DRN-5372069

The complaint

A limited company, which I'll refer to as E, complains that Coventry and Warwickshire Reinvestment Trust Ltd ("CWRT") treated it unfairly and failed to act as a responsible lender.

E is represented by its sole director, Mr R.

What happened

E took out a Coronavirus Business Interruption Loan ("CBIL") from CWRT in 2020.

Repayments began in June 2021, but, as a result of Covid and other setbacks, E said it was unable to meet them. CWRT agreed to E making reduced repayments for period.

In 2022, Mr R asked CWRT if they could introduce him to potential investors as he needed more funds to develop his product. CWRT's lending officer made an introduction and some discussions followed, during which E was asked to supply a business plan and other information. Ultimately, the investments did not go ahead.

Mr R became uncomfortable with the behaviour of CWRT's lending officer. He was also worried about the safety of E's intellectual property. In April 2023, a meeting took place in which Mr R expressed concerns about the lending officer's conduct.

In May 2023, E applied for a new loan from CWRT. CWRT made several information requests. The application went before a lending panel in October 2023, where it was declined.

In February 2024, Mr R made a formal complaint. CWRT did not uphold the complaint, as they did not consider they'd made any errors.

One of our investigators looked into what had happened. She considered that some parts of E's complaint were not within our power to investigate. And she didn't think CWRT had done anything wrong in terms of the other parts.

Mr R disagreed. He didn't think her investigation fully addressed his complaint, so he asked for an ombudsman to look into the matter and issue a final decision.

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.

The Scope of our investigation

First, the only eligible complainant here is E. I don't think there is any dispute that Mr R is representing E, but is not an eligible complainant in his own right. This is because he doesn't have a relationship with CWRT in his personal capacity as a consumer. That means that I will be considering the impact of CWRT's actions on E - but not on Mr R personally - in this decision. In saying this, I realise that Mr R is E's sole director and employee, but there is nonetheless a legal distinction. This distinction means that I can't consider any distress felt by Mr R, because E is an incorporated body and cannot be distressed.

Secondly, Mr R has made a number of different allegations of misconduct against CWRT. As our investigator has explained, we are not free to consider all complaints referred to us. There are rules. Although the Financial Ombudsman is separate from the Financial Conduct Authority ("FCA"), the rules that govern our service are set out in the FCA's Handbook. They are known as the Dispute Resolution ("DISP") rules and are publicly available. They are derived from the Financial Services and Markets Act 2000.

The DISP rules specify a number of tests that must all be met for a complaint to be one that we have the power to consider. Mr R has asserted that any behaviour by a lender that directly impacts the ability of a business to trade should be within our remit. But I'm afraid that is not the case.

Particularly relevant to the allegations made by E is DISP 2.3, which sets out the activities covered by our jurisdiction. DISP 2.3.1 (4) allows me to consider complaints about unregulated lending. E's CBIL falls within this category, so I can consider complaints about the CBIL and matters ancillary to that lending. However, there is no activity of general financial misconduct and no activities relating to investors or introductions thereto.

I have considered whether the parts of E's complaint relating to CWRT introducing Mr R to potential investors - and possible conflicts of interest in respect of this introduction - are ancillary to the lending, but I do not think they are. This is because capital investment is a separate form of company funding from debt. I appreciate that both forms of funding might be crucial to an enterprise's financial health, and one could be used to repay the other, but that does not make one ancillary to the other in my view.

I also agree with our investigator's conclusions regarding the elements of the complaint that relate to complaint handling, for example, E's belief that CWRT failed to address or define the complaint properly and tried to shut it down. The DISP rules define the complaints that we can look at as "any… expression of dissatisfaction … about the provision of, or failure to provide, a financial service…". Complaint handling does not fit within those categories. Neither is complaint handling included in the list of the activities which I can consider in DISP 2.3.

As an ombudsman, I am tasked with informal dispute resolution. We do not operate in the same way as the courts and cannot compel witnesses or conduct interviews. Mr R has said that our investigator should have engaged with someone he regards as a key witness. But it was always open to E to provide any evidence it regarded as relevant to the complaint and our investigator made that clear. Our investigator also explained why she did not feel that the testimony would change the outcome of the complaint, based on Mr R's own account of what happened at the meeting.

Mr R has also asked me to comment on the failure of Coventry City Council to respond to E's complaint, despite promises to reply. I know he feels the council has some responsibility here, but it is not a regulated financial institution and I have no jurisdiction over its decisions.

I acknowledge Mr R's concern that failing to investigate all financial misconduct allegations against a regulated lender could set a precedent for firms acting without accountability. I do not have the power to set aside our jurisdiction, but neither do my decisions set precedents. My role is only to consider whether the actions of CWRT that fall within my scope in this particular case were fair and reasonable.

It's clear that Mr R feels very strongly about E's complaint and I can understand this, given his personal long-term investment in the success of E. I have read and considered everything that he has provided. As an informal dispute resolution service, we are tasked with reaching a fair and reasonable conclusion with the minimum of formality. In doing so, it is not necessary for me to respond to every point made, but to concentrate on the crux of the issue. It also rests with me to identify the complaint made. In my view, the relevant question (that falls within my jurisdiction) is, has CWRT acted wrongly in its handling of the lending? I will consider this under subheadings below.

Did CWRT mislead E about the requirement for a personal guarantee?

Mr R says CWRT's lending officer told him that a 30% personal guarantee was a requirement for a CBIL and that this was an industry standard. Mr R says this deterred him from seeking borrowing elsewhere.

I haven't seen any evidence of CWRT making any mention of a personal guarantee in writing and I suspect Mr R is saying he was told this verbally. It may reflect some confusion regarding the Government guarantee, which covered 70% of the loan, leaving 30% uncovered.

In terms of CWRT's alleged statement that guarantees are an industry standard, think it's fair to say that personal guarantees are very widely required for any limited company borrowing outside of the special Coronavirus schemes. So I don't think this comment was necessarily inaccurate.

I have seen the CBIL agreement and the documentation makes it clear that there is no guarantee. The only security is a debenture over the assets of E. I am also aware that, under the terms of the CBIL scheme, personal guarantees could not be taken for loans under £250,000.

I have also seen CWRT's email of 20 October 2020 setting out the outline terms of the CBIL. This does not mention a guarantee (other than the Government one) and I would have expected it to, if CWRT were planning to require one. I think this email made the accurate position clear, even if E was under a misapprehension before. I would also expect Mr R to have queried the absence of any reference to a guarantee at that point, if he was expecting to give one. The accurate position was then unequivocally apparent as soon as E received the documentation for the loan. So any misapprehensions should have been disabused at that point.

DID CWRT set unfair terms for the use of the CBIL?

Mr R complains that CWRT required him to use the proceeds from the CBIL to repay other debt, thereby not leaving him as much as he wanted for working capital.

I can see that both the "outline terms" email of 20 October 2020 and the actual CBIL agreement required E to repay its existing bounce back loan. I think this is clearly set out in CWRT's documentation. It is also a requirement of the rules of the CBIL scheme that borrowers cannot also have a BBL, so I see no error there.

In terms of repaying any other non-BBL lending, I haven't seen any requirements set out in writing by CWRT. And if it isn't in the loan documentation to which both sides agreed, then I don't think there were any other restrictions on how E used the funds.

I haven't seen anything I consider unfair in the terms of the CBIL. I also consider the detailed terms of lending are a matter for the discretion of lenders and it is up to borrowers whether to choose to accept the terms offered.

Did CWRT's loan officer behave inappropriately and/or exert unfair pressure on E?

I can see that Mr R feels very strongly that CWRT's loan officer was rude and condescending to him and that this severely knocked his confidence in pushing his business forward.

It is difficult for me to comment on what were supposedly verbal exchanges, of which the only evidence is the testimony of the aggrieved party. I haven't seen anything in written form expressing attitudes I consider inappropriate.

Most of this part of the complaint seems to relate to comments made by the loan officer in a car on the way to a meeting. And I do note that Mr R wrote to CWRT after that meeting thanking them for the meeting "and for all the advice and support. It means a lot to me". It was over six months later that Mr R informed CWRT of his concerns about the loan officer's conduct and I would have expected it to have been raised straight away if it had such a severe impact.

Mr R has also complained about the loan officer's actions in a meeting where repayment of the CBIL was discussed. He has said that the loan officer unnecessarily created shock and panic by suggesting that flexibility regarding repayments might be taken out of his hands and cease. Mr R says this was out of context. But it seems to me reasonable to warn E that CWRT could not show forbearance indefinitely and if repayments cannot be made, recovery action would need to be taken. Whilst I'm sure the news was unwelcome, I'm therefore not persuaded it was inappropriate or unjustified.

Mr R also says CWRT made him feel obliged to sell some intellectual property. I haven't seen any evidence that CWRT put him under undue pressure to sell and it does not appear that the proceeds went to the CBIL. My conclusion is that the decision to sell was Mr R's own. I can see that CWRT asked for some information about the sale. But responsible lending principles require a lender to keep abreast of developments in a borrower's business, especially where there are repayment difficulties, so I think this was a reasonable information request.

Finally under this topic, I don't think it is fair to say that CWRT's response to these allegations suggested that the individual's departure absolved them from responsibility. I can see that CWRT apologised for any rudeness that occurred, which I think is a reasonable response.

Did CWRT act fairly in asking for repayment of the CBIL?

The starting point here is that E accepted the terms of the CBIL and therefore had an obligation to make repayments as they fell due. Under these terms, interest was covered by the Government for the first 12 months, but capital repayments were due to start in June 2021. E was unable to make these, and a payment plan was agreed with CWRT at £100 a month. This payment plan was then renewed in March 2022 for a further six months. Full repayments would have been £1139 by this point, so even when an agreed plan was in place, E was not paying enough to cover interest still less capital.

In October 2022, E proposed making repayments of £100 for a further six months, followed by £150 for the following six months with two more six monthly increments thereafter. CWRT declined to accept this offer and said they would need an improved offer or alternatively, they could offer a three month breathing space, after which they would expect full repayments to resume.

E then proposed a payment plan of £200 a month for the next six months and CWRT accepted this offer. E made five of these payments and has not made a payment since, as far as I am aware. The context here, then, is that E has never been able to make a full repayment on its CBIL.

It should be noted that, in the CBIL loan scheme, unlike the BBL scheme, the Government chose not to set out any obligatory forbearance provisions. So lenders are not obliged to allow any breathing space, but are free to adopt whatever approach they see fit.

In order to decide if CWRT acted fairly and in line with best practice, I have taken into account the Lending Standards Board's Standards of Lending Practice for business customers. I consider that these standards provide a useful proxy for best practice for unregulated loans. These standards say that firms should "demonstrate an empathetic approach to the customer's situation" and "apply an appropriate level of forbearance where, if after having made contact with the customer, it is clear that this would be appropriate for their situation". In my view, CWRT has complied with this approach in E's case.

CWRT allowed E to make nominal repayments for eighteen months without putting any pressure on it, in recognition of the fact that E is a start-up business and was hopeful of getting contracts established in the near term. This is considerably more time than many lenders would have provided before taking recovery action.

Mr R points out that he was very open with CWRT and kept them fully informed of the progress he was making on various fronts. I do not dispute this, but that does not oblige CWRT to show forbearance indefinitely. Unfortunately, I haven't seen any evidence that E at any point approached the point of being able to make regular repayments according to the terms of the contract.

My conclusion is that CWRT gave E a considerable amount of leeway and did not unfairly pressure it to commence repayments.

Did CWRT act fairly in relation to the new loan request?

Mr R has made several points about this. He has said that E only applied for the loan as a result of being pressured by CWRT into selling his intellectual property for less than it was worth. He has said that CWRT took too long to make a decision, thereby leaving the business in limbo. Given that the new borrowing was ultimately declined, he has also argued that CWRT wasted his time on a proposal they were never going to approve. He has suggested that distracting him from E's complaint may have been the motivation for this.

The possibility of a new loan application seems to have first arisen at the meeting in April 2023 when Mr R first raised concerns about CWRT's loans officer. However, I cannot see that the need for more funding was caused by any actions by CWRT, but was rather because E was severely in need of further investment. I have already concluded that CWRT did not force the sale of the intellectual property or indeed benefit from it. And all the evidence shows that, whilst E might have had several hopeful potential avenues to explore, none of them came to fruition and in the meantime, it didn't have enough working capital.

The loan was under discussion from mid-May 2023 until early October 2023. I have seen detailed evidence of all the correspondence, including information requests, from which I am persuaded that there were no undue delays on CWRT's part.

In early October, the application went to CWRT's lending panel, where it was declined. This process of a decision-making panel, which is separate from the relationship managers, is a typical approach to lending money and I make no criticism of it. Reasons were given for the decline, which were that E failed CWRT's Know Your Customer check criteria and that "your business's financial performance to date does not give sufficient levels of reassurance or confidence that the total lending exposure is affordable".

It could be argued that CWRT should never have entertained the new application, since they were unlikely to agree to it from the start. But it seems to me that they did this in the spirit of helpfulness, as there was always a chance that something might get off the ground that might enable the lending to proceed. I don't think that, if CWRT had rejected it from the start, it would have put E in any way in a better position. So apart from the time taken providing the information, I don't think there was any detriment to E. And I think for a start-up enterprise like E, it is highly likely that there will be a lot of time invested in pursuing avenues that don't ultimately produce positive outcomes.

I realise my conclusions will be very disappointing to Mr R. He has invested a vast amount of time and effort in trying to get E's business off the ground and has had various disappointments along the way. He feels that CWRT is ultimately responsible for the lack of momentum of E. But I'm afraid I haven't found any evidence of this.

My final decision

For the reasons set out above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask E to accept or reject my decision before 16 April 2025.

Louise Bardell
Ombudsman