

complaint

Mr M had a business loan and current account with Clydesdale Bank Plc and is unhappy about how the bank managed their relationship.

background

I issued a provisional decision in early November, a copy of which is attached below and forms part of this final decision.

Clydesdale accepted my provisional findings, but Mr M did not. He said, in summary, that:

- I haven't sufficiently tested the bank's assertions and have wrongly accepted its version of events over his. For example, he never agreed to adding the overdraft debt to the loan, or to adding the overdraft debt to his loan. I should have made my decision based on fact, not on assumptions and/or what I thought was more likely.
- The way he managed the current account was effective provided there was cash available to pay in and he doesn't recall the bank making the special provisions I described. Having earlier access to telephone and/or mobile banking wouldn't have changed anything.
- He asked for his overdraft facility to be extended for short periods of time to give him some breathing space while he spent time with his wife. This was a difficult time so the bank should have been more sympathetic and agreed to his requests. Later on it did agree to some extensions but, in doing so, it didn't give appropriate consideration to the likely time it would take to sell his business. It was also unreasonable to expect him to discuss his business affairs so soon after losing his wife.
- The charges Clydesdale applied were excessive and compounded an already difficult situation, causing payments to be refused and his suppliers to lose trust in him and his business. No proof has been provided that the bank refunded charges as gestures of goodwill, rather than because it realised it had managed the situation badly.
- Some of the problems he experienced with cash flow were due to him being without a debit card and PIN. I haven't properly considered this aspect of the complaint.
- The bank treated him badly after he complained and lied to both him and this service.

my findings

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

What Mr M has said hasn't changed my mind and I still think, for the reasons set out in my provisional decision, that Clydesdale has done enough in the circumstances. Mr M disagrees and I'm sorry about that, but I don't think it would be helpful to repeat everything I've already said. However, I would say that:

- Mr M has asked for further evidence to support some of my findings. But we've already shared all the evidence I've relied upon, and I'm satisfied I've seen enough from both parties in order to reach a fair and reasonable decision. I have considered everything

that Mr M and Clydesdale have said and provided and, where the evidence is incomplete or contradictory, I have made my decision on the balance of probabilities – that is, I've weighed up the evidence and decided what I think is more likely to have happened

- Although Mr M feels the current account charges have been excessive at times, I remain satisfied that they were applied in line with the account terms and conditions and tariff of charges. And that includes the charges applied when the overdraft was renewed. Banks aren't required to waive all charges and interest simply because an individual or business is in financial difficulty, that's just one of the measures they might consider. But, in any event, a considerable amount of charges has now been refunded and I do believe this was done with a view to helping Mr M improve his business' financial situation.
- I do accept Mr M went through a very difficult time in his personal life which meant that managing his business wasn't always his main priority. But the business did continue to operate – the bank's notes suggest some of Mr M's family stepped in to help at times – and I don't think it's reasonable to have expected the bank to extend the overdraft facility indefinitely and without input from Mr M, given the way the current account and loan were being managed.

Overall, I don't think I can fairly tell Clydesdale to do anything more in this case.

my final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 29 December 2019.

Ruth Hersey
ombudsman

copy of provisional decision

complaint

Mr M had a business loan and current account with Clydesdale Bank Plc and is unhappy about how the bank managed their relationship.

background

In early-2011 Mr M took out a £60,000 loan, secured on his residential property, to help buy a business. A couple of months later the bank agreed to give him a £7,500 overdraft facility on his business current account. The overdraft limit was increased to £10,000 in early-2012 and to £12,000 in April 2015.

The bank's notes show Mr M called in June 2015 to complain about problems over the past 10 months – he said his relationship manager (RM) wasn't helpful, the bank had refused to refund any charges and he wanted to increase his overdraft limit. He's also told us there were some problems around that time with his direct debit and standing order instructions. And his wife was diagnosed with a serious illness, which affected his ability to run the business.

Mr M is unhappy about how the bank handled their relationship after that. He said, in summary, that:

- The bank changed the way he could view his account which meant he could no longer manage the business account effectively because he could no longer see daily transactions.
- The bank applied excessive charges to his account. It has refunded some of those which he thinks means they accept they acted unfairly, even though they've said the refunds were made as gestures of goodwill.
- The bank failed to reinstate all of his direct debit and standing order instructions.
- The bank unfairly withdrew his overdraft facility at various points in time and without warning.
- The bank's actions led directly to two prospective purchasers withdrawing from the purchase of his business.
- His wife was diagnosed with a serious illness which ultimately proved terminal. This meant he couldn't give his full attention to the business, but the bank had little regard for his circumstances.
- He was forced to sell his home in order to repay the loan and overdraft, in August 2017. This could've been avoided but for the bank's lack of understanding and help through what was a very difficult time.

The bank thought it had done enough to support Mr M and didn't agree it had treated him unfairly. Mr M was unhappy with the bank's response, including how it had handled his complaint and asked us to look into the matter in March 2018.

Our investigator didn't think the bank should have done anything differently. But Mr M still disagreed so the complaint has come to me.

my findings

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

Did the bank treat Mr M unfairly when his business was having financial difficulties?

Mr M has said the problems all started in June 2015, around the time he wife's illness was diagnosed. But the evidence the bank has provided suggests the matter went back further than that. On the whole, I think Clydesdale has taken adequate steps to support him. I note in particular that:

- Mr M managed the business account in such a way that he was often close to the overdraft limit, which meant he frequently had to pay in money to cover payments due to leave the account that day. My understanding is that he didn't use telephone or internet banking and relied on information obtained from automated teller machines (ATMs) to keep track of the account balance. This account management method wasn't always effective and the overdraft limit was sometimes exceeded, causing unauthorised charges to be applied. Or payments would be rejected which incurred other charges. In January 2014 a new relationship manager (RM) took over and, it seems, tried to encourage Mr M to use internet or telephone banking to better monitor his account. But he was unwilling to do so at that time. So the RM agreed to put a manual fix in place whereby the bank checked his account throughout the day waiting for money to be credited and pending payments would only be rejected if insufficient funds had arrived to cover them by 5pm. I don't think the bank was obliged to offer this facility so, at that point, it was going out of its way to help Mr M. But don't consider this to have been a sustainable solution in the long-term – bank staff simply don't have the time to spend on such a manual process. It's not clear to me precisely when this arrangement was withdrawn but that seems to have happened by June 2015.
- Mr M says the bank didn't reinstate all of his regular monthly repayment instructions after he asked for them all to be cancelled in June 2015, and he said his RM had been generally unhelpful. But he ended up withdrawing this complaint after the bank refunded a total of £350 worth of charges and explained how to download the mobile banking app and set up text messages in order to be sent an account balance each morning. The bank's notes also record that he refused its offer of a new RM. And, latterly, the bank said it had reactivated all the regular payments but sometimes this also has to be done with the payment beneficiaries. In my experience that does sometimes happen, usually if the beneficiary has tried to call for a payment after the instruction has been cancelled. In the circumstances I think the bank did enough to address Mr M's concerns at that time.
- In July 2015 there seems to have been a conversation with Mr M about refinancing £10,000 of the overdraft onto his loan and perhaps paying off some of the debt through the sale of a vehicle. The bank agreed to extend the overdraft for a further three months to give him time to consider his options. That seems fair in the circumstances.
- In October 2015 it seems Mr M had changed his mind about adding some of the overdraft debt to the business loan – in fact, there's some indication he said to the bank this had never previously been discussed. But Mr M said he was in the process of selling his mother's house to free up cash and reduce the business' debts. He anticipated this completing by the end of December, but the bank thought it best to give some additional time and agreed to extend the overdraft to the end of January 2016. That seems fair in the circumstances. And I also note it was at this point the bank says it first realised Mr M's wife was terminally ill.
- Mr M says the overdraft was unfairly withdrawn in January 2016 and this caused problems with his suppliers. I understand he still needed the £12,000 overdraft facility at that point because the expected house sale hadn't gone through, so he hadn't been able to reduce the business' debts in the way he'd originally envisaged. That's unfortunate, but I think he was given fair warning about when the facility would expire and I've seen little which suggests he contacted the bank to explain the change in circumstances and discuss a further extension. Such extensions had been agreed in the past and another was agreed in February 2016, despite the fact the loan was in arrears at that time too. I think the bank acted fairly at this point. I do note the copy facility letter the bank has provided from February 2016 says the overdraft had been approved until September 2016, but that doesn't match with what the bank's internal notes say. They indicate it was approved for just two more months to give Mr M time to bring the loan repayment up-to-date and agree what the next steps were. And I think it's more likely than not, given the subsequent correspondence, that Mr M understood this too.
- It seems the bank approved further extensions to the overdraft in April and again in June 2016 – at which point it was scheduled to run until the end of September 2016. Later in June, Mr M appears to have called to complain about the charges applied to the business account which he

felt were excessive. At that point the bank refunded £1,995 on top of some other charges that had already been refunded. The bank's notes say it refunded those charges as a gesture of goodwill, in recognition of Mr M's difficult situation with his ailing wife and in the hope that doing so would regularise the position. In effect, I think the bank did this to try and help Mr M get on top of things, give him further time to make a sustainable plan for the future and, in the meantime, avoid further charges resulting from exceeding the overdraft limit. Mr M has suggested that a large refund of charges should have been paid to his loan rather than the current account and I think he's referring to this payment. The bank dispute his assertion and I can see a couple of large debits left his account the same day the refund was applied to the current account. Had the money been credited to the loan instead, those two debit payments might well have been refused. I don't think the bank acted unreasonably here.

- Internal discussions at the bank appear to have taken place in August 2016 with a view to getting plans in place with Mr M ahead of the overdraft facility expiring at the end of the following month. But, sadly, Mr M's wife passed away that month. So the bank decided to give him some breathing space and pick things up again toward the end of September 2016. That seems fair in the circumstances.
- Mr M says that in October 2016 the bank reinstated his full account view so he could once again see daily transactions. He says this facility had been withdrawn around June 2015. But he hasn't provided any evidence to support his assertions and the bank says it didn't make any such changes. From the bank's notes it seems that they tried to encourage him to use alternative, more accurate ways to manage his account – telephone or internet banking – which he refused at first but then did take up in June 2016. I don't think the bank should've done more here.
- The bank extended the overdraft again in October 2016 and refunded a further £725 of charges. Some internal notes from December 2016 indicate the bank wanted to get some plans in place but was conscious of Mr M's difficult situation, having lost his wife not long ago. It appears the bank tried to contact Mr M by phone and letter but he didn't get in touch until mid-January 2017. At that point he advised a property sale had been agreed and was expected to complete in May 2017. The bank's notes indicate it then had trouble getting hold of Mr M again, with phone messages not being returned. But contact was made in mid-February 2017 and in March the bank wrote to Mr M to confirm their agreement. This was to extend the overdraft facility until the end of October 2017 to allow time for the business to be sold. But the bank also confirmed it needed monthly updates from Mr M about the sale, because loan payments had been missed and the current account balance exceeded the overdraft limit. The bank also agreed to refund a further £905 of charges. This related to Mr M having had problems managing the current account because he had been without a debit card – apparently the bank had sent several but these had not reached Mr M. The bank also made arrangements to send the replacement debit card to a nearby branch to ensure it reached Mr M. All of this seems fair in the circumstances.
- It doesn't look like Mr M kept the bank updated in the way it had requested. And in May 2017 the current account balance stood at over £14,000. It seems to me that the bank was allowing him to exceed the overdraft limit as a relatively short-term measure with the anticipation that things would be rectified once the business sale completed. Which seems fair in the circumstances. By June the plan to repay the business' debts seems to have changed and Mr M then hoped to do so by selling his own home. It was around this time that Mr M raised his complaint about the way the bank had treated him.
- In August 2017 the overdraft and business loan were repaid in full. The overdraft facility was withdrawn and the account was kept in credit for some months although I understand it may now be overdrawn again.
- I've seen nothing to suggest any charges were applied outside the terms and conditions of the account. And the bank wasn't obliged to refund all charges and interest simply because Mr M was experiencing financial difficulties with regards to his business. But I note, as set out above, that the bank has refunded significant amounts of charges at various points in time.

- The bank has provided copies of overdraft facility letters that it says were sent to Mr M over the course of their relationship. The bank hasn't been able to provide signed copies of all those letters but says these were sent automatically when the facility was agreed/renewed. I have little reason to doubt that. I have also seen three letters (from 2011, 2014 and 2015) that Mr M did sign and these confirm such things as, the overdraft facility term or expiry date, that it was repayable on demand and that Mr M should seek independent advice before accepting the facility. I think it's more likely than not the bank did send letters each time the overdraft was renewed which told Mr M when the overdraft would be due for review and, potentially, for repayment. So I can't agree with him that the bank withdrew the overdraft facility without warning.

I appreciate, given his wife's illness, that Mr M wanted to spend time with her and the running of business might not have been his main priority at all times. But I also understand, given the way the accounts were being managed, why the bank wanted to keep in touch and agree a way forward. I don't think it's reasonable to expect the bank just to keep extending an overdraft indefinitely and allow loan arrears to build up. I say this, not least, given the bank's obligations under the lending code, which include the requirement to "*work positively with a customer to support a lasting solution for a successful running of the business.*" But I would also note that requirement can usually only be fulfilled if the customer keeps the bank informed of development, keeps to any agreements and is prepared to make necessary changes.

Overall, I don't currently think the bank treated Mr M unfairly or failed in its duty to act positively and sympathetically given the financial difficulties he was having with his business. With that in mind, I don't currently think it's reasonable to expect the bank to refund all the charges incurred since June 2015 (up to the time Mr M brought his complaint to this service) or pay any other compensation.

Can the bank be blamed for the sale of Mr M's business falling through?

I've considered carefully the statement Mr M provided from the first prospective purchaser. He said his main concerns came after viewing the account statements for the first quarter of 2016 when he saw a lot of charges being applied and that the overdraft facility had been withdrawn. And he concluded from this that the business might not be able to trade for much longer which might mean he'd be able to buy it at a later date at a reduced price.

I don't think it's unusual for a prospective purchaser to look at a business' accounts in order to decide whether it is a viable venture and a good investment, representing value for money. I've already explained that I don't think the bank acted unreasonably, that charges weren't applied unfairly or that it was wrong of the bank to withdraw the overdraft facility when it did. So while those things may have affected the purchaser's decision to buy, I can't say it was the bank's fault the purchase didn't go through.

I've seen little evidence relating to the second purchase or why that wasn't successful. So, equally, I can't hold the bank responsible for that.

In the circumstances, I can't fairly tell the bank to pay the losses Mr M has claimed.

Did the bank act disingenuously when handling Mr M's complaint?

Mr M has expressed concern with the way the bank handled his complaint and with the way it has communicated with this service. But I think the bank genuinely tried to address his concerns and explain why it had taken the action it did. And I've currently seen nothing which supports his assertion that the bank deliberately tried to mislead us.

my provisional decision

My provisional decision is that I don't uphold this complaint.