



“It is up to business entrepreneurs to take their own commercial decisions and they should consult relevant experts whenever necessary.”

In the latest of our ethical dilemmas, BOB SOUSTER examines when information becomes advice and where the responsibilities lie for banker and client alike.

Is free advice always a bargain?

Jenny and Barry are business partners, operating gift shops in three beauty spots in towns in a National Park. They have worked hard to build up their shops, all of which are profitable. The shops are leased.

Eager to expand their business still further, they identified a large village in the National Park as having great potential for opening a new shop. Prior to their annual business review with their bank, they identified three possible premises and incorporated their proposed new venture in their amended business plan.

The only concern that Jenny and Barry had about these premises was that they were available for purchase but not for lease. They had never borrowed commercially before, except by way of very short-term overdrafts, which were always quickly settled.

Their review meeting was set up with the bank, and they discussed their plans in detail with Olivia, their small business adviser. When they came to discuss the expansion plans for the business, Olivia was asked by Jenny and Barry to explain the policies of the bank in respect of commercial mortgages, and to give her thoughts on the information in the business plan. As it happened, Olivia was brought up in the village in which all of the premises were located and had an extensive knowledge of the area.

Jenny and Barry expressed a preference to open a shop in the high street, where two of the premises were located. Olivia explained that subject to satisfactory valuation both fell within the lending criteria of the bank. However, Olivia stated that in her experience

the parts of the high street in which the shops were situated were relatively quiet, and that there would almost certainly be difficulty in attracting customers, unless there was a big change in the profile of businesses immediately around that area.

The third shop was the least desirable in terms

of location, business space and layout, but Olivia suggested that it was in an area of great future potential. A property developer was planning to develop a fitness and leisure centre nearby, and the complex would include restaurants and shops that would be highly attractive to tourists. Olivia recalled that the area was once very busy and vibrant.

Jenny and Barry were not aware of this, but it certainly made the third property more attractive. Olivia confirmed that the bank would consider a commercial mortgage on the property.

Jenny and Barry carried out some further preliminary visits to the third property and decided that it had potential after all. Their application for a mortgage was approved and the shop was opened for business. Jenny and Barry were disappointed with business turnover at the outset, but were sure that the new complex would have a positive effect.

After one year of operating at a loss, Jenny and Barry learnt that the new complex would not be going ahead, as local residents had successfully blocked it. They also found out that the area of the high street in which the other two premises were located was being revitalised with the opening of a supermarket by a national chain.

Jenny and Barry closed the shop after only 18 months of operation. In an interview with the local newspaper, and subsequently on a local radio station, they blamed the bad advice given by their bank, causing considerable embarrassment to Olivia and the small business team. Jenny and Barry said they were also considering legal action against the bank.



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But did the bank do anything wrong?

“Even millionaires go bankrupt because they do not speak to those with the right knowledge and skills.”



Principles 2 and 8 of the Institute’s Code of Professional Conduct refer to requirements to “consider the risks and implications of my actions” and to maintain “technical and professional knowledge and competence”. In this case, Olivia has done her best to advise her clients without necessarily adhering to either principle.

Olivia is a small business adviser. She does not know the retail gift shop business, and she is not a commercial property valuer. She may or may not

have expertise in retail marketing. Olivia’s expertise lies in the products and services offered by the bank, then dovetailing the benefits of these with the needs of the customers.

Olivia almost certainly acted with good intent by giving her views on the relative merits and demerits of business locations in a village with which she was very familiar, but this extends the reach of her role beyond her area of competence. It is up to business entrepreneurs to take their own commercial decisions and they should consult relevant experts whenever necessary. Even millionaires go bankrupt because they do not speak to those with the right knowledge and skills.

It was probably impossible to predict that the leisure complex project would fail, or that the appearance of a national supermarket brand would rejuvenate a sleepy part of the high street, but at the time of the interview with Jenny

and Barry these were plans and not certainties. Olivia was right to mention them, but wrong to steer her customers’ commercial decision based on these assumptions.

One consequence of Olivia’s actions has been an adverse impact on the bank’s reputation. It could be worse...

The scenario resembles the case of *Verity and Spindler v. Lloyds Bank plc* (1995). In this case a bank manager advised the claimants to buy a particular property having stated that others were unsuitable.

The claimants suffered a loss and successfully sued the bank for negligence. The court held that in giving advice to the claimants he had taken on the role of financial adviser, with a duty of care to the client. Whether Jenny and Barry could do so in the fictitious case turns on the extent to which Olivia steered her clients towards what turned out to be an inappropriate decision for their business.

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