

complaint

Mr M and Mrs M complain on behalf of J, a partnership. They say Clydesdale Bank Plc made the partnership incur unnecessary costs and its actions were unreasonable.

background

J was experiencing cash flow problems from early 2015. It approached Clydesdale for support. Clydesdale agreed to increase J's overdraft limit from £350,000 to £400,000 as a temporary measure.

In late 2016, Clydesdale reduced the overdraft to £380,000. Mr M and Mrs M say this put increased financial strain on the partnership. J was in the process of trying to sell two properties in order to pay the debt it owed Clydesdale. And Mr M and Mrs M feel Clydesdale's decision to reduce the overdraft was unfair in the circumstances. They say this resulted in a number of additional charges on the partnership account which increased their financial difficulties.

The partnership had signed a standard security agreement with Clydesdale in 2002. But in 2016, Clydesdale told J it needed to renew the security, because there had been a change in partners since the original agreement was drawn up. J's solicitor didn't think the security needed renewing and that doing so would incur unnecessary costs. So Mr M and Mrs M didn't agree to renew. Clydesdale explained it couldn't continue to provide banking facilities to J unless the security was renewed.

Mr M and Mrs M feel that Clydesdale acted unfairly and aggressively in putting further, unnecessary financial strain on J. They say Clydesdale forced them to bank elsewhere and gave them only a short period of time to make other arrangements. They also complained about an excessive fee applied to an overdraft renewal in 2017 and that once the two properties were sold, Clydesdale retained the surplus after the overdraft was cleared.

Clydesdale didn't think it had done anything wrong. It said it had received independent legal advice that the security needed to be renewed. And J had already signed a waiver to say it would pay Clydesdale's legal costs to do that. It said the overdraft increase was a temporary measure and despite giving lots of breathing space, J hadn't been able to start paying off the increased debt. It did however accept that it had incorrectly bounced some direct debits.

Clydesdale agreed to refund £500 of charges applied to the partnership account as a gesture of goodwill. It said because J wasn't prepared to renew the security and there were ongoing concerns about the financial stability of the partnership, it had explained that J would have to repay all existing debt. It said it gave sufficient notice and even agreed to extend the partnership's overdraft by several months beyond the original date it gave.

Our investigator didn't recommend the complaint be upheld. He thought Clydesdale had been clear and upfront about its concerns involving the overdraft borrowing. He thought its decision to withdraw banking facilities was fair and that Clydesdale had charged the correct fees on the account. He also thought Clydesdale were entitled to retain the surplus from the property sales as this was used to reduce other debt J held with Clydesdale.

Overall, he thought Clydesdale could have been more sensitive to J's struggles in finding a new bank but he was satisfied the £500 compensation from Clydesdale was fair in the

circumstances. Lastly, he said Clydesdale was entitled to request for the security to be renewed.

Mr M and Mrs M accepted the investigators findings on all but one point – the renewal of the standard security. They say J was already struggling financially and this renewal brought further unnecessary costs, creating a larger strain on the partnership. They say Clydesdale bullied them into agreeing the renewal. They said they were assured by Clydesdale the only reason for the renewal was because of a change in partner names. And that the renewal would only cost J £750 in solicitor fees. When they discovered it would cost a lot more and their own solicitor said it wasn't necessary they challenged Clydesdale.

They say Clydesdale didn't give them any further explanation about why the renewal was needed. Mr M and Mrs M say J's solicitor also approached Clydesdale's solicitor about why the security was needed and was told they were only acting on the bank's instructions. For this reason, Mr M and Mrs M feel Clydesdale didn't receive any legal advice about the security.

Our investigator was still of the view that Clydesdale were entitled to ask for renewal of the security to protect their position. So Mr M and Mrs M asked for a final decision from an ombudsman, solely on this one complaint point.

my findings

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

Mr M and Mrs M initially raised several complaint points with our service which I've detailed above. As they have accepted our investigator's findings on all but one point (and have asked for a decision only on that one point), my decision will only focus on the renewal of the standard security.

The crux of this dispute centres around whether the renewal of the security was necessary. Clydesdale says the legal advice it received said it was, J says the legal advice it received said it wasn't. But it isn't my role to decide which solicitor gave the correct advice. Instead, my role is to decide whether Clydesdale acted fairly in asking for renewal of the security based on the information it had. From everything I've seen, I think it did act fairly. I'll explain why.

Clydesdale says it received independent legal advice that the security needed updating. Mr M and Mrs M doubt that it did get any advice because Clydesdale won't share it with them and because of what J's solicitors told them. I'll deal with each point in turn.

Clydesdale asked J to sign an indemnity in 2015. This was to agree to Clydesdale's solicitors conducting a review. The partners of J signed the indemnity agreeing to the fee. Clydesdale's solicitors then carried out the review and Clydesdale say they found some concerns with the security. So Clydesdale asked the partners of J to sign another indemnity in 2016 to cover Clydesdale's legal costs in renewing the security. The partners signed this indemnity too. They've said they were bullied into doing this, but I've not seen anything to persuade me that was likely to be the case. Overall, I think this timeline of events does support that Clydesdale initially sought advice, likely got it and then acted on it.

Mr M and Mrs M have referred to an email they received from J's solicitor. The email says: *"I called the bank's solicitor and they couldn't tell me why the bank wanted fresh security...They are just acting on the bank's instructions."* But I don't agree this supports the point Mr M and Mrs M have made. What J's solicitor has said doesn't demonstrate that Clydesdale didn't receive legal advice. It only shows that Clydesdale instructed their solicitors to renew the security and the solicitor wasn't willing to discuss why. Just because Clydesdale instructed their solicitor it doesn't mean they didn't receive advice on the matter first.

I've also read the remainder of the email from J's solicitor. J's solicitor doesn't definitively say that the security isn't needed (although I accept that advice may have come later – but J hasn't provided it) and instead is just unclear on the reason why it might be. J's solicitor suggests Mr M and Mrs M challenge Clydesdale on this first before agreeing to renew.

Mr M and Mrs M say they did this on several occasions and this appears to be supported by some of the contemporaneous evidence. But despite that Clydesdale insisted the security needed to be renewed. Clydesdale says they were relying on legal advice they'd received and I've no reason to doubt that from everything I've seen. Whilst I appreciate this was going to put further financial pressure on J, Clydesdale are entitled to ensure they had adequate security in place.

Although Mr M and Mrs M have explained why they feel Clydesdale's request to renew was unfair and unreasonable, they haven't provided anything that would persuade me that Clydesdale were wrong to rely on any legal advice they say they received. There is clearly a very strong difference of opinion here, but from everything I've seen, I can't reasonably say Clydesdale acted unfairly.

my final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M, on behalf of J to accept or reject my decision before 21 January 2019.

Tero Hiltunen
ombudsman