

complaint

Mr T complains that Clydesdale Bank Plc has made mistakes in the way it has managed his mortgage account. He complains that Clydesdale:

- has been recording his mortgage as being in default, even though he was discharged from bankruptcy in 2011;
- didn't do enough to help him in his financial difficulty;
- should have stopped the trustee of bankruptcy from taking possession of his property in 2018.

Mr T says that Clydesdale's incorrect reporting on his credit file has stopped him from being able to move on with his life. He says it's caused him to lose out on buying his dream home and it's caused him considerable suffering.

background

In 2008 Mr T took out a mortgage with Clydesdale having received advice from a mortgage broker. He borrowed around £730,000 on an interest only basis over 13 years.

Mr T soon fell into arrears with his mortgage payments. In 2009 he was declared bankrupt. In 2011 his bankruptcy was discharged. As part of the bankruptcy, it was agreed that Mr T could keep the mortgaged property as a residential address. Clydesdale agreed to this, and Mr T continued to make monthly payments of interest.

In 2017, the trustee in bankruptcy sought consent to sell Mr T's property through the courts and this was agreed. Mr T had to leave his property. In December 2017 Mr T's solicitor wrote to Clydesdale. Mr T's solicitor explained that he'd soon be forced to move out of the property and that he planned to stop making interest payments at the point he moved out.

From February 2018 Clydesdale started reporting that Mr T was in default on his mortgage on his credit file. Mr T says he found out about this when he tried to arrange a new tenancy. He complained about to Clydesdale about this.

On 9 August 2018 Clydesdale gave its final response. It said it didn't think it had made a mistake and that Mr T should be maintaining payments on his mortgage. If he didn't, it said it was right to report this on his credit file as this was a true reflection of his mortgage conduct. It didn't think it has treated Mr T unfairly in his financial difficulties over the years, and it said it wasn't Clydesdale's place to have prevented the trustee from taking possession of Mr T's property.

Mr T brought his complaint to us. Our investigator thought Mr T's complaint should be upheld. He thought Clydesdale was no longer able to record any default on Mr T's credit file following his discharge from bankruptcy. He thought Clydesdale had caused Mr T considerable trouble and upset through its mistake. Our investigator thought Clydesdale should pay Mr T £1000 for the impact its mistake had had on Mr T.

Clydesdale thought our investigator's award was too high. It said it hadn't known that Mr T was discharged from bankruptcy until 2017.

Mr T replied to say he thought the compensation awarded was too low. He thought a figure of around £50,000 was more appropriate considering the impact this has had on him. Mr T says Clydesdale's mistake had stopped him being able to get on with his life. He's suffered from mental health problems as a result and he's been unable to rent a property or work. He's said he is still considering taking this matter to court.

Both parties wanted an ombudsman to look at the case again and reach a final decision.

my provisional findings

On 28 May 2019 I issued a provisional decision saying:

"I'm sorry to hear that Mr T has had such a difficult time over the past decade or so. I don't doubt how strongly he feels about this complaint and how deeply his financial problems have affected him. I've thought very carefully about Mr T's complaint, and determining as best I can what the impact of Clydesdale's mistakes may have been on Mr T.

I agree with our investigator that there was no need for Clydesdale to record a default on Mr T's credit file in 2018. Mr T stopped making payments having handed the property to the trustee. Mr T's solicitors had given Clydesdale notice of this happening and I've seen the letter dated 14 December 2017 that updated Clydesdale with Mr T's situation. While Clydesdale has said it didn't previously know that Mr T had been discharged from bankruptcy in 2011, it would have done from this point. It still knew in advance of the default it started to record from February 2018 on Mr T's credit file.

Clydesdale now seems to be in agreement that it didn't need to record this default so I won't repeat our investigator's reasoning for this here.

What is still to be determined is what impact this mistake had on Mr T and what financial compensation should be awarded in respect of this. Both parties were unhappy with our investigator's proposed figure of £1,000 for trouble and upset caused to Mr T.

Mr T's explained how difficult things have been for him in recent years. I've also thought about Clydesdale's decision not to take possession of his property and force the repayment of the mortgage in 2009 when Mr T was declared bankrupt. It may have been that there were a number of motivations for Clydesdale not calling in the mortgage debt at that point in time - but its decision did allow Mr T to remain in the property for a further eight years until a third party took legal action. Until that point I think Clydesdale had showed a reasonable degree of forbearance in allowing the arrangement (now informal following the discharge of bankruptcy) to continue.

Other factors forced Mr T to leave his property. That process and the parties involved are not something I need to determine here. However, I think it's important to note the wider circumstances in this case. I'm satisfied that Clydesdale is not responsible for Mr T losing his property and the problems that have flowed from this.

Clydesdale's mistake is that it started to record a default on Mr T's credit file from February 2018 when it shouldn't have. It also started to send letters to Mr T saying his mortgage was in arrears and that he needed to make his mortgage payments.

Mr T's said that because of Clydesdale's actions he hasn't been able to buy another property. He's provided information about the buildings he planned to buy. It seems that Mr T was planning to purchase property as part of a property development scheme. The funding for the scheme fell through. I'm not persuaded from the information provided to me that this was solely due to an administrative error by Clydesdale in the way it was recording mortgage debt on Mr T's credit file. Mr T's also said that a significant deposit was lost but again I don't think this is clearly attributable to Clydesdale's error.

I've looked at the copy of Mr T's credit history that he's provided to us. I think there are a number of other entries on this credit file over the years that may have caused concern for potential creditors and/or parties selling property. I don't think there's sufficient evidence that it was solely Clydesdale's error that has had an adverse impact on Mr T's ability to get credit. It may have been a contributory factor, but even without this error, I'm not persuaded that the funding and the venture itself would have gone ahead.

I agree that Clydesdale's mistake has led to upset and inconvenience to Mr T. However, as I've said, my provisional finding is that I don't think it would be fair to hold Clydesdale solely responsible for Mr T's wider suffering and hardship. I think a more reasonable payment of compensation in this case would be £300.

Mr T needed to pursue his complaint to get Clydesdale to change his credit history. But I think Clydesdale's mistake is one of a number of factors (of varying significance) that has led to the undoubtedly difficult situation that Mr T finds himself in."

responses to my provisional decision

Mr T replied to say he was absolutely not happy with the compensation I had awarded and he felt I didn't value his life. He's said that he plans not to accept my decision so he can pursue the matter in court.

Mr T said Clydesdale had sent further arrears letter. But it had also been in touch to try to reach an agreement under which Mr T could move back into his property if he pays the outstanding mortgage payments.

my findings

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

I can see why Mr T is so disappointed with the compensation that I'd considered was fair in the circumstances. I'm conscious that Mr T was very unhappy with the higher award initially proposed by our investigator because he'd hoped to receive around £50,000. I'd like to reassure Mr T that my award makes no judgement as to what value I place upon Mr T's life. The awards that we typically make are more modest than Mr T may have hoped. Further information on how we determine awards to compensate people for trouble and upset caused by a business' mistakes is available on our website. There are some examples given of the level of awards made in various types of complaints. However, I'd like to reassure Mr T that each case is determined on its own merits, and any award is carefully considered in the specific circumstances of each complaint brought to us.

I've given further thought to everything Mr T's said. I've also taken into account Clydesdale's recent proposal to let Mr T move back into his property if he repays the mortgage arrears.

Overall, having reconsidered all aspects of this complaint, I've decided not to depart from my earlier provisional findings. I still believe that there are a number of factors that have led to Mr T's current situation. The issue I've considered in this complaint against Clydesdale is the reporting on Mr T's credit file from February 2018. For the trouble and upset caused by that mistake, I consider Clydesdale should pay Mr T £300 of compensation.

Mr T is correct that if he accepts my decision it will become legally binding. He may choose not to accept my decision if he wishes to pursue the same matter in court.

my final decision

My final decision is that I uphold this complaint against Clydesdale Bank Plc.

I direct Clydesdale Bank Plc to pay Mr T £300 in full and final settlement of the matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 12 July 2019.

Emma Peters
ombudsman