

complaint

Mr W has complained about the way in which The Co-operative Bank Plc ("Co-op") has dealt with him after he experienced financial difficulties. In particular, Mr W is unhappy about Co-op's decision to call in his secured business borrowing. He wants Co-op to pay compensation of just over £250,000 which he says are his financial losses arising from Co-op's actions.

background

I will set out the background to this complaint in rather less detail than it has been presented to me. I confirm I've read and taken account of everything both parties have said. But I am also required to ensure that my decision does not in any way identify Mr W. Consequently, I have summarised the background to the complaint in the general terms.

Mr W is a business banking customer with Co-op. His main area of business is as a landlord of rental properties. He and his son also started another business in an unrelated field.

On 15 May 2011 Mr W entered into a facility with Co-op for an overdraft of £95,000, repayable on 11 March 2012. The terms and conditions state that the overdraft was repayable on demand. The overdraft was secured by a second legal charge over Mr W's residential property signed on 28 March 2001. This was an all monies charge, securing all Mr W's overdraft and loan account balances.

The overdraft was not repaid on 12 March 2012. On 15 June 2011 Co-op issued a formal demand for repayment, because the overdraft had exceeded the £95,000 limit. In 2014 Mr W sold some land. This allowed him to clear arrears on his first mortgage and to pay £65,000 to Co-op. After this the overdraft debt was about £35,000.

After Mr W reduced the overdraft, Co-op granted a new facility for a loan. The advance of £57,399.40 was made in September 2014. Unfortunately, the loan quickly fell into arrears. Co-op issued formal demand on 12 May 2015 for all Mr W's borrowings – his overdraft and two loan accounts.

Mr W's accounts – were passed to Co-op's Recoveries section, at which point Mr W owed Co-op about £184,000 on his loan accounts and current account overdraft.

Negotiations between Mr W and Co-op about how Mr W would get back on track with his finances were unproductive. Although Mr W made proposals to clear the debt, these were not agreed by Co-op. Similarly, Mr W wasn't able to accept Co-op's proposals.

In September 2016 Co-op issued possession proceedings, and a possession order was obtained on 17 November 2016.

It is these events which have led to the complaint being made. In summary Mr W says:

- Co-op's decision to issue formal demand was unfair;
- his proposals to clear his debt were unreasonably refused;
- Co-op breached the Lending Code because it refused to acknowledge he was in financial difficulty;

- over a six-week period, between 13 August and 5 September 2014, almost £22,000 in interest and charges was added to the account, which he says is in contravention of the Lending Code.
- Co-op has continued to add interest to his account;
- Co-op refused to adjourn the court hearing in November 2016, even though he had suffered a family crisis;
- he believes Co-op saw him as a “*soft target*” and has tried to bully him into selling his assets to satisfy his borrowing;
- if Co-op had listened to his proposals in June 2015, the bank would have been repaid in full; instead obstacles were put in his way.

Co-op didn't uphold the complaint, so Mr W contacted the Financial Ombudsman Service. An investigator looked at the complaint. He didn't think Co-op had acted unfairly and so didn't think the complaint should be upheld. He set out his conclusions in a detailed letter dated 27 October 2017. Both Mr W and Co-op have a copy of this letter.

Mr W asked for an ombudsman to review the complaint. He's set out in detail why he disagrees with the investigator's findings, but hasn't provided any new evidence or arguments.

Co-op has confirmed that the current indebtedness is approximately £75,000. The last payment made to reduce the debt was £250 on 4 March 2017. The bank has confirmed that recovery action was put on hold whilst the complaint was referred to us.

my findings

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

The evidence in the case is detailed, running to several hundred pages of documents. I've read everything, and it's apparent that some parts of the evidence are less relevant to the underlying case than others. There are also a lot of duplicated documents and repetition of arguments. In what follows, I have, by necessity, summarised events in rather less detail than has been presented.

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. It allows me to focus on the issues on which I consider a fair outcome will turn, and not be side-tracked by matters which, although presented as material, are, in my opinion peripheral or, in some instances, have minimal impact on the broader outcome.

Mr W has made some allegations of misconduct against individual staff members. But we consider complaints against Co-op as a corporate entity, which is reflected in this decision.

The crux of the complaint is that Mr W says that Co-op failed to recognise or acknowledge that he was in financial difficulties. He says that, if the bank had complied with its obligations under the Lending Code, it would not have been able to add interest and charges, a total of £31,110 between December 2012 and December 2016.

It's correct that, in June 2011, Mr W had exceeded the overdraft facility he'd taken out just a few weeks before. Mr W says that this was the trigger which should have caused Co-op to recognise that he was in financial difficulties. He says there was no contact at all from Co-op about his financial difficulties. Instead, on 15 June 2011, Co-op made formal demand.

I don't think this was unfair or unreasonable. Within a very short space of time, Mr W had breached the terms of the overdraft facility. It then became repayable in full. I don't think the facility letter is misleading or ambiguous about the consequences of breaching the overdraft.

Co-op's records show that, rather than discussing his situation with the bank, Mr W contacted his MP, who wrote to Co-op in August 2011. On 23 August 2011 Co-op spoke to the MP's assistant and explained that the bank needed written authority to correspond with a third party. But, the bank explained, alternatively, if Mr W wanted to discuss his financial situation, he could contact Co-op to make an appointment.. From time to time since 2011 Mr W has asked his MP to intervene on his behalf with Co-op and now with the Financial Ombudsman Service..

Mr W is, of course, perfectly entitled to do this, but from my perspective as an objective reviewer of what's happened, it seems to me that since 2011 Mr W has felt under attack and, as a result, has become somewhat entrenched in his position. I say this not as a criticism; I totally understand that Mr W's primary objective has been to preserve his home and his source of income. But Mr W's perception of Co-op has meant that it's not been possible to find a way forward.

In October 2011 Mr W and his son started a new business, which he says was profitable from the start, turning over £1,000 a week with a gross profit margin of 75% to 90%. Mr W says that, following a "*devastating attack*" by Co-op at a meeting he had with the bank, his son left that business, leaving Mr W to try to run it and his property portfolio. Mr W says that this was unsustainable and made it difficult for him to pay his residential mortgage and his debts to Co-op.

I don't doubt that there was a meeting about the secondary business, but it's not recorded in the account notes for the property business. That's not unusual if these were discrete enterprises. It's unfortunate that Mr W's son decided he no longer wanted to work with his father on their secondary business. But I'm afraid I can't see that Co-op is responsible for this.

I'm also not persuaded that Co-op should, in 2011, have considered Mr W to be in financial difficulties. Mr W has told us that in 2011 his new business was producing gross profit of £750 to £900 per week, which was more than sufficient to service his debt to Co-op, without including any rental income from his portfolio. If this was what he told Co-op in 2011, then I don't think Co-op could reasonably have concluded that Mr W was in difficulty.

Co-op's notes also show that by 12 December 2012, Mr W had failed to respond to letters or emails requesting his proposals for paying off his overdraft. In the circumstances, Co-op instructed its solicitors.

The notes show that there were discussions with Co-op in 2014, following which Mr W paid off £65,000 from the overdraft in July 2014. Thereafter Co-op agreed to a further loan facility. If, as Mr W says, he was in financial difficulty, he could have declined the loan facility taken out in September 2014. I have no doubt that Co-op would not have granted it had it considered Mr W would be unable to pay it back.

Mr W says that the only solution Co-op had to his financial difficulties was that he should either sell his residential property or sell off all (or part) of his property portfolio. Mr W argues that the property rentals were his main source of income to fund his mortgage and business borrowing commitments. So it made no sense for him to dispose of his portfolio.

I've looked at everything Mr W has said about this. I can see he had some problems with his rental properties – a burglary, the need to refurbish, rent arrears and issues with theft of housing benefit which should have been paid to him as landlord. All of these impacted on the rental business and affected Mr W's income. But, whilst I feel considerable sympathy for Mr W, none of those events is the fault of Co-op.

I also note that Mr W had a proposal in 2015 for his son and his wife to sell their home, move in with Mr W and his wife and use £30,000 of their proceeds of sale towards reducing Mr W's indebtedness to Co-op. In an email dated 1 July 2015, Co-op rejected the proposals and put forward a counter-proposal. I confirm I've read the email and noted the proposals.

I have had regard for all that Mr W has said about how the bank has acted inappropriately and how he thinks the bank might have acted differently. But when funding commercial ventures, Co-op is entitled to determine the level of risk to which it is prepared to be exposed and to make decisions – based on its perception of the risk involved – about whether it will lend, on what terms, and, in the event of default, whether it will agree to a customer's proposals to repay the debt.

Such decisions are commercial judgements made by the bank and have to be made as part of the everyday carrying on of its business. Where commercial judgements have been exercised legitimately, I would not interfere with those judgements. I can't substitute my own decision for that taken by the bank where I'm satisfied Co-op's decision has been reached fairly.

And so, having read the email of 1 July 2015, I can see that Co-op gave reasons for rejecting Mr W's proposals which satisfy me that those proposals were given proper consideration. Mr W was provided with an explanation as to why the bank didn't think his proposals were sustainable. Co-op also put forward counter-proposals, based on the information Mr W had given about his circumstances on an Income & Expenditure form which he'd signed.

So although I accept Mr W was upset that Co-op didn't agree to his proposals, I don't think it acted wrongly or unfairly in doing so, or that it failed to exercise proper commercial judgment.

I think it's also important to explain that, notwithstanding Co-op didn't agree to what Mr W wanted to do, there was nothing to prevent him from going ahead with his plan and reducing his overdraft by £30,000 if he truly thought this was the best thing for him to do. Indeed, Co-op's solicitors pointed this out to Mr W in January 2017, when Mr W was once again proposing a lump sum payment as part of an overall payment proposal. I agree with the solicitors that the proposal Mr W was making in January 2017 is almost the same as the bank's counter-proposal made on 1 July 2015, which Mr W rejected.

I know Mr W's position is that he couldn't sell his portfolio, as this would have resulted in a loss to him. I've not seen any property valuations to support this contention. Nonetheless, in June 2015 Mr W agreed with Co-op that his portfolio was worth around £947,000 with

outstanding mortgages of £776,000. He also estimated his home as worth £525,000 with an outstanding mortgage of £350,000.

In the circumstances, I'm not persuaded Co-op should have treated Mr W as being in financial difficulties or made any concessions under the Lending Code. I've noted Mr W's arguments about interest added to his debt, which he says is in breach of the Lending Code. But overall, I'm not persuaded the Co-op has breached the Code.

It follows from this that I'm satisfied Co-op has fairly applied interest to the account. I've noted the explanation by the bank provided for how interest was applied. I think this was reasonable, and I don't intend to order Co-op to remove any interest.

I understand that Mr W marketed his home for about a year between 2015 and 2016, but even after reducing the price, was unable to find a buyer. Mr W estimates that, after paying off his main mortgage and his debt to Co-op, he'd have about £60,000-£70,000 left from the sale of his property. I haven't seen any up-to-date valuation of the property since it was last marketed in 2016.

I fully appreciate that it was distressing for Co-op to begin possession action. But looking at the position on the account, where no payment had been made for 18 months, I don't think it was unreasonable for Co-op to do this.

I've read what Mr W has said about his reasons for wanting Co-op to adjourn the court hearing in November 2016. I think Co-op could have acted with more sensitivity, given the situation. But I also note that Mr W attended court and so he could have explained the position to the judge and asked for an adjournment. But even if Mr W had succeeded in getting the hearing adjourned, I don't think it would have made any difference to the outcome in court. If Mr W thinks that Co-op wasn't entitled to be granted the possession order, he'll need to go back to court to argue this. I don't have any power to interfere with a court order.

I appreciate Mr W doesn't think Co-op has treated him positively and sympathetically. But overall I'm satisfied that the bank has given Mr W a considerable period of forbearance and has tried to explore various avenues to repay the debt he owes. I fully appreciate that the deterioration in Mr W's finances has been affected by outside influences beyond his control. But that's not something I can hold Co-op responsible for.

Co-op has told us that, once this final decision is issued, it will contact Mr W to open a dialogue. Mr W has suggested that he might take court action against Co-op. If Mr W does decide to embark on legal action, I would suggest he takes legal advice from a qualified solicitor before doing so. But instead I would strongly suggest that Mr W might find it more beneficial to speak to one of the free debt advice charities such as StepChange, Citizens Advice or Shelter. They will be able to liaise with Co-op on Mr W's behalf and to put forward a realistic proposal for dealing with his debt. We can provide Mr W with contact details for those agencies, if he'd like us to.

I am sorry this isn't the outcome Mr W was hoping for. I can assure Mr W that I've given detailed consideration to everything he's said. I am grateful to Mr W for the very detailed submissions he's made, and. I don't underestimate how important this is to him; he has presented his case articulately and clearly. But as I am independent of both Mr W and Co-op I am able to assess the evidence provided by both sides with a degree of objectivity that the parties to the complaint might not necessarily have. And having done, so I'm sorry to disappoint Mr W, but I'm unable to uphold his complaint.

In closing I would urge Mr W to maintain an open dialogue with Co-op, with a view to reaching a resolution on a collaborative, rather than an adversarial, basis. As I said above, Mr W might find that asking an outside agency to liaise with Co-op on his behalf might be helpful.

my final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 5 December 2019.

Jan O'Leary
ombudsman