

The complaint

A company, which I'll refer to as S, complains that Hampshire Trust Bank Plc (Hampshire) were responsible for delays in considering its application for a loan.

In bringing this complaint, S is represented by its director who I'll refer to as Mr E.

What happened

The background to the complaint is set out in my provisional decision dated 12 May 2025 which forms part of this decision.

I provisionally concluded that S' complaint should not be upheld:

In summary I said:

The specific issue I have to consider is a simple one because as I've already noted, what is at the heart of this dispute is a straight-forward allegation by S that through their delay in considering its loan application, Hampshire and solicitors caused it to suffer financial loss. My starting point, therefore, is to identify the period in which the alleged delay occurred and to consider the events that took place in that period and the timeline in which they occurred.

The period of the alleged delay

I note S has described the delay by Hampshire as occurring over an 18-month period. I think broadly speaking that is about right. Although initially S approach to Hampshire for funding in 2020 and received an offer on 12 November 2020, things went largely quiet. However, I'm satisfied the reason matters did not progress wasn't because of anything Hampshire did or didn't do. Rather it was because of structural issues that S needed to address. S explained this in an email to Hampshire dated 1 December 2021, where it told Hampshire that:

"The last 12 months has involved an intrusive investigation of the structure following the failure of the structural engineers to analyse the building properly".

As noted above, on 20 January 2022, Hampshire offered S a fresh loan facility. And they've told us that afterwards, the process of negotiating its terms began. S withdrew its application in July 2023.

I also wish to thank S for sharing with me its solicitors' timeline of events. They identify the alleged delay period as running from February 2022 to July 2023. Broadly the period is the same as I've identified above. So, for my provisional decision, I've focused on the period between January 2022 and July 2023. In other words, I agree with S that this is the relevant period for assessing whether there were any delays as is alleged

I note it is a significant part of S' case that separately from Hampshire's own delays, their solicitors contributed significantly to this. In particular, because the solicitors weren't properly supervised and managed by Hampshire throughout the application process.

I don't think Hampshire were under any obligation to supervise or manage their solicitors. Hampshire appointed them to carry out the necessary legal work in connection with the security S intended granting for the loan facility. Banks tend not to have the expert knowledge to do this type of work. And I wouldn't expect Hampshire to direct the enquiries their solicitors felt were necessary when carrying out the legal work required in connection with the transaction.

That being said it is not my opinion, however, that Hampshire can be absolved of any and all responsibilities when it comes to errors, acts or omissions that relate to the work done by their solicitors in that regard. So, I've considered the conduct of Hampshire's solicitors also when determining whether there were significant delays during the period I've identified.

I agree with Hampshire this wasn't a typical development. They've pointed out that it was in part an "airspace" development of a building with existing tenants in occupation and that the bank had no track record of such developments.

I agree also that there were complex issues that needed to be addressed before the lending could finally be agreed. For the most part these were legal matters - not least the requirements for the drafting of section 5 Landlord and Tenant Act notices by S and/or its representatives for approval by Hampshire before serving them on existing tenants. And there were other agreements too, including option agreements that needed to be prepared for approval by Hampshire's solicitors. However, I think S still had a right to expect its application to be progressed reasonably expeditiously and without avoidable delays.

The evidence shows that the Section 5 notices were problematic. I don't agree with Mr E's submission that at the outset – ie at time of S' application, these notices were already in place and were with Hampshire.

I say that because on 28 November 2022, in an email to S' solicitors Hampshire's solicitors said this:

Our Litigation team are reviewing the draft section 5c notice sent to us on 24th November and will respond with any comments. I completely appreciate that it is not your firm drafting the section 5 notices but please note that my Litigation team has now had to review and comment on at least three (incorrectly drafted) draft section 5 notices since the start of this matter.

Later, on 5 January 2023, S' solicitors sent an email to Hampshire's solicitors saying:

Please find attached slightly amended Section 5 notices. We have just tidied them up to reflect the Options, whereby the airspace is being offered, as opposed to the as-built flats. I believe (or hope) that we are now there but I would be grateful if you could please confirm you are happy from your end and we will have these issued.

And on 9 January 2023 Hampshire's solicitors responded as follows:

We have no further comments in respect of the attached draft section 5c notices. They reflect the attached option agreements and we consider the attached notices to comply with the 1987 Act, but please note that you (or whichever firm is advising on/preparing the notices) will need to satisfy your client in that regard.

However, it was a condition of the 20 January 2022 facility that:

"all notices have been served on commercial tenants correctly and vacant possession is achieved by May 2022."

The correspondence I've just referred to show there were ongoing issues with the notices as late as January 2023.

I'm satisfied that from January 2022 as well as the Section 5 notices being agreed and served, there was a lot of work that needed to be completed by other relevant professionals so that S' loan facility could be completed. The valuation report for example was not delivered to Hampshire until April 2022.

And on 6 June 2022 by email Hampshire's solicitors wrote to S' solicitors saying:

*Have you actually completed our security requirements (as I could not see them)?
Please can you do so and this will give us a steer of various aspects
It would be helpful if you also responded on my initial email of the 24th February
(attached for ease) and had comments to the points that we need to deal with (ie
what you have provided/what is to follow). I couldn't actually see the planning
permission and plans*

Having reviewed the correspondence, I've found no evidence of material delays by either Hampshire or their solicitors between January and June 2022.

Were there delays between June 2022 and January 2023

I've also found no evidence of material delays between June 2022 to January 2023. I say that because as I've already alluded to, the two solicitors were actively engaged in correspondence - including in respect of matters concerning the Section 5 notices. And as I've identified, it wasn't until January 2023 that the Section 5 notices were in order and could now be served. On 20 February 2023 S' solicitors confirmed this had been done. During that time, there were proposed amendments too to the option agreements aimed at facilitating proposed purchases by S.

I also note that S' solicitors' own account of things acknowledges that during the period above, Hampshire's solicitors had been raising legitimate enquiries. Although they've commented that some enquiries were repetitious, they acknowledged there were new sensible ones that hadn't been raised before or in respect of which responses were outstanding.

Were there delays between January and June 2023.

It is S' case that things did seem to go quiet after January 2023 and that in April 2023 its solicitors chased progress towards completion and drawdown of the loan facility.

Hampshire on the other hand say around this time some of the reports that had already been submitted couldn't be relied upon because by then they were too old. And so, for example on 9 February 2023, they told S that they needed an updated valuation and cost report for the facility to be re-sanctioned and a revised offer issued. They said it was essential for the bank to work with up-to-date reports. And I don't think that was unreasonable.

I can see the inspection of the development took place on 28 February 2023 and the revised report completed on behalf of Hampshire on 5 April 2023.

Hampshire's internal records show there were extensive discussions between them and their solicitors during the period January to June 2023 as there were concerns that certain conditions that S needed to complete before the facility could be agreed – including obtaining planning permission for particular aspects of the development - hadn't been

obtained. This issue became the subject of direct discussions between S and Hampshire as I've seen from email correspondence dated 28 April 2023.

Furthermore, in the lead up to the revised facility being issued to S, I also note there were direct discussions in May 2023 about the changed nature of the development and that updated offer terms would be required. Also to finalise their report on title on behalf of Hampshire, their solicitors sent further detailed enquiries dated 20 June 2023.

I note that S' solicitors described these as mainly repetitious but acknowledges that some were new. Indeed, Hampshire's solicitors described them also as either repeat enquiries or enquiries which were necessary given the passage of time.

I can't say I've seen evidence of significant delays between January and June 2023 considering the events I've described above. Whilst S was clearly frustrated by the enquiries that were being raised by the bank's solicitors, I don't think it is for me as ombudsman to say they were not legitimate enquiries.

But more to the point, since I've found no evidence of significant delays, I don't think I can reasonably require Hampshire to pay S the compensation that Mr E submitted S incurred arising from such delay – including its legal fees and £7,000 worth of other costs.

The commitment fee of £26,470

I'll deal with the commitment fee specifically because as I understand it Mr E's case is that it should be refunded because S did not proceed with any of the facilities offered by Hampshire.

The facility offers dated 12 November 2020 and 20 January 2022 contained a standard commitment fee clause. The wording in both offers is the same as I've set out above in reference to Clause 5.1.

On 31 January 2022, S agreed in writing to accept the offer the bank made on 20 January 2022 - meaning the £26,470 became payable. I've also considered clause 12 of the offer under the heading "Acceptance" which clearly says:

"12 ACCEPTANCE

The Bank recommends that legal advice is sought before acceptance of this Offer.

To accept this Offer, please provide the Bank with the following; whereupon the Bank will instruct its professional advisors:

a) the enclosed duplicate of this Offer signed by the Borrower, the Guarantors and any other Obligor named below; and

b) a non-refundable payment of £26,470 representing full payment of the Bank's Commitment Fee."

Considering this, I don't see how I can reasonably say S should not be bound by what it signed. Whilst it is true that fresh terms were proposed in June 2023, this more recent offer had its own separate commitment fee requirement upon acceptance. It is not my understanding S paid the £5,000 commitment fee which was a requirement under that fresh agreement.

Finally, I considered whether Hampshire were directly and separately responsible for failings

and poor service towards S

It is S's case that after April 2022 Hampshire failed to properly communicate with it due to the turnover of staff at the bank.

Hampshire haven't challenged this. Rather they acknowledge they did provide poor service in that S should have had a regular point of contact throughout the application process, and the bank didn't provide this. They acknowledge too that more meaningful conversations should have taken place with S to set more realistic expectations regarding its application.

With Hampshire's acknowledgement of poor service in mind, which tends to support S' allegation against them, there is perhaps a case for me to award compensation.

However, for me to require Hampshire to compensate S for this, I'd need to find that S suffered financial loss and or significant inconvenience. For the reasons I have already set out above, I am satisfied that S hasn't suffered any financial loss arising from this matter. As regards significant inconvenience, I haven't seen clear evidence S was significantly inconvenience from the bank's acknowledged poor service. Therefore, I am not at present minded to award compensation for this.

What happened since my provisional decision

In my provisional decision I asked Mr E and Hampshire to send me any additional points or information they wanted me to take into account before I issued my final decision.

Hampshire didn't provide any new information.

Mr E felt S was due compensation. He wrote with further detailed submissions on behalf of S. These submissions largely expanded on the arguments he'd originally made about the way the application was conducted which he felt was poor. I summarise what I regard as the key points of Mr E's submission - as follows:

- Hampshire and their solicitors made mistakes during S' application process. Hampshire, lost senior and experienced employees during the application and whilst they were later replaced, this was by less experienced employees who brought about a change in the bank's attitude towards the proposed lending. And the solicitors worked at their own pace, were slow, linear and repetitive in the way they approached the application.
- It was envisaged the loan application process would take around four months. And although the ombudsman concluded that 18 months was normal – clause 8 of the contract with Hampshire provided the opposite where it states that:

8. DEVELOPMENT MILESTONES & OTHER SPECIAL CONDITIONS

8.1. First Advance of the Loan must take place within 2 months of the date of this Offer.

8.2. Construction on site, as determined by the Bank, must start within 2 months of first Advance of the Loan

8.3. The Borrower must have achieved Practical Completion of the Development within 18 months of first Advance of the Loan.

- It was expected that the development would be completed in 18 months from the first advance rather than 18 months to agree the terms of the loan.
- The issues with the Section 5 notices need to be considered against the background of the badly drafted 1987 Act which sets the framework for such notices. Because the Act was poorly worded, this enabled Hampshire's lawyers to use it as a justification for insisting on the precise wording of the notices.
- The ombudsman needs to understand the nature of the contract with Hampshire and the sequence in which the development was scheduled to occur. Broadly it was that:
 - The first phase was the construction of flats on the building's existing roof for which detailed planning had already been approved.
 - The second phase was for the conversion of the existing ground floor from Commercial to Residential. This second phase was never any risk to the bank.
- There was never any requirement for Hampshire's lawyers or Hampshire to make the ground floor development an issue. It only became one as Hampshire sought to find ways to end the deal and unilaterally cancel the initial January 2022 offer which it had agreed.
- The Ombudsman makes light of Hampshire's unilateral cancellation of the January 2022 offer and their decision to issue a new one in June 2023. Hampshire did so without any discussion. S' claim for a refund is because the cancellation of the January 2022 contract was due to Hampshire's change of mind rather than anything initiated by S.
- The ombudsman has stated a reason for his interim decision not to award compensation was that no actual financial loss has been shown. But as well as valuation and monitoring surveyors' fees, S has been able to show it made payments of £16,470.00 on 3 May 2022 £10,000 on 7 Feb 2022 to Hampshire and £32,295.26 which was paid on 28 June 2023. The latter was to solicitors for work conducted on behalf of Hampshire.
- S then had to incur the same costs all over again in relation to the loan application it made elsewhere in June 2023. And therefore, on the basis S' funds were used to cover Hampshire's solicitors' fees, it's unfair it should be precluded from recovering such fees when work carried out by them was so poorly executed.

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 acknowledge that the time it took to consider the application for the loan facility is the major issue in this case. But to be clear, in my provisional decision I did not find that in general the time it took to consider S' application was normal. Rather, after I looked carefully into the events and circumstances of this case, I was satisfied there were no material delays by Hampshire in their consideration of S' application.

I've thought about Mr E's submission regarding Clause 8 of the January 2022 offer letter. I note Clause 8 deals with the various milestones in relation to S' proposed development. In

particular, I take Mr E's point regarding the timescale for the first advance of the loan as referred to in clause 8.1. Looked at in isolation, I understand why Mr E feels the 18 months during which the application was under consideration was considerably in excess of the two months that was specifically mentioned in relation to the first advance.

But, in my opinion, Clause 7 of the offer letter is also relevant. It sets out in detail the conditions that needed to be met before the first advance could take place in any event. In particular clause 7.1.5 requiring:

“a report on title from the Bank's solicitors in respect of the Property and the Development”.

And it further lists a detailed set of conditions that needed to be satisfied also - including:

7.1.5 h): all notices have been served on commercial tenants correctly and vacant possession is achieved by May 2022.

An important part of Hampshire's case was that significant delays arose during their solicitors attempts to satisfy clause 7 – especially clause 7.1.5 (h) because to begin with the Section 5 notices were poorly drafted by S' agents. I agree with that assessment.

This brings me more directly to the issue of the section 5 notices. Mr E has submitted that there are flaws in the legal framework governing them. In particular, that the poorly drafted Landlord and Tenant Act 1987, meant Hampshire's solicitors were able to exploit to S disadvantage such matters as the need for specific wording in the draft of such notices.

But it isn't for me as ombudsman to comment on whether the 1987 Act had the effect Mr E suggested. I am aware that over several months, after July 2022, the correct wording of the notices did result in considerable back and forth with both solicitors.

But I can't reasonably say there was anything wrong with Hampshire's solicitors' insistence that the wording of the notices must satisfy the relevant legal requirements. I've seen no evidence Hampshire's solicitors were motivated by anything other than to ensure the notices were correctly drafted. I don't think I can reasonably say they were wrong to do so. And in any case, since S' agents were ultimately responsible for the drafts, I don't think it would be unreasonable to say they had a responsibility to get it right so that the notices complied with the legislative requirements. The evidence shows it was not until January 2023 that Hampshire's solicitors were happy that the Section 5 notices were properly drafted, and S could begin the process of serving them.

I acknowledge that the background to this complaint is complex. And I note Mr E believes only by understanding the nature of the contract that I can determine this matter fairly. I assure Mr E that I fully understand the terms of the January 2022 offer, and indeed the proposed development, but I thank him nonetheless for his explanation.

I start with the cancellation of the January 2022 offer and the bank's decision to issue new terms in June 2023.

I do not agree with Mr E's submission that Hampshire's decision in that regard was taken unilaterally by Hampshire and without any consultation with S.

The evidence I've seen doesn't support that conclusion. In particular I note the exchange of emails between Mr E and Hampshire dated 21 April and 24 April 2023.

In their 24 April 2023 email to Mr E, Hampshire said:

"I am looking back through the offer and the original approval was for the planning to be in place for both the PD and the airspace works, as a conditional precedent to the loan.

You mentioned that you are actually looking to commence funding the airspace now, while the planning process commences.

To manage your expectations, under this approach we would only be able to offer funding for the airspace now and would have to seek credit approval down the line when planning is granted. I hope that makes sense."

It is my understanding that the scope of the proposed development changed from that described above in Mr E's response to my provisional decision. In other words, both the ground floor and airspace comprised the original proposal and on which the bank based its January 2022 offer. But since there were planning issues to overcome in respect of the ground floor space, this had to be excluded, and considering that change, in June 2023 revised terms were offered including a reduced lending amount.

Given that background, it seems to me that the ground floor development became an unavoidable issue. And I don't think this supports Mr E's submission that it could have been glossed over by Hampshire's lawyers or Hampshire and not be made an issue. The lack of planning was clearly significant. So, I find it difficult to conclude this was being used by Hampshire as a pretext to unilaterally cancel the January 2022 offer.

I turn finally to the issue of S's alleged financial loss. Mainly this comprises of the commitment and other professional fees that S paid - even though as Mr E has said, it did not complete the offer of funding it received from Hampshire, preferring instead to go elsewhere.

I can understand why Mr E would consider these costs as representing a financial loss and especially, as he's submitted, these were later duplicated when S applied in June 2023 to the new lender for funding. However, I won't be requiring Hampshire to reimburse S with the amounts Mr E has sought to recover. I say that for this important reason.

Clause 5 of the January 2022 offer makes clear that the commitment fee and all professional charges are the responsibility of the Borrower – S. Importantly it provides that the commitment fee is payable upon acceptance of the offer and that the borrower is still responsible for professional charges – whether or not the loan is drawn down.

S agreed to those terms. Hampshire's solicitors carried out work on behalf of Hampshire, and it has not been my finding that they were responsible for significant delays in doing so. In the circumstances, I can see no fair basis for requiring Hampshire to refund their fees to S as well as the others that are mentioned.

My final decision

For the reasons stated above, my final decision is I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 18 July 2025.

Asher Gordon

Ombudsman