

## **complaint**

G complains Clydesdale Bank Plc mis-sold it a tailored business loan because it didn't want to fix the interest rate and didn't understand the terms and conditions. It says the agreement kept being amended when it wanted to borrow money and it lost out as a result.

Later on Clydesdale told it to repay its borrowing but it couldn't because there was a break cost it couldn't afford. It says Clydesdale agreed to accept an offer in full and final settlement of the debt but then went back on that. And it's unhappy with the fact Clydesdale appointed and registered receivers and then was slow to remove the registration of them.

## **background**

G is a limited company. It took out a loan of £480,000 in April 2007. This was for a term of 15 years and the interest rate was fixed for 10 years – until April 2017. At that point it was a rate of 5.75% plus a margin of 1.5%.

This borrowing was increased twice – in December 2010 and December 2011 – to £550,738 and £677,968 respectively. On both occasions, a new agreement was drawn up to replace the first one. The date the fixed rate was due to end didn't change – this remained April 2017. But the rates did change – first to a rate of 5.29% plus a margin of 2.25% and then to a rate of 4.62% plus a margin of 3%.

G was later asked to repay all of its borrowing. It contacted Clydesdale in May 2013 saying it could get together £704,000 to repay its loan and overdraft but it wouldn't be able to afford the break cost for the loan. Clydesdale replied saying it would put the £704,000 offered towards the debt but it wouldn't write it off.

Receivers were appointed in October 2013 and G brought a complaint to this service. It seems Clydesdale agreed to accept £704,000 in full and final settlement of G's debt at that point – in January 2014. G's solicitor responded accepting the offer if the £35,690 G had paid since making the offer in May 2013 was deducted. But Clydesdale didn't agree to this. So no settlement was reached.

Clydesdale therefore carried out an investigation into G's complaint and issued a final response letter. It said the initial loan required G to protect the interest rate but it accepted a five year fixed rate would've been more suitable than the 10 year one G was given. It therefore offered to put G in the position it would've been in if it'd fixed the interest rate on the first loan for five years and drawn down later borrowing at a variable rate.

I issued a provisional decision. In summary, I was satisfied the two parties hadn't reached an agreement on writing off the debt and so it was right that Clydesdale had investigated the sale of the loan. I was satisfied Clydesdale's offer to reduce the term of the fixed rate to five years with later borrowing being on a variable rate was a fair and reasonable reflection of what G might've done if everything had happened as it should. And I was satisfied Clydesdale was entitled to increase the lending margin; call in G's borrowing; and appoint receivers in the circumstances. It also seemed as though the removal of the registration of the receivers had been attempted at the correct time.

Clydesdale responded to say it was happy to settle on the terms outlined in my provisional decision. G's representative responded to say it didn't accept my provisional decision. In summary it said:

- This is a simple contractual issue of offer and acceptance. In January 2014, Clydesdale accepted G's May 2013 offer of £704,000 to write off its debt – including the break costs that were due. It didn't make its acceptance conditional on ignoring the payments G had made to the debt since the offer. And so it's legally obliged to deduct these.
- Clydesdale had made a decision to not lend to businesses in the market G was in any longer. It then used its "*financial muscle*" against G to call in its debt and achieve this aim.
- After having withdrawn the receivers Clydesdale failed to respond to G's requests for the registration on Companies House to be removed. This meant other lenders weren't prepared to support G.
- Clydesdale has said it'll deduct £967.62 from the compensation. It initially said this was a "*break cost due for alternate loan*" but now says it's "*in respect of accrued interest that would have amounted from the previous roll date of 07 May 2013 up to 23 May 2013 which is the date the customer broke the loan*". As it's not clear what this deduction is for, it shouldn't be allowed.

## my findings

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

### *the offer of £704,000 in full and final settlement*

I've thought about G's response to my provisional decision carefully. I understand why it feels Clydesdale should be required to accept £704,000 less £35,690 in respect of the outstanding debt. But I don't agree. I think Clydesdale had simply decided it was prepared to accept £704,000 to settle the debt in January 2014. At that point it effectively made an offer to G. G went back to it to check an assumption it'd made about the repayments made since May 2013 being deducted. And Clydesdale said it wouldn't agree to that. There therefore wasn't agreement on the terms of the settlement.

### *the first loan – April 2007*

G hasn't provided any additional comments or evidence in relation to the first loan. I'm therefore still satisfied it was a condition of that loan that G protect the interest rate. And that this was within Clydesdale's commercial discretion. But I'm also still satisfied that G probably wasn't given enough information about the break costs that could be incurred if it exited early.

Taking everything into account, I think Clydesdale's offer to put G in the position it'd have been in if it'd taken a five year fix instead is fair. I say this as it would've allowed G to still have certainty of rates but with far more flexibility.

### *the later increases to borrowing*

Again, G hasn't provided any additional comments or evidence in relation to the later increases to borrowing. I'm therefore still satisfied Clydesdale's offer to put G in the position

it'd have been in if that later borrowing hadn't been fixed and instead had been at a variable interest rate is fair.

This means the original loan wouldn't have been broken and this later borrowing would simply have been taken out as separate loans. G therefore wouldn't have incurred any break costs when borrowing more later on. Clydesdale says break costs weren't always incurred anyway, but where they were, I'm satisfied it's fair for these to be refunded.

I'm also still satisfied it's fair and reasonable for Clydesdale to pay compensation based on the lending margin having changed when it says it would've. With this kind of tailored business loan, the interest rate is fixed but not the lending margin. And Clydesdale says it only increased the lending margin each time G borrowed more money later.

#### *Clydesdale's decision to not continue lending to G*

I appreciate that G feels it was treated unfairly when Clydesdale called in its debt. But as set out in my provisional decision, it seems G had broken the terms and conditions of its borrowing. And in these circumstances, and taking everything into account, I'm still satisfied Clydesdale acted reasonably in calling in the debt. I don't think it's relevant whether or not it would've made the same decision if it was still providing new lending to businesses in that market.

#### *the appointment of receivers*

I'm still satisfied Clydesdale was entitled to appoint receivers and register this on Companies House. In relation to the removal of the registration of receivers, Clydesdale has provided me with an email chain that confirms the receivers told Companies House when they resigned. It therefore seems the error wasn't Clydesdale's. G says it was regularly chasing Clydesdale about the removal, although it hasn't provided any evidence of this. But even if Clydesdale did do something wrong, it seems most likely to me that it wouldn't just have been that issue that was preventing G from moving to a new lender – the outstanding debt with Clydesdale would've also been a significant hurdle. And so I wouldn't be able to safely conclude any shortcomings in Clydesdale's actions caused G a loss.

#### *Clydesdale's compensation calculation*

My provisional decision said Clydesdale can deduct from the compensation any break costs that would've been owed for the variable rate lending being broken. Clydesdale says that under the replacement products there's a gap between the last set of interest that would've been charged (7 May 2013) and when the loan was broken (23 May 2013). And it's calculated this to be £967.62. It's described this as a break cost. But really it just seems to be further interest G would've paid under the replacement product. And in these circumstances I'm satisfied Clydesdale's entitled to deduct it.

#### **my final decision**

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £150,000, I may recommend the bank to pay the balance.

*determination and award:* I've upheld G's complaint in part. I consider that fair compensation requires Clydesdale Bank Plc to carry out the steps I specify below. I order the bank to do this – up to a maximum financial effect of £150,000.

*recommendation:* if the financial effect of any award exceeds £150,000, I recommend that Clydesdale Bank Plc still carry out in full the steps I specify.

This recommendation won't be part of my determination or award. It won't bind the bank. It would be unlikely that G can accept my decision and go to court to ask for the balance. It may want to consider getting independent legal advice before deciding whether to accept my decision.

#### *the specified steps*

Clydesdale Bank Plc should put G in the position it would've been in if a five year fixed rate had been agreed in April 2007 and later borrowings had been taken out at variable interest rates. It says the interest rate available for a five year fix in April 2007 would've been 5.93% plus the lending margin. And that the lending margin would still have changed when it did to the rates it did. This means:

- In relation to the first five years of the first loan – Clydesdale Bank Plc should pay G the difference between the payments it made under the 10 year fix and what it would've paid under a five year fix. If the payments would've been more for the five year fix, these can be deducted from the compensation.
- In relation to the period of time after the first five years of the first loan and the later borrowings – Clydesdale Bank Plc should pay G the difference between the payments it made under the fix and what it would've paid with the variable interest rate and relevant lending margin at the time.
- Clydesdale Bank Plc should refund any break costs paid by G when it blended break costs into the later borrowing.
- The break cost previously quoted for breaking the fixed loan won't apply because the break happened after a five year fix would've finished. But Clydesdale Bank Plc can deduct any costs that would've been owed for the variable rate lending being broken.
- Clydesdale Bank Plc should pay G compensatory interest of 8% simple per year\* on each reimbursed payment from the date it was paid until the date of settlement.

\*If Clydesdale Bank Plc believes it's legally required to deduct tax from this interest, it should send a tax deduction certificate with the payment. G may then be able to reclaim any tax overpaid from HMRC, depending on the circumstances.

I understand Clydesdale Bank Plc intends to use this compensation to reduce G's loan debt. I also understand G had some questions about the figures produced when this calculation was done. We don't normally ask for detailed redress calculations but if it chooses to accept this decision and then has queries about the calculations, it can raise those with Clydesdale Bank Plc at the time.

Under the rules of the Financial Ombudsman Service, I'm required to ask G to accept or reject my decision before 4 December 2015.

Laura Layfield  
**ombudsman**