

## **The complaint**

This complaint is about a commercial loan taken out in 2022 by a company I'll refer to as BR, with United Trust Bank Limited (UTB) to fund a building project. In essence, there are two broad strands to the complaint, which is brought by the company's director, Mr B. These are:

- UTB didn't provide access to the full amount of the agreed lending. It withheld close to £0.25m on a "just-in-case" basis, without Mr B's knowledge or consent. He says if this had been properly explained, BR would not have taken the loan out.
- UTB's monitoring surveyor put unnecessary barriers in the way of recommending BR's requests for drawdowns of funds be approved. This delayed completion of the building project beyond the original projected end date, causing BR to incur additional costs and interest charges. Mr B maintains this was down to UTB and the monitoring surveyor.

## **What happened**

The above summary is in my own words. The basic background to this complaint is well known to both parties so I won't repeat the details here. Our decisions are published, and it's important that I don't include any information that might result in BR or Mr B being identified.

Instead I'll focus on my decision and the reasons for it. No discourtesy's intended by that. It's a reflection of the informal service we provide, and if I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint. This approach is consistent with what our enabling legislation requires of me.

## **What I've decided – and why**

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers.

In doing that, we don't replicate the work of the courts. Whilst statutory, our scheme is intended to provide swift outcomes to disputes between business and the customers, with a minimum of formality. We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. But in doing so, we have to work within the rules of the ombudsman service.

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

It's for us, rather than the parties to the dispute, to decide what evidence we need to reach a fair outcome. It's also for us to assess the reliability of evidence, from both sides, and

decide how much weight should be attached to it. When doing that, we consider everything together to form a broader opinion on the whole picture. We don't just consider individual pieces of evidence in isolation, but we may attach greater weight to, and place greater reliance on, some pieces than we do to others.

Regarding the evidence in this specific case, there's a lot of it – over 700 pages of documents. That said, there also a degree of duplication, repetition and contradiction; also not everything we've received is relevant to the specifics of the dispute. I've taken all of that into account. Having done so, here are my findings on what I consider to be the main elements of the complaint.

BR applied for the loan with UTB in late 2021, on the advice and recommendation of a third-party broker firm I'll refer to here as BE. UTB issued its first offer in November 2021; the amount of the offer reflected BR's initial budget of a little under £1m. In January 2022, UTB's appointed monitoring surveyor, whom I'll refer to as Mr V, reported that in his opinion, BR's budget was too low, and that a more realistic figure was £1.23m. To reflect that, UTB issued a new offer in February 2022.

It's not for me to second guess UTB's commercial judgement on what the terms of the lending, or the conditions for agreeing drawdowns, should be. Rather, my role to assess the extent to which UTB made BR aware of what those terms and conditions would be, so that Mr B as its director could make an informed decision on whether to proceed.

The new offer, conveyed under cover of an email dated 11 February 2022, confirmed that drawdown would be monitored by Mr V against the original budget, with the additional amount to be available if costs went over budget. The offer also documented that the interest rate was variable. BR accepted the revised terms, on the advice and recommendation of BE.

Mr B has criticised our investigator for placing too much emphasis on that email whilst disregarding other exchanges that he says paint a different picture of what was agreed. I understand his frustration, but as I said earlier, judgements on which pieces of evidence should be relied on to a greater extent than others are ours to make. Here, I agree with the investigator that the email of 11 March 2022 is key to what BR should have understood about how the facility would operate, and what Mr V's role would be.

I have also kept in mind that BR had the services of BE, to rely on. It was BE's responsibility to ensure Mr B knew and understood the terms on which UTB was willing to lend to BR, and what the role of Mr V would be. If Mr B doesn't think BE discharged its duty in that regard, he'd need to take that up with BE on BR's behalf.

In order that there should be no ambiguity, in making that observation, I imply no criticism of BE and none should be inferred. This complaint is not about BE, and indeed if it were, we would not be able to consider it. Arranging and giving advice on unregulated commercial loans is not an activity that falls within the jurisdiction of the Financial Ombudsman Service. I mention it merely for context.

That said, I have seen a copy of BE's suitability letter of 16 February 2022, recommending BR take out the facility. Taking that into account along with what UTB said in its email of 11 February 2022, overall, I can't fairly conclude that Mr B was unaware of, and didn't consent to, the revised terms and conditions on which UTB agreed to lend to BR, and the role Mr V would play in that.

That brings me to the involvement of Mr V, and how his recommendations to UTB influenced the release of funds. In much the same way that BR had the services of BE to advice and guide it in this transaction, UTB had Mr V.

The role of Mr V here is not dissimilar to that of a valuer instructed by a lender when valuing a property for a proposed mortgage. In that situation, a lender isn't an expert in property values, so it needs a professional opinion from someone who is. To achieve that, a lender will typically seek a valuation from a suitably-qualified valuer, usually a member of the Royal Institution of Chartered Surveyors. The valuation is paid for by the applicant but is solely for the lender's benefit. That is standard industry practice.

In this case, UTB needed similar expertise from an external source, and chose to instruct Mr V. Mr V's professional qualifications are that he is a monitoring surveyor, a quantity surveyor and is a member of the Chartered Institute of Builders. His role, in layman's terms, was to monitor the progress of BR's building project, and make recommendations to UTB on when and how much funding it should release periodically to BR from the agreed lending facility.

I've already found that this was made known to BR. Meanwhile, by instructing a professional with Mr V's qualifications, UTB discharged its duty to BR and could fairly rely on Mr V's opinions when deciding how much and on what terms it was willing to authorise drawdowns from the lending facility.

So the real disagreement here, and the fundamental crux of the complaint, is that Mr B disagrees with the recommendations made by Mr V on BR's periodic requests to draw down funds from UTB's facility. I haven't considered whether Mr V's recommendations to UTB were reasonable or not, or whether he unduly delayed making them. I have no remit to do so. He is not an employee or agent of UTB; he is a senior partner in an independent firm of surveyors that isn't covered by our jurisdiction.

I'm confined to considering how UTB acted; I've explained that it was entitled to make its decision in reliance on Mr V's professional opinions when it received his reports and recommendations. It did so reasonably and in my view, without undue delay on its own part.

Mr V's professional charges were to be covered by BR, and this too was documented in the revised facility offer and in BE's suitability letter of 16 February 2022. But the recommendations he made, were solely for UTB's benefit. Again, all of that is standard industry practice.

I said at the outset that I wouldn't be commenting on every single point, and I haven't. I have, as I said I would, confined myself to those matters that I consider have a material effect on the outcome. I can see how strongly Mr B feels. That's a natural, subjective reaction, and entirely understandable in the circumstances. Be that as it may, I have to take a different approach. I'm impartial and I have to look at things objectively.

That's what I've done and my conclusion is that UTB has not treated BR unfairly.

### **My final decision**

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

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask B to accept or reject my decision before 9 December 2025.

Jeff Parrington

**Ombudsman**