

complaint

N, a limited company, complains that Clydesdale Bank plc sold its debt to an unregulated lender. It says this was in breach of the account terms and conditions and relevant laws and regulations. N is represented by its director, who I'll call Mr P. It asks for compensation.

background

N had business accounts with Clydesdale. In mid 2015 Clydesdale sold the debt owed by N. Mr P says Clydesdale didn't comply with the terms and conditions of the accounts. He says it didn't carry out proper checks before agreeing to the sale and hasn't provided copies of the undertakings it says were provided by the purchaser.

Mr P also says by selling the debt to an unregulated lender it took away N's right to complain to the regulator and this service. He says Clydesdale shouldn't have sold transactional current accounts to an entity which doesn't have a banking licence.

The adjudicator didn't recommend that the complaint should be upheld, saying:

- The terms of N's account allow Clydesdale to sell the debt the way it did.
- The debt wasn't regulated in the UK. This didn't change when it was sold.
- The agent appointed by the purchaser to recover the debt is regulated for debt collection activities in the UK so N can raise complaints about this.

Mr P didn't agree. He said Clydesdale acted unlawfully. He said the purchaser didn't meet the requirement in the account terms to be "regularly engaged" or "established" as a buyer of debts. Mr P says this service has already ruled that we don't have jurisdiction over the UK agent as it acts as agent, not lender. Mr P says the sale of N's current accounts is illegal and removed N's right to complain about the accounts. He says all the correspondence from Clydesdale confirms it sold the current accounts. He also says the closure of the accounts when the debt was sold proves this.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Mr P feels strongly about what's happened. But I don't think Clydesdale did anything wrong.

The terms of N's accounts say Clydesdale can transfer its rights, benefits and obligations to an entity that's regularly engaged in or established for the purpose of purchasing debts, or to any other person. I think the debt purchaser falls within this description.

I think the correspondence from Clydesdale is clear that while the debt, and the right to recover it, was sold, operation of the current accounts remained with Clydesdale. I don't think Clydesdale's decision to close the accounts is inconsistent with this.

The purchaser appointed an agent regulated in the UK to recover the debt. N can bring a complaint to us about the agent, subject to our rules.

Clydesdale says it did checks and received undertakings from the purchaser. Mr P would like copies of the transfer agreement and the undertakings. I don't think it's reasonable to require Clydesdale to provide information to N which is commercially sensitive.

Ultimately Mr P's question about whether the sale of the debt is legal and in accordance with the account terms can only be decided by a court. But, based on the available evidence, I don't find Clydesdale's interpretation of the account terms unreasonable.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask N to accept or reject my decision before 6 March 2017.

Ruth Stevenson
ombudsman