DRN-4899933

The complaint

This complaint is about a commercial mortgage application made by a limited company I'll refer to here as 24BL to Yorkshire Building Society in 2022. Mr Z, a director, is representing 24BL. The purpose of the mortgage was to fund the acquisition of business premises.

Yorkshire issued a mortgage offer in August 2022, but then withdrew it in September 2022 after belatedly noticing that part of the funding for the transaction was an injection of funds from an external source. 24BL eventually completed its purchase with a mortgage from a different lender, but the delays mean 24BL is paying a much higher interest rate than Mr Z anticipated, which Mr Z says Yorkshire should reimburse.

What happened

By way of a provisional decision dated 15 May 2024, I set out my provisional conclusions on this complaint. The following is an extract from the provisional decision.

> "I do not need to set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat the details here. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr Z being identified.
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> So for these reasons, I will instead concentrate on giving a brief summary of the complaint, followed by the reasons for my decision. If I don't mention something, it won't be because I've ignored it; rather, it'll be because I didn't think it was material to the outcome of the complaint.
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> Mr Z submitted the application in the spring of 2022, initially in his own name, using a broker firm as an intermediary. On 28 April 2022, Yorkshire issued a decision in principle for the proposed loan, subject to full underwriting. Mr Z then decided, on advice, to apply in the name of a newly-incorporated company; that would be 24BL. On 16 May 2022, Yorkshire emailed Mr Z asking for, amongst other things, clarification from Mr Z's accountant of the stamp duty land tax position.
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> That clarification was provided in a document dated 24 May 2022 from a consultancy firm I'll call CR, which Mr Z sent to Yorkshire by email on 26 May 2022. The same document also referenced "cash to be introduced" of £230,000. On 30 May 2022, in an exchange of emails with Mr Z, Yorkshire confirmed receipt of the information from CR and said it would now proceed with the valuation.
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> Yorkshire issued a mortgage offer on 6 August 2022, on an initial five-year fixed rate of 4.35%. In September 2022, 24BL's solicitors asked Yorkshire to confirm it was aware of, and was agreeable to, additional funds being introduced to the transaction by way of a gift. Yorkshire said it was not aware and didn't consent. After some to-ing and fro-ing, during which Mr Z suggested the funds might be a loan rather than a gift, on 12 October 2022, Yorkshire withdrew the offer.

When Mr Z complained, Yorkshire said it should have withdrawn the offer as soon as it became aware of the problem in September, and offered 24BL £250 compensation for poor service. That was in a final response dated 7 December 2022. Mr Z then set about sourcing the finance elsewhere; in May 2023, a lender I'll call S issued a mortgage offer on an initial five-year fixed rate of 6.49%. On 6 June 2023, Mr Z referred 24BL's complaint to this service.

During our investigation, Yorkshire acknowledged that reference to the introduction of additional funds had been in its possession in an attachment to an email of 2 August 2022, but had gone unnoticed because it was on an unrelated matter. Yorkshire said that had the information been noticed, the offer would not have been issued.

Ultimately our investigator wasn't persuaded that the information gave enough detail about the source of the additional funds to cause Yorkshire any concerns. In his view, it was not until September 2022 when the solicitors specifically mentioned it being a gift from a family member that Yorkshire had reason to reconsider its lending decision. He didn't recommend the complaint be upheld.

Mr Z asked for the case to be reviewed by an ombudsman.

It's come to me, and having reviewed the casefile, I've reached a different conclusion from the original investigator on how the complaint should fairly be determined. According, I'm setting out my conclusions in a provisional decision, to allow both parties to comment before the matter is finalised.

What I've provisionally 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 work within the rules of the ombudsman service and the remit those rules give us. We don't replicate the work of the courts.

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.

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

The first point I need to make here is the eligible complainant here isn't Mr Z; it's his company 24BL. Mr Z presents the complaint on the company's behalf. That means that when deciding how the complaint should fairly be settled, I can only take account of how Yorkshire's acts and/or omissions have impacted on the company. I can't take into account any adverse impact that there may have been for Mr Z personally.

It seems to me that this case is all about what Yorkshire knew and when it knew it. I'll start with the "when". Yorkshire accepts that the document from CR was in its possession on 2 August 2022, but wasn't picked up. Having considered everything that both parties have said and provided, I think Yorkshire was in possession of the document earlier than that.

As detailed above, Mr Z emailed CR's document to Yorkshire on 26 May 2022 and received confirmation of its receipt on 30 May 2022. Furthermore, because the document from CR also contained answers to questions that Yorkshire had specifically asked as being essential to treating the application as coming from 24BL rather than Mr Z, I'm persuaded on the balance of probabilities that the document was read.

In terms of *what* Yorkshire knew on 30 May 2022, the document from CR simply referred to "cash to be introduced". It gave no detail of where that cash was coming from; no mention was made of it being a gift or a loan. Our investigator wasn't convinced that was enough to start the alarm bells ringing at Yorkshire; after considering the point very carefully, I've reached a different conclusion. I'll explain why.

Elsewhere, the document says: *"Any cash can be lent to the company after incorporation as a directors loan".* Additionally, the proposed balance sheet listed, in the liabilities column, additional capital of £230,00.

I think the document from CR should have put Yorkshire on notice to make further enquiries into where the £230,000 was coming from. After all, Mr Z was to be 24BL's sole director, so only he could provide a director's loan. That immediately invites the question of where Mr Z would get the £230,000 to lend to his new company.

On the test of what it knew and when it knew it, when all this is taken together, I'm persuaded that Yorkshire knew enough on 30 May 2022, the day it agreed to proceed to valuation, to realise further enquiries were needed to establish where the £230,000 would be coming from.

If Yorkshire had made the enquiries it should have done, the valuation would not have gone ahead and Yorkshire would have been in a position to decline 24BL's application long before the offer was issued. All that would have been needed was another email or even a phone call to Mr Z to find out where the £230,000 was coming from.

Allowing, say, two weeks for underwriters to assess that news, on balance, I think Yorkshire should reasonably have been in a position to realise by 13 June 2022 that it would not be able to lend to 24BL.

It follows from this that Yorkshire should refund 24BL the fee for the valuation, which should not have gone ahead. It should also reimburse and any costs Mr Z can demonstrate as having been incurred by 24BL (but not by Mr Z personally) in connection with the abortive application, between 13 June and 12 October 2022. It will be for Mr Z to evidence those costs, in the form of paid invoices; I'd ask him to include such evidence with his response to this provisional decision.

In order that there should be no ambiguity, I will not be ordering Yorkshire to pay anything to cover the additional interest being charged by the alternative lender S on the mortgage that was arranged after Yorkshire withdrew its offer. The reason for this is that the offer Mr Z has sent us shows that this mortgage was taken out by him personally and not by 24BL. So the extra interest being charged isn't 24BL's loss.

I note that Yorkshire in its final response offered £250 compensation by way of an apology for poor service. A limited company can't suffer distress in the sense that a person can, but its director can be inconvenienced by poor service and delay. That's clearly happened here, but the period of delay and inconvenience was much longer

than Yorkshire has been willing to admit to. Bearing in mind the application should reasonably have been rejected in mid-June 2022 instead of being accepted, offered and then withdrawn four months later, I'm minded to award 24BL £750 compensation."

I gave the parties two weeks to add anything further before I finalised my decision. Yorkshire continued to maintain its position that it has no record of having received CR's document in May 2022. It also said that Mr Z had applied initially in his personal name and at the last minute in May 2022 he decided to change to a limited company. This change didn't need to go back to the underwriting team, Yorkshire's Commercial Lending team asked some questions about the limited company that would be set up for it and then confirmed it could still proceed in 24BL's name rather than Mr Z's personal name.

Mr Z, on behalf of 24BL, expressed his disappointment that the extra interest he is paying on the alternative mortgage won't be considered, given that he is 24BL's sole director and shareholder. He attached an indicative offer that the replacement lender S issued to 24BL in October 2022.

He said that the £250 offered in the final response had been paid directly to him, and also enclosed copies of invoices to evidence 24BL's additional expenses.

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 was already aware the loan had been approved subject to valuation on 28 April 2022; that was confirmed in a letter to Mr Z the same day. That letter also confirmed what would happen next; first in a list of four next steps was for a valuer to inspect the property. So, at that stage, the valuation fee had not been spent.

In an email dated 16 May 2022, LC asked Mr Z a series of questions, included the one about stamp duty land tax, in relation to his request that the loan being taken out in the company name rather than his own. CR's document dated 24 May 2022 answered those questions, Mr Z emailed it to LC on 26 May 2022. On 30 May 2022, in reply to another email of the same day in which Mr Z references information provided by CR, LC emailed Mr Z, saying:

"Brilliant, thanks for this. This is fine for us to proceed with now.
Instead of resubmitting the case back to credit they have given the go ahead to still proceed with the valuation and then I will go up with the changes and valuation at the same time.
Please let me know which valuer you wish to go with and I will get this instructed."

In that context, I cannot reach any other conclusion than that Yorkshire was in possession of CR's document on 30 May 2022 (and acknowledged as much) and therefore on notice of the cash to be introduced.

Turning to Mr Z's response, I appreciate his disappointment that I won't be awarding compensation for the extra interest he is paying on the mortgage from S. However, whilst he may be the sole director of, and shareholder in, the limited company, it is a separate legal entity from him. S may have issued an indicative offer to the company in October 2022, but the eventual offer in May 2023 was to Mr Z. It may be of small comfort, but for the same reason I must also disregard the £250 Yorkshire paid to Mr Z following the final response in December 2022, when assessing the redress due to 24BL.

That brings me to the evidence of 24BL's abortive costs. The sums being claimed are the following payments made from 24BL's bank account. I've abbreviated the beneficiary names to minimise the risk of identification.

Date	Beneficiary	Amount
15 June 2022	UKF	£200.00
28 June 2022	GL Solicitors	£80.00
7 July 2022	G Solicitors	£1,080.00
1 August 2022	GL Solicitors	£3,500.00
3 October 2022	CR	£1,680.00
3 October 2022	T Solicitors	£300.00

Having cross-referenced the above payments against the invoices Mr Z has provided for sums billed, and the work carried out by the various beneficiaries on 24BL's behalf in relation to the aborted mortgage, I am satisfied that all of the above sums should be reimbursed to 24BL.

My final decision

My final decision is that I uphold this complaint, by ordering Yorkshire Building Society to:

- refund the valuation fee 24BL paid;
- reimburse 24BL each of the sums listed in the table in the preceding section;
- pay 24BL interest on each refunded payment, at 8% simple per annum, from the date of each payment up to the eventual date of settlement; and
- pay 24BL £750.

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 2 to accept or reject my decision before 7 August 2024.
Jeff Parrington
Ombudsman