

## **complaint**

Mr F complains that Clydesdale Bank Plc ("Clydesdale") caused a debt his business owed it to increase, and that he's been unfairly affected by its actions.

## **background**

In 2007 Mr F and his partners at the time took out a business overdraft of £197,200. This was to be used towards funding the purchase and development of a plot of land. The borrowing was secured by a charge on the land. But planning issues meant the land couldn't be used as they had hoped and so it became worth less than they'd paid for it.

Mr F and his partners received compensation from a claim against their solicitors about the planning restrictions and the resulting reduction in value of the land. But that money didn't represent the actual loss in value of the land once fees and interest were taken into account. This resulted in payments still being required to service the debt to Clydesdale, whilst they were left with land that was unusable for its originally intended purpose.

As time passed, the partnership experienced difficulties servicing the debt, and so decided to sell the land to repay the borrowing in 2011. Despite making price reductions, the land didn't sell and matters escalated. In late 2012 Clydesdale informed one of Mr F's partners that it intended to appoint a LPA receiver to sell the land.

Following the death of one partner, and the bankruptcy of another, Mr F was left solely responsible for the debt. Over the next couple of years, he was seriously unwell with periods of time in hospital and so wasn't in a position to chase Clydesdale. As he heard nothing more, he assumed the land had been sold and the outstanding debt cleared.

But in 2016 Mr F was contacted by another business pursuing the remaining balance of the debt (having purchased it from Clydesdale). It has since transpired that the land was sold at a substantially lower value than Mr F had expected and so left a shortfall in repaying the debt.

Mr F now believes Clydesdale sent a number of letters to the incorrect addresses and so he wasn't informed and given the opportunity to take earlier action. He feels this resulted in the debt being assigned to an unsuitable business and the land being sold at a below market value.

The investigator that looked into the complaint didn't think it should be upheld. She felt Mr F was aware of the debt and of Clydesdale's intention to appoint a LPA receiver. She also noted he would've needed to sign the documents to transfer the land upon sale. So she felt it was unreasonable for him to assume the debt had been cleared, and commented that he could have checked with Clydesdale to be certain of his position.

Although Clydesdale had sent letters to a several different addresses it had on record, the investigator didn't think it was wrong in doing so. She also concluded that even if Mr F had received more information to the correct address he would still be responsible for the debt and she'd seen nothing to suggest he would've repaid it earlier.

Mr F disagreed with the investigator and gave further explanation about the sequence of events and how they've impacted him.

As no agreement could be reached I've now been asked to review the case afresh.

### **my findings**

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

I understand Mr F's found himself in this situation as a result of a series of complex and unfortunate circumstances. And I've no doubt this has been particularly distressing and frustrating for him. But in reaching a fair and reasonable outcome I have to focus upon what I consider to be the heart of the issues complained about and what, if anything, Clydesdale's done wrong. Having done so, I'm not upholding the complaint.

Mr F has acknowledged he was responsible for the debt and he's never disputed this point. But his complaint relates to the way Clydesdale has acted and he believes that as a result, he is now being pursued for an outstanding 'shortfall' which otherwise wouldn't have existed.

Mr F has raised a number of points, and I've taken everything into account. But I consider the key issues for me to focus upon in my decision are:

- Whether Clydesdale issued correspondence to the wrong addresses (and if it did, whether that materially affects the situation Mr F is now in).
- Whether Clydesdale did anything wrong by assigning the debt to a third party.

### **addresses correspondence was sent to**

The borrowing was originally taken from Clydesdale in 2007 when the partnership had three partners. As a result several addresses for the business were recorded. Since that time a number of changes have occurred within the business, and the other partners are no other involved.

From the available evidence it's not entirely clear when changes to addresses were requested, or if letters continued to be sent to historic addresses by Clydesdale. But it is clear that Mr F didn't receive copy correspondence to his new address in addition to the permanent address on file belonging to one of his former partners. Whilst I don't deny this is frustrating, I think Clydesdale was entitled to continue sending correspondence to an address still held on file. And I note Mr F in fact requested it continue to do so in his letter to it in April 2013.

I appreciate that soon after this; Mr F became seriously unwell and underwent treatment. And this meant he wasn't able to chase Clydesdale when he didn't receive any of the correspondence he was expecting. But he had previously been aware that the debt was still outstanding and one of his former partners had been informed of Clydesdale's intention to appoint a LPA receiver.

I know Mr F has stated he assumed the debt was cleared from the sale of the land. But I can't say that was a reasonable assumption to make. For a matter of such value and importance he ought to have expected something to confirm it in writing. So when nothing was received, I'd expect him to query it as time started to pass.

I understand there were a number of other things going on in Mr F's life around this time; but Clydesdale was unaware of this. Ultimately, had Mr F been copied in and received the correspondence issued, I've not seen anything to suggest he'd have been in a position to do anything different anyway. In other words, had the further demands for the debt been presented to him earlier he hasn't suggested he'd have been able to repay it.

So overall, I can't say the addresses used by Clydesdale are responsible for causing the situation Mr F now finds himself in.

### **assignment of the debt**

The partnership had been in financial difficulty for a number of years following negligent advice from its solicitors. This resulted in proposals to sell the land at a loss from 2011.

Following reduction in the sale price the land still went unsold. And by late 2012 there were indications that Clydesdale intended to appoint an LPA receiver to dispose of the land and recover its debt.

Mr F has stated that he understands Clydesdale was entitled to assign the debt and land. But he's also expressed concern over the way this was done, and in particular the business it was transferred to. Notably, he's unhappy the business isn't a UK-based regulated company, and he believes it then sold the land for less than it was worth, thus creating a shortfall in repaying the debt.

Whilst I recognise Mr F's frustration and understand the points he makes, I don't agree that Clydesdale is to blame for his situation. When it sold on the debt and land, the assignment was on the same terms as Mr F would have had with Clydesdale itself and that's not unreasonable.

With regards to the sale of the land, I've seen nothing to suggest anything untoward took place. A LPA receiver is tasked with selling an asset and acting on behalf of the borrower, and not the business. Whilst the sale value may have been disappointing, I believe it was likely an appropriate value given the need to sell quickly, and in all the circumstances. The land had been offered at higher prices previously, but had gone unsold. But in any event, this isn't a matter within my remit to consider.

So having reviewed this complaint afresh, I can't say Clydesdale has done anything wrong that's resulted in the position Mr F is in now.

I appreciate this will come as a disappointment to Mr F, but can assure him I've reached my decision having considered everything he has provided.

**my final decision**

My final decision is that I don't uphold the complaint and am not going to ask Clydesdale Bank Plc to take any further action.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 6 April 2017.

Ross Hammond  
**ombudsman**