

complaint

Mr M and Mr N complain about the way Barclays Bank Plc has administered their business bank account and that it has recorded adverse information on their personal credit files.

background

Mr M and Mr N are partners in a business ("the partnership") which ceased trading in November 2009.

At that time the partnership's account was overdrawn although there was no agreed overdraft limit. The history of the account shows previous unauthorised overdrafts were a feature of the account. Mr M and Mr N do not believe the bank should have paid items on the account when there was no agreed overdraft arrangement. They have also said they tried unsuccessfully to move the payments due on the account to a third party company account, but the bank refused to do this.

The partnership vacated its business premises and Mr M and Mr N say they advised their relationship manager of this. But an internal bank note, dated 3 December 2009, says that Mr N told Barclays that the partnership was no longer trading. He also said he had recently cancelled the regular payments on the account, could not offer any repayment proposals but was aware recovery action would follow.

The partnership's address was not changed by the bank and all correspondence about the debt, including the default, continued to be sent by it to the last notified address it had on record.

Mr M and Mr N say that it was only when credit was refused to them that they were aware of the debt and the default which the bank had registered. They dispute the balance outstanding and want their credit files to be amended.

Our adjudicator did not recommend that this complaint should be upheld. In summary she considered that:

- Mr M and Mr N had not been able to provide anything to show they advised Barclays earlier than 3 December 2009 that they had ceased trading. There was no evidence they had done so in November 2009 as was suggested. They may have told their factoring company but she did not expect that it would have told the bank.
- They were also unable to evidence any request to change their correspondence address, to transfer payment instructions to a third party company or cancel the direct debit instructions on the partnership account.
- The partnership account had featured an unauthorised overdraft fairly regularly in the past and the bank had a commercial right to decide on whether, and if so on what terms, it wished to lend.
- No correspondence sent out by Barclays to the partnership's address had been returned undelivered by the post office. So the bank had no reason to believe Mr M and Mr N were not aware of the debt and the actions the bank was taking. Furthermore, Mr N had made it clear in his discussion with the bank on

3 December 2009 that he was aware of the debt and that recovery action would follow.

- The bank was not wrong to record the default on the partners' credit files.
- But Barclays should not have paid the items presented after 3 December 2009 when it has been told the partnership had ceased trading and it should refund the direct debits paid after that date until the account was closed. Barclays has subsequently agreed to refund those payments.

Mr M and Mr N do not agree with the adjudicator's opinion. In summary they say that Barclays is equally responsible for the partnership's debt as it should have stopped paying all direct debits earlier. They are also unhappy that it did not confirm the sum claimed to them and say they have never been given the opportunity to review it. They say the bank had a valid contact address for them for correspondence and as it cannot provide a signed and validated copy of its notice to default this proves the document was never issued. They consider Barclays has unfairly penalised them.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Mr M and Mr N have provided detailed submissions to support this complaint, which I have read and considered individually in their entirety. But my findings are expressed in considerably less detail and focus on what I consider to be the central issues.

Having done so, I agree with the conclusions reached by our adjudicator for broadly the reasons given.

In this case Barclays has explained it made the decisions to allow payment of a number of direct debits on the partnership account, notwithstanding the fact that it had not agreed to an authorised overdraft facility on the account. It says it did so as it considered that refusing payment of them would have been detrimental to the partnership.

While Mr M and Mr N may disagree with the bank's reasoning and decisions, these are matters of the bank exercising its commercial judgement, in which we would not normally interfere and I consider the bank was entitled to act as it did.

I am satisfied on balance that Barclays took reasonable steps to bring the state of the account to Mr M and Mr N's attention. I find that it was entitled to write to them at their last notified address and I am not persuaded, on balance, that they ever told the bank of a new address as is suggested or arranged for post to be redirected. I am also satisfied that this correspondence, more likely than not, included notice of the bank's intention to record a default.

In any event, I am satisfied that Mr N was aware of the outstanding debt and possible future bank action when he spoke to the bank on 3 December 2009. I also note that Mr M and Mr N had access to online and telephone banking. As such I consider they had ample opportunity to monitor their account and discuss any alleged discrepancies in the charges with the bank if they had chosen to do so.

Furthermore, as partners in the business, Mr M and Mr N are both jointly and severally personally liable for the partnership's debt and so I consider the bank's recording of the default on their personal credit files is an accurate record of the account's conduct.

Consequently, I am not persuaded that Barclays has done anything wrong in its handling and recording of the debt and default, or that it has unfairly penalised them as is suggested.

Nevertheless, I do consider that it is fair and reasonable that the bank refunds the various direct debits made after it was told on 3 December 2009 that the partnership had ceased trading and adjusts the interest applied to the account accordingly. The bank has confirmed this amounts to a total refund of £286.58 including interest adjustments. I am also not persuaded that the bank has otherwise wrongly applied charges to the account as has been suggested.

Overall, I see no compelling reason to change the proposed outcome in this case.

my final decision

My final decision is that I uphold this complaint in part. In full and final settlement of it I order Barclays Bank Plc, if it has not already done so, to refund the sum of £286.58 to Mr M and Mr N's partnership account.

Stephen Cooper
ombudsman