

## The complaint

C, a limited company, complains that Hampshire Trust Bank Plc (HTB) unfairly appointed receivers to manage and sell a property which was security for a mortgage. C is represented by its director Mr C.

## What happened

In 2022 C purchased a property for around £3.7million. The purchase was funded in part by a loan from HTB of around £2.83million, secured on the property. The loan was on interest only terms over ten years, with the interest rate fixed for the first five years. The property is a block of flats which C intended to let out. Mr C gave a director's personal guarantee at the time of the lending.

In November 2023, HTB decided to appoint receivers. The receivers were appointed on 12 December. In January 2024 the receivers said that their strategy was to prepare the property for sale and then put it on the market. The receivers estimated that the sale would realise between £3.5million and £3.8million. HTB agreed to the receivers' proposal.

By late March 2024 the receivers had obtained one firm offer of £2.7million, with two other buyers expressing interest in paying around £3.1million. This was from an initial "soft" launch, and based on that the receivers decided to market the property at £3.5million. In late April an offer of £3million was received. The sale completed in October 2024. After fees and the costs of sale, this left a shortfall – after accounting for payments received, fees and interest, HTB told C that in January 2025 that the outstanding balance was around £108,000 and that if this wasn't paid it would seek to recover it, including by calling in the guarantee.

C complains that HTB unfairly appointed receivers. It complains HTB appointed the receiver to sell the property regardless of whether that was the best way forward. The property was sold for less than the borrowing, leaving a substantial shortfall, without proper marketing. The sale included not only the property itself but its contents, which were owned by C and not agreed to be included. As a result, C complains that collecting the shortfall, including potentially enforcing the director's personal guarantee, would not be fair.

HTB said the property consisted of 24 vacant units at purchase, and it included a retention on the lending until 15 units were tenanted. It said that by early 2023, while C had made all the payments due it had made every payment late. It said that while 16 units were tenanted by then, that needed to be at least 19 to meet the rental cover covenant in the loan agreement. It said that it had discovered that a second legal charge (for a loan of £400,000) and an equitable charge had been registered over the property without its consent, in breach of the loan terms. It said that having reviewed things, it was concerned about C's ability to meet its obligations. That, and the breaches of the terms, led it to decide to appoint receivers. It said the receivers did not act as its agent, and it was not responsible for the actions of the receivers, including the conduct of the sale. It had tried to work with C to deal with payment of the outstanding balance, but if that wasn't possible it would be entitled to rely on the guarantee.

Our investigator didn't think HTB had acted unfairly, so C asked for an ombudsman to review

the complaint.

### **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'm sorry to hear of the difficulties Mr C has experienced. I've taken full account of everything he's said. But having done so, I'm afraid I don't think I can fairly uphold this complaint.

This was a commercial loan facility, lent to a limited company. As such, it's not a regulated mortgage contract and the rules of mortgage regulation don't apply. Nevertheless, I would expect HTB to act fairly and reasonably, and in line with the account terms and conditions.

The initial lending completed in May 2022. By 2023, HTB had concerns about the situation. Its concerns covered two broad areas – the management of the loan to date, and the wider stability of C and its ability to sustain the loan over the longer term. I've looked carefully at everything it's said, and I do think its concerns were reasonable.

Throughout the term of the loan, no payments had been made on time. Although they had all been made up, the payment delays meant that additional interest had been applied to the account and so the balance had increased. And it was part of the terms and conditions that all payments had to be made on time.

It was also a term of the loan that the "debt service cover" – the net rental income – needed to be at least 180% of the "debt service costs" – the amounts payable to the lender. And the terms required that all the units be let under Assured Shorthold Tenancies (ASTs). The units that were let under ASTs only provided rental cover of around 166%.

HTB also learned that C had agreed to a second charge loan of around £400,000, and there was also an equitable charge registered against the property. The terms and conditions said that second and subsequent charges were not permitted without HTB's consent – which it had refused to give.

There were therefore several breaches of contract – the late payments, the lack of rental cover from AST lettings and some units let not on ASTs, and the further charges. In addition, HTB had some concerns about the initial lending application, including how the remaining part of the purchase price was funded and what it had been told at the time.

HTB was also concerned about the long term sustainability of the loan. It appeared from the second charge loan and from discussions with Mr C that C was experiencing financial difficulties. A second property it owned had already been taken into receivership and sold by another lender. And Mr C told HTB he was experiencing various health concerns which impacted his ability to manage the business.

For all those reasons, I think it was fair and reasonable for HTB to appoint receivers when it did. The terms and conditions entitled it to do so once there was an event of default – a breach of contract – and there had been several. It was concerned about the long term sustainability of the loan and about C's ability to service it. It took the view that it was better to act on the breaches now and bring the loan to an end rather than to risk things getting worse in the future. I don't think that was unreasonable in all the circumstances.

Once the receivers were appointed, they acted not as HTB's agents but as C's agents – even though they were appointed by HTB. That's set out in the Law of Property Act. What it means is that once receivers are appointed, they stand in the shoes of the borrower and can

make any decision that the borrower could in managing or disposing of the property and the mortgage secured over it. The law also says that the borrower, not the lender, is responsible for the receivers' actions.

I've looked at the available evidence and I'm not persuaded that HTB directed the receivers; rather, it worked with the receivers and accepted their advice. That means I can't consider any decision made by the receivers, or any of their actions, in a complaint about HTB. That includes the decision to sell the property, and what happened to the contents Mr C says belonged to C that were in the property. That's something C will need to take up with the receivers.

I can consider whether it was fair that HTB agreed to the recommendation that the offer of £3million be accepted, even though – once fees and charges were added – it wasn't enough to repay the lending. On balance, I think it was. The offer was the highest received after a period of marketing, and within the range of projected values obtained at the time. There's a balance to be struck between obtaining the best possible price, and not letting a sale drag on, running up costs (and the debt) in the meantime. I'm satisfied that the evidence shows the receivers took reasonable steps to obtain the best price and that it was fair for HTB to agree to proceed with a sale and redemption based on that offer.

It's very unfortunate that the sale price resulted in a shortfall. But I'm afraid I don't think I can fairly say that HTB isn't entitled to try to collect the shortfall, including relying on the guarantee if necessary. I appreciate this puts C, and Mr C, in a very difficult position. But I don't think I can fairly uphold this complaint.

### **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 C to accept or reject my decision before 19 March 2026.

Simon Pugh  
**Ombudsman**