DRN-4244973

The complaint

A company which I'll refer to as F complains that Clydesdale Bank Plc trading as Virgin Money (Clydesdale) unfairly declined to open an account on its behalf.

In bringing this complaint F is represented by its director who I'll refer to as Mr K.

What happened

The background to this complaint is well known to the parties and so, I won't repeat it in detail.

Briefly, Mr K has told us that:

- On 7 October 2022 F applied to open a client account ("the Account") with Clydesdale.

- F is part of a group that includes a Limited Liability Partnership - which I'll refer to as L. F is a designated member of L, and the purpose of the Account was to hold funds on behalf of L to help facilitate its administration of various will trusts.

- Although at the time, F had an account with another bank, unlike Clydesdale it did not offer client account facilities. It was on that basis that F's application to Clydesdale took place.

- On 17 October 2022 Clydesdale wrote to F requesting its response to a series of questions. The bank also asked for:

> "evidence from HMRC that you are regulated to hold client funds"

- Shortly afterwards, F sent a copy of a letter from HMRC dated 15 September 2022. Headed: "The Money Laundering Terrorist Financing and Transfer of Funds (information on the Payer) Regulations 2017 (the Regulations)", the letter said:

> "Please accept this letter as confirmation that you have passed the Fit & Proper test".

- F also provided to Clydesdale a separate document from HMRC which confirmed its registration as well as F's unique HMRC registration number.
- Clydesdale rejected F's application on the basis they weren't satisfied F was regulated by the relevant body to receive and hold client funds.

- F opened an account with another bank and complained to Clydesdale about its decision.

Clydesdale maintained their position, saying they had concerns about whether F was regulated to hold client funds in line with the bank's requirements. They said that although F told them it was regulated by HMRC, nonetheless they didn't think HMRC offered client money protection. On that basis therefore, they believed F had failed to meet their requirements to open a client account with the bank.

Since F's complaint remained unresolved Mr K referred it to this service to look into. Our investigator did so. He also shared with Clydesdale the same HMRC evidence that F had done previously regarding its status. And he asked the bank to let him know if that evidence wasn't sufficient indication of F's status, to clarify what alternative evidence would be required from F.

Despite reminders, Clydesdale didn't respond to the investigator. So, he considered the provisions in our rules, known as DISP. In particular, DISP 3.5.14R and DISP 3.5.9R(3). Broadly speaking, where time limits that we've given the parties aren't adhered to, they allow our service to proceed with our consideration of a complaint and reach a decision on the basis of the evidence to hand.

In the absence of a response from Clydesdale and relying on the evidence available, the investigator concluded that:

- The absence of regulation couldn't reasonably have been the sole reason Clydesdale declined to open the Account for F.

- In light of this, the bank did not act fairly when it declined F's application.

- He'd seen no evidence F had suffered financial loss arising from Clydesdale's decision not to open the Account. Especially as F is a not-for-profit company and furthermore neither was it actively trading at the time of its application.

- There was no evidence L was impacted by Clydesdale's decision, not least because L was still free to trade.

- Nonetheless, F was inconvenienced by what had happened and so, Clydesdale should pay F £300 for that inconvenience.

Clydesdale accepted the investigator's conclusions. F on the other hand didn't and has asked for an ombudsman to review its case.

On F's behalf Mr K said he didn't agree with the investigator's conclusion that F hadn't suffered any financial loss arising from Clydesdale's decision. Although he acknowledged F is a non-profit company, nonetheless, he reiterated the importance of its link to L as part of a group. And he argued that link should give rise to a much broader consideration of financial loss to include that incurred by L.

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.

Having done so I agree with the investigator and for broadly the same reasons.

I start by saying it is within the commercial discretion of banks to decide who they wish to have as their customers. And generally speaking, it's not my role to interfere with that judgement. What I can do is assess whether a bank has exercised its discretion fairly.

Here, Clydesdale has not challenged the investigator's conclusion that based on the evidence noted above, F had indeed provided the bank with evidence reasonably for it to be satisfied about F's status. In light of this, I find that Clydesdale decision to reject F's application on the basis they did, amounted to unfair treatment of F.

I turned next to consider how F should be fairly compensated.

F has had to submit an account application elsewhere in light of the decision that Clydesdale took. I note also there were various exchanges of correspondence between F and Clydesdale in an attempt to determine the reason behind their decision. I'm satisfied therefore that F has been inconvenienced by Clydesdale's decision to decline its application. For the reasons the investigator gave, I'm also satisfied the £300 he recommended as compensation for that inconvenience is both fair and reasonable. That leaves the question of financial loss which I now come to.

Although Mr K doesn't agree F has suffered no financial loss, I've seen no persuasive evidence demonstrating that it has. More to the point, Mr K acknowledges the purpose behind the Account was to hold funds on behalf of L. And whilst he says when assessing financial loss, we must also have regard to L given their group relationship, I do not agree.

When determining whether financial loss has occurred, it has to be done by reference to the parties in dispute.

In the circumstances of this case, L doesn't have a relationship with Clydesdale. And nor does a relationship become established for the reasons Mr K has given – which is that F and L are members of a group. F and L are separate legal entities. And L is not in dispute with Clydesdale on its own behalf.

I acknowledge that Mr K considers that losses to F are in effect losses to L. He has suggested that the relationship between F and L (where F is a designated member of the limited liability partnership L) is very similar to the relationship between a director and a limited company.

I agree that there are similarities – but even if F had been a director of a limited company, I would still have been unable to make an award in respect of any losses suffered by that limited company. Limited companies and their directors are separate legal entities, just as limited liability partnerships and their members have separate legal personalities.

The complainant here is F. which means I only have the legal power to make awards in respect of losses suffered by F itself. I am satisfied that F itself has not made a financial loss, and I have no power to make an award in respect of any losses any other parties may have suffered.

Putting things right

I am satisfied F has been inconvenienced because of Clydesdale's decision for which they should pay it compensation.

My final decision

My final decision is I uphold this complaint in part. In full and final settlement, I require Clydesdale Bank Plc trading as Virgin Money to pay F £300 for inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask F to accept or reject my decision before 9 January 2024.

Asher Gordon
Ombudsman