complaint

T, a limited company, complains that Clydesdale Bank Plc (trading as "Yorkshire Bank") mis-sold it a bridging loan in 2007, and failed to have regard to its sole director's ill health when it fell into financial difficulties in 2009.

background

T's complaint is brought by its director, Mr M.

In 2007 T bought a property, which Mr M intended to lease to another business. The price of the property and the stamp duty together came to £1,040,000. It was agreed that T would pay a deposit of £200,000 and the Yorkshire Bank would lend T the remaining £840,000, secured on the property. It was a term of this agreement that the money for the deposit was to be provided by Mr M's father.

By July of that year, it had become apparent that the deposit money would not become available in time for the sale to proceed on the agreed date. So the Yorkshire Bank provided T with a bridging loan for £200,000. This loan was only intended to be temporary, and was to be repaid as soon as Mr M's father had raised the money. In August the Yorkshire Bank paid £1,040,000 into T's account, and T bought the property. But then Mr M's father was unable to raise the deposit money, and so the bridging loan remained in place for the next two years.

Mr M says that this arrangement effectively amounted to a mortgage for 100 per cent of the property price plus the stamp duty, so that T was left in negative equity. Mr M hadn't budgeted for that eventuality, and the loan repayments were higher than he had expected. Mr M says that the bridging loan should never have been sold in the first place.

In August 2009 the Yorkshire Bank required the loans to be restructured, because the bridging loan had never been meant to last for this long. The repayments for the first two years were interest only, so the £200,000 was still unpaid. Mr M says that by this time his health had suffered because of the stress from trying to run his business under this unexpected financial burden. He says the Yorkshire Bank didn't care about this, and he felt that he was forced to agree to the restructure with no real choice in the matter.

Mr M's health deteriorated further under the financial pressure. He became unable to cope, and finally his business failed. T was dissolved (but it has since been reinstated so that it can bring this complaint). Our adjudicator and the Yorkshire Bank both accepted that Mr M's poor health amounted to exceptional circumstances which explained the delay in bringing this complaint. That meant our service could still consider this complaint even though it had been brought outside our usual time limits.

The Yorkshire Bank did not accept that it had done anything wrong. It said that if it had not provided the bridging loan, then the sale would have been delayed or would have fallen through altogether. It hadn't advised Mr M what to do, either in 2007 or in 2009, and it had told him to get independent advice. He had made an informed choice when the loans were restructured. T had been making repayments in full and on time for the first two years. And the bank calculated that even if T had only borrowed £840,000, the business would still have failed eventually, because of other issues. The bridging loan wasn't the cause of that. Finally, Yorkshire Bank said that it has already written off £700,000 of T's bad debt.

Our adjudicator did not uphold this complaint. She said that the facility letter in 2007, which Mr M had signed, had made it clear that T was borrowing £1,040,000. She accepted that the sales had been done on a non-advised basis. And she said the Yorkshire Bank had not known about Mr M's illness until 2012.

Mr M did not accept that decision. He said the bank had known about his ill health in 2009, because his father's accountant had written to the bank in July 2009 to tell it. He said some of the bank's records were not accurate, which meant that the bank was wrong in its calculation that his business would have failed anyway. He said he had known in 2007 that he was borrowing £1,040,000 not £800,000. But in 2009 he hadn't understood what he was signing or agreeing to, because of his health and because the paperwork hadn't been clear. He said his health had got even worse after the loans were restructured, and this had affected his ability to run the company. He said the company's turnover had declined after July 2009.

When the adjudicator put Mr M's points to the bank, it pointed out that Mr M hadn't been ill in 2007. His accountant had written to the Yorkshire Bank in July 2009 to say that T's profits were expected to increase significantly in the second half of that year. The restructure of the loans had been designed to make the repayments more affordable, to help T. There was no reason for the restructure to adversely affect T's turnover. The relevant members of staff had since left the bank, so it wasn't possible to ask them about the alleged inaccuracies in the bank's records, but Yorkshire Bank said that the records suggested that the disputed information had come from Mr M. The purchase of the property could not have gone ahead without the bridging loan. It had been Mr M's choice to accept the loan.

This complaint has been passed to me for an ombudsman's decision.

my findings

I have considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint, including medical evidence about Mr M.

I would like to express my sympathy for Mr M. He has been quite ill for several years, and I was sorry to read about that. And I agree with our adjudicator's opinion that this is a complaint our service can consider, even though it's late.

However, I am afraid that my decision will disappoint him, as I am not going to require the bank to do anything. I will explain why.

the bridging loan in 2007

It's not in dispute that Mr M knew that T was borrowing £1,040,000 (and not only £840,000). The facility letter makes that clear, and he has not suggested that he didn't know what he was doing. His argument is that the bank had guaranteed to him that the £200,000 bridging loan would only be temporary, because it was guaranteed to be repaid within a month. (If he had known it would become a permanent commitment, he would never have agreed to it.)

I accept that that was what both parties expected would happen. But I can't accept that the bank gave Mr M any guarantee that the bridging loan would be repaid within a month. It was Mr M's father who was going to repay it, and so the bank wasn't in a position to guarantee that this would certainly happen. I think that Mr M may have actually been referring to the personal guarantee his father gave the bank for the loan, which isn't quite the same thing. All

that did was give the bank the right to pursue Mr M's father for repayment of the bridging loan, instead of – or as well as – T.

Also, as our adjudicator pointed out, this was a non-advised loan. The facility letter contains a conspicuous and clear warning, in bold capital letters immediately above Mr M's signature, that the bank does not give any financial or other advice about the loan. It says Mr M shouldn't sign it unless he understands the risks. I think in this instance the most relevant and obvious risk was that his father's £200,000 would not be forthcoming, especially because it was already late. And the warning concludes by strongly recommending that Mr M seek independent advice.

Without the deposit, T could not have afforded to buy the property. So at this point Mr M (who wasn't ill yet) had to decide whether to accept the bridging loan or let the sale fall through. He knew that the only reason the bridging loan was needed in the first place was because the money for the deposit had not become available when expected. That doesn't mean that it was *likely* that the deposit would never materialise, but it was a reminder that things do not always go according to plan. Only Mr M could decide whether to take that risk. I can't say it was a decision made for him, or forced upon him, by the bank.

If Yorkshire Bank had not allowed T to have the bridging loan, and the property purchase had fallen through as a result, then it might have faced a complaint about that. Instead, it chose to try to help its customer. So its decision to offer the loan in order to salvage the purchase was a commercial decision it was entitled to make.

Mr M says he was only 23 at the time, and was inexperienced. But as I've said already, the bank had advised him to seek independent advice. His father, who is also a businessman, was already involved to the extent that he had not only agreed to provide the deposit, but had also given a personal guarantee for the bridging loan, and so he was able to offer his own advice. And I note that the bank's records from that time describe Mr M as "well educated, articulate and impressive." The bank also knew that he was studying a business course in college. So I don't accept that the bank should have withheld the loan merely on the grounds of Mr M's youth or inexperience.

For all these reasons, I do not think it would be fair or reasonable to say that the loan was mis-sold.

the restructuring of the loans in 2009

As I have explained above, it wasn't Yorkshire Bank's fault that the bridging loan had not been repaid by 2009. So it was entitled to restructure the lending. In fact, I would go further than that and say that restructuring the lending was the proper thing to do. The bridging loan had only been intended to be very temporary – it was meant to be repaid in a matter of weeks or days. Once it was clear that it had become an indefinite loan, it had to be turned into a fixed-term loan.

The original loan in 2007 was due to mature in 15 years. The loan was restructured in 2009 to allow for repayment in 20 years instead. This was intended to make the loan repayments more affordable. So I can't see that this had an adverse impact on T's turnover or profits. I think T would have been in a worse position if the loan had never been restructured. I therefore think it is likely that Mr M's business must have failed for reasons other than the restructure.

I have thought about whether the bank actually erred by delaying the restructure for two years, even though that isn't the basis of Mr M's complaint. It could be argued that the bank should ideally have restructured the loan earlier than it did. But I don't think that would have made much difference to how things turned out. The rest of the loans were also to be repaid on an interest-only basis for the first two years, so it's not likely that Mr M would have asked to repay the bridging loan on a different basis during that period, especially as it would have been more expensive if he had done so. All the repayments during that period were made on time. And in July 2009, as I've mentioned, his accountant had told Yorkshire Bank that T's profits were expected to increase during the rest of that year.

I accept that at around the same time, Mr M's father's accountant wrote to Yorkshire Bank about Mr M's health. Yorkshire Bank apparently has no record of having received that letter. That may be because it wasn't delivered by the mail. But if the bank had known that Mr M was ill, I would have expected it to deal with him in a positive and sympathetic manner by trying to help him restructure the debt in such a way as to make it easier for T to repay it. This is in fact what it did do. So I don't think that the bank should have done anything differently during the restructuring process. I do accept that Mr M felt under pressure at the time, but I note that this was another non-advised sale, and that the bank recommended that Mr M get independent advice. So I think the source of the pressure was really the unexpected size of the loan repayments T had had to meet since 2007.

The disputed fact on which the bank relied when arguing that T failed for reasons other than the restructure is that in 2012 one of T's debtors went into liquidation owing T about £30,000. Mr M denies that; the bank says it got this information from him. I don't think I have enough evidence to decide that issue one way or the other. But that isn't the only basis, or even the main basis, for concluding that T failed for reasons unconnected with the restructure. As I've said, the restructure extended the time in which to repay the loan. And the repayments had mostly been met from the rent payments being made by the tenant to which T had leased the property, which was a third party business. In early 2012 that business was given a rent holiday for three months, so that source of income was not available for making the loan repayment for that quarter. Even if it had been, the normal rent was not enough to cover all of the loan repayments, and until then the shortfall had been met from the profits of another part of T's business. By 2012 Mr M's health had sadly deteriorated to the point where his ability to run the business was seriously impaired, and so T's ability to trade had substantially declined. This is stated in a letter from T's accountants. So I think that T was finding it harder to make the repayments because it was failing anyway, rather than the other way around.

I recognise that Mr M attributes his poor health to the bank's actions. But while the financial difficulties his company was facing may well have contributed to this, it doesn't follow that the bank must have been at fault, or that it was the cause of those difficulties.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M, on behalf of T, to accept or reject my decision before 3 July 2017. But if I don't hear from him by that date, then I will assume that he has rejected it.

Richard Wood
ombudsman