint. I appreciate that Mr K1 feels very strongly about what has happened and does not believe that Redwood treated him or his company fairly. But, having considered everything, I'm satisfied that it did.

From when the loans were taken out, A kept up with the repayments until March 2023 when the direct debit payment on the larger loan was not met – the payment was made a few days later by bank transfer, but the same thing happened in April – this time the payment wasn't made up until the following month. In May full payment was made, albeit slightly late. But no payment was made in June. On the smaller loan, May's direct debit failed but was made up by bank transfer two weeks later. June's payment was made.

At the same time, the other company had a similar pattern, with some payments failing but being made up later and no payment being made on one of the loans in June.

In May 2023, Mr K1 spoke to Redwood and explained that the companies were experiencing financial difficulty. It appears that this was because of a combination of factors – the monthly payments had increased because of increases in interest rates, and because of problems on other projects they were experiencing cashflow issues.

Redwood said it would be able to consider offering support, but would need to see financial details for both companies – including bank statements, details of rental receipts and a long-term plan to get things back on track.

Following further discussion, in July 2023 Redwood agreed a three month payment break. This was agreed retrospectively – to cover June's missed payments as well as those due for July and August.

Mr K1 complains that this agreement wasn't set out in writing, and as a result it wasn't clear what was being agreed or the implications of it. He says that Redwood acted unfairly in treating the missed payments as arrears which contributed to later enforcement action.

Redwood agrees that it didn't confirm the agreement in writing (although it normally would), but says that it would have been clear to Mr K1 what was agreed.

I agree that it would have been better for Redwood to have confirmed the agreement in writing. It's important to note that these are commercial loans and so unregulated – so there is no specific obligation on Redwood to do so. But even though the loans are unregulated, Redwood itself is a regulated entity and covered by the regulator's general principles for business, which include treating customers fairly and communicating in a way that's clear, fair and not misleading.

As I say, it would have been better had Redwood confirmed the arrangement in writing, to avoid any later disputes or misunderstanding. But even so I'm not persuaded it was unclear what was being agreed at the time. I think it would have been clear to Mr K1 that the payments for June, July and August would not be collected for reasons of forbearance – but I don't think Mr K1 could reasonably have concluded that those payments were not still due and would not need to be made up later.

There's no provision in the loan agreements for a payment holiday – a contractual entitlement not to make payments for a pre-defined period. The loan agreements require payments to be made each month. In agreeing to a payment arrangement or break (not a contractual payment holiday), Redwood was agreeing not to collect the payments due in those months. But it did not agree that those payments were no longer due. By not making payment in those months A went into arrears, albeit arrears that were agreed and arranged with Redwood. Redwood's agreement was not that A did not have to make those payments at all, it was that it would not take enforcement action even though they were not made. But at the end of the arrangement period they would need to be made up. Even though that wasn't confirmed in writing, that ought reasonably to have been clear to Mr K1.

The payment arrangement was extended for a further three months. At the end of the payment arrangement, Redwood expected A to resume making payments and to discuss how the missed payments would be made up. But A wasn't in a position to do that. So there were further discussions about the loans. Mr K1 said he was trying to re-finance the lending with other lenders. He also discussed options with Redwood – such as moving from variable to fixed interest rates, and converting the loans to interest only terms for a temporary period.

In January 2024, Redwood quoted options for capitalising the arrears and offering a six month interest only period. It also offered options for moving to a fixed rather than variable rate instead. But Mr K1 said that these options were unaffordable. A didn't resume making

payments and after further discussion this complaint was raised in March 2024.

I do appreciate the problems A faced, as well as the personal difficulties Mr K1 and Mr K2 experienced. But even taking those into account, I think Redwood offered reasonable forbearance. It allowed a six month arrangement where no payments were made, and at the end of that time it was willing to consider other options to assist. But the options presented weren't affordable for A.

This wasn't because of something Redwood had done wrong. It seems clear to me that the problems A encountered were largely caused by two factors. Firstly, these loans were on variable interest rates and during this time the Bank of England base rates increased substantially – making the lending more expensive. And at the same time, A had taken on other projects and Mr K1 and Mr K2 were using at least some of the rental income from these properties to finance those other projects. So at the same time as the loans were becoming more expensive, less of the company's income was available to service them. But Redwood is not responsible for increasing interest rates – that is always a risk with variable rate lending, and one I would expect A as a responsible business to be prepared for. And Redwood is not responsible for A's choice to divert some of its income away from servicing these loans to fund other projects.

The fact is that A didn't make payments for several months, with the loans going into arrears as a result. I think Redwood showed reasonable forbearance in allowing that to happen for over six months, and even after that trying to agree a way forward rather than taking enforcement action. It only began enforcement action after it became clear that A wasn't able to resume making payments at the level required. And, more recently, it has now agreed to withdraw enforcement action in return for the arrears being cleared. I'm not therefore persuaded that Redwood acted unfairly.

I can't consider the impact of attempting the direct debit in August in this complaint, because that was done on the other company's loans. However, I've found in the other complaint that it wasn't this that stopped Mr K1 re-financing the loans of both companies. The lending decisions he has shown us make clear that the refusal was because of the conduct of the accounts more generally, rather than just because of the direct debit bouncing. In any case, other direct debits had already failed in May and June. And for the same reasons as Redwood's proposals were unaffordable for A in early 2024, any terms another lender offered in 2023 would have also been unaffordable. So I don't think re-financing was ever a realistic prospect at this time, or that doing so was prevented by anything Redwood did rather than because of A's financial situation.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask A to accept or reject my decision before 25 February 2025.

Simon Pugh
Ombudsman