complaint

Mr G's complaint is about Moneything Capital Limited (MCL). He says it breached its regulated obligations and the terms of its peer-to-peer lending platform in relation to a specific loan arrangement by:

- Not providing accurate information on the security on which the loan was based.
- Not informing him about late/missed interest payments on the loan.

Mr G says the first issue misled him into the loan arrangement – which he would potentially have avoided if he was accurately informed about the loan's security – and that the second issue deprived him of the opportunity to react, to the late/missed payments, by exiting the arrangement before the borrower went into default.

background

The loan arrangement involved a collection of lenders to the relevant borrower. Mr G was one of the lenders. The money he loaned, as part of the collective, to the borrower was offered in four tranches – two payments in May 2017 and two payments in August 2017. The term for the loan was six months and the interest rate was 12% per annum. At the outset of Mr G's venture into the arrangement, information relevant to it was available. The underlying subject of the loan was the development of a commercial property and as part of the available information there was a valuation report on the property, prepared by a third party for MCL.

The borrower's late/missed interest payments occurred during the loan term. By 24 August 2017 the borrower was declared in default. The late/missed interest payments were initially unknown to Mr G because he received them. Before the default was declared, MCL covered those payments to the lenders in order to relieve pressure on and give a recovery opportunity to the borrower. Mr G became aware of the problem upon declaration of the default, after which the loan arrangement was restructured for a new term in order to give MCL the opportunity to recover the loan.

A recent update from MCL informed this service that recovery of around 74% of the loan capital is imminent, with the money having been raised from the loan security. MCL says it is working on recovering the remainder of the loan capital from the borrower's personal guarantee.

Mr G complained after the default was declared. It appears that initially his main concern was that MCL did not inform him about the late/missed payments until after the default had taken place. He said such information prior to the default was likely to have helped him to review his stake and to mitigate his position by selling it on the secondary market. He referred to having done something similar in a past loan arrangement. Mr G has also said that he was misled by the information about the underlying commercial property which, based on a legal charge, stood as the security for the loan. He said the information stated that it is a freehold property but in fact it is a leasehold property which, he argues, devalues the security. He wants a return of his capital and interest.

MCL's position can be summed up as follows:

- Its effort to recover the loan capital is as it has updated us about.

- It considers that the complaint about the loan security was not a complaint at the outset. Nevertheless, it accepts that the valuation information about the security was wrong – the property is leasehold, not freehold as the information stated. However, given the nature of the lease and of the freehold title, the valuation difference is nominal. In the wider context of its recovery effort, the difference is not enough to uphold this issue.
- In terms of the complaint about the late/missed payments it considers that Mr G agreed, within the terms for the platform, that it would be the agent for the lenders with discretion over the management of the loan arrangement. As such, it was entitled to manage the late/missed payments as it did and considers that its work in that respect was without fault. It did not have reason to foresee a default at the outset and considered that the borrower could recover. When it realised this was unlikely it declared a default. It was reasonable for it to cover those payments in between to help the borrower recover. It accepts that the terms of the platform gave Mr G a right to be informed but it also had discretion over when to inform him and it does not consider that it exercised this discretion wrongly.

One of our adjudicators considered the complaint and concluded that it should not be upheld.

- She noted the execution only (non-advised) nature of MCL's service to Mr G and concluded that the decision to engage in the loan arrangement at the outset was his – not one based on MCL's advice.
- She said he had decided to take on the additional risks of such an arrangement which included risk of a default, regardless of whether the security was leasehold or freehold.
- She considered that MCL's attempt to help the borrower's recovery was reasonable and that the secondary market for a loan with problems was unlikely to have been as liquid as Mr G claims so she was not persuaded that he had been denied an opportunity to mitigate his position.
- She noted that the full extent of any loss from the loan arrangement is presently unknown, given the ongoing recovery effort.

Mr G did not accept this outcome. In the main, he argued that the misinformation about the security resulted from a failing in MCL's due diligence and resulted in devaluing the security he had relied upon; that the failing was in breach of some of the regulator's principles (which he listed); that while it might have been pragmatic for MCL to try to help the borrower's recovery the fact remains that it was obliged to tell him that the payments were in arrears before the default took place; that loans remain tradeable in the secondary market when they are in default so he maintains he was deprived of the opportunity to mitigate his position; and that redress for his complaint can be suspended and determined after the end of MCL's recover effort.

The adjudicator responded to clarify that MCL's duty to inform Mr G was to do so at a time of its discretion and it was not unreasonable for it to have given the borrower three months to recover before declaring the arrears and default. She noted that the thrust of the principles he quoted applied to the relationship between MCL and the borrower too, so it essentially had to strike a balance to be fair to all parties. MCL had treated the lenders fairly by covering the late/missing payments, which was irrecoverable money paid at its expense. With regards to the events at the outset of the loan arrangement, the adjudicator said the main point is that Mr G's decision to invest in it was based on his assessment, investigation and understanding of the venture. The matter was then referred to an ombudsman.

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 Loan Security

The fact that MCL appears to have commissioned and then received a valuation report for the underlying commercial property serves as evidence of a due diligence process on its part. I do not consider it necessary to look into any other areas of that process because Mr G's dispute relates only to a specific piece of misinformation within this report. However, for a start, on balance and in the absence of evidence of any other due diligence failure, I do not accept the assertion that MCL's due diligence was lacking.

The misinformation about the property's leasehold status is not in dispute. The question is whether MCL can reasonably be held responsible for it in the context of this complaint. If it is responsible, the matter of impact upon Mr G's position becomes relevant. Otherwise the matter of impact becomes arguably irrelevant to the complaint if the respondent to the complaint (MCL) is not responsible for the misinformation.

I have not seen evidence that suggests MCL ought reasonably to have known the property's status had been wrongly stated or to have verified the information in the valuation report with another source. The report was produced by a firm of professional surveyors and MCL was entitled to rely upon it as part of the information available to its lenders through the platform. In order to hold it responsible, there would be a need for evidence to conclude, on balance, that such reliance was negligent and I have not seen that evidence. The report expressly concluded that "*The Asset "The Property" provides suitable security for loan purposes.*" Reference has been made to a suggestion in the report, to MCL, about verifying a copy of the lease when underwriting the loan. However, this appears to have been said in relation to the tenancy of the property, not its freehold/leasehold tenure status. I am not satisfied that this ought reasonably to have made MCL question the freehold description and the report's conclusion about suitability of the security gave it little or no reason to think otherwise.

The adjudicator's conclusion about Mr G's role in ensuring that his investment in the loan arrangement was supported by his own investigation and assessment of it is supported by section 8.8 of the terms of the platform. That section says lenders like him agreed that they are to make their own independent decisions about entering into a loan, that they have not been advised by MCL to do so, that their decisions do not rely on MCL and that they should take independent advice if necessary.

Mr G has argued that these terms do not excuse a due diligence failure. I do not suggest that they do. I recognise that MCL had its own obligations in terms of the promotion of loan arrangements on its platform – and in relation to the regulator's principles about fairness and the provision of information to customers, as Mr G has quoted. However, I have concluded above that MCL's due diligence was not lacking and Mr G has not alleged misinformation at the outset in any other respect. Overall and on balance, I conclude that MCL cannot reasonably be held responsible for the misinformation about the underlying property's leasehold status.

The Borrower's Late/Missed Payments

I have applied a similar approach to the arguments for this issue. Mr G was informed about the arrears only after the default was declared – this too is not in dispute. Primarily, I need to establish whether (or not) MCL breached an obligation to inform him about the arrears *as they happened* – not after the default declaration. If so, the question of whether (or not) he could have mitigated his position becomes relevant. Otherwise, in the context of this complaint and in the absence of such an obligation his point about being deprived an opportunity to use the secondary market becomes arguably redundant.

The terms for the platform confirmed agreement between the lenders and MCL that the latter will act as agent for the former in terms of management of loan arrangements. The basis for this agency relationship gave MCL discretion in such management matters. Section 9.1(i) gave it discretion:

"*To enter into negotiations and make agreements, waivers and amendments on your* [the lender's] *behalf relating to the individual terms of any Loan Contract that you* [the lender] *have participated in, whether before or after a Default Event has occurred …*" [my emphasis]

This supports what MCL did in trying to help the borrower recover prior to the default event. I too do not consider that an allowance of three months in this respect, during which MCL bore the irrecoverable cost of interest payments to the lenders, was unreasonable in the circumstances. I appreciate that section 12.1 of the terms obliged MCL to keep the lender(s) informed of progress in its effort to collect outstanding payments from borrowers. However this must be read alongside the discretion in section 9.1(i) and, as the adjudicator noted, the obligation in section 12.1 is not time defined.

The combined terms can reasonably be read to mean that MCL's immediate responsibility was to try to resolve outstanding payments and where it appeared reasonable to waive or amend terms for that purpose it had discretion to do so. Discharging that responsibility was its priority and whilst it tried to do so it catered for the lenders' interests by covering the payments due to them. When it realised the situation could not be resolved it informed them of its efforts and the outcome. Mr G could argue that a reasonable reading of section 12.1 is that the lenders would be informed during, not after, the events. Given that the relevant sentence says MCL "… *will keep you* [the lender] *informed of the progress of the attempts to collect outstanding payment(s)*", it could also be argued that an update *after* attempts to collect outstanding payments was not exactly contrary to the obligation. The sentence does not have a strict requirement for contemporaneous updates as collection attempts happen. Overall and on balance, I conclude that MCL did not breach its obligation to update Mr G about the arrears.

my final decision

For the reasons given above, I do not uphold Mr G's complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 23 November 2018.

Roy Kuku
ombudsman