

complaint

Mr and Mrs M complain that Clydesdale Bank PLC has unfairly registered a default against their credit files that resulted from errors it had made with their current account.

background

Mr and Mrs M had a mortgage with Clydesdale that included a current account. This account provided a reducing limit of borrowing which was secured against their property and was for home improvements.

In 2005, Mr and Mrs M moved their mortgage to another lender. When Clydesdale provided their solicitor with the redemption figure for their mortgage, it made an error in not including the debit balance they had on the secured current account. This meant that this was not repaid when the mortgage was redeemed.

However, the debit balance on the account was still owed. Clydesdale said that it would place this amount in an interest and charge free account and Mr and Mrs M agreed mutually acceptable monthly repayments towards paying it off.

Mr and Mrs M kept to this agreement until November 2007. In May 2007, Clydesdale had begun charging Mr and Mrs M interest on their account. Mr and Mrs M contacted Clydesdale at this time to try and resolve the issue, but unfortunately this was not corrected. So Mr and Mrs M made the decision to stop making their monthly repayments.

The bank then transferred Mr and Mrs M's account to its collections department. Clydesdale wrote to Mr and Mrs M in May 2008 to ask them to clear the balance or contact it within ten days to give it a proposal for repayment. The letter said that if no satisfactory proposal was made, information relating to the debt would be recorded with credit reference agencies 28 days from the date of the letter.

Mr and Mrs M complained that they were being penalised for Clydesdale's original mistake and asked for the remaining amount they owed to be written off.

Clydesdale acknowledged their complaint and said that recovery action would be put on hold. But it defaulted Mr and Mrs M's account and this was recorded on their credit files in June 2008.

In response to their complaint, Clydesdale apologised for the service that Mr and Mrs M had received. It said that interest had begun to be charged on their account because it had changed its computer system. It arranged for the interest and charges to be refunded to the account. In recognition of the distress and inconvenience caused to Mr and Mrs M, it also offered to pay them £222.93 which would reduce the outstanding balance on their account down to a round figure.

However, rather than credit both the refund and the compensation payment to the current account to reduce the balance, Clydesdale sent it to Mr and Mrs M by cheque. As they chose not to pay this money into their current account, the balance stayed as it was.

But when Mr and Mrs M received a statement showing the balance on their account as the higher figure, they complained that it should show the reduced figure, as they had received a letter from the collections department referring to this amount.

Clydesdale apologised that its letter had not been correct. It said that the balance was still at the higher figure as the cheque had not been paid into the account to reduce it.

The bank then made the decision to sell Mr and Mrs M's debt onto a debt collection agency. Mr and Mrs M agreed a further repayment plan with the agency and maintained this until the debt was fully repaid.

But when Mr and Mrs M had difficulty applying for credit products elsewhere, they realised that the adverse information Clydesdale had recorded on their credit files was affecting them. They complained to Clydesdale that this information had been unfairly recorded and should be removed.

Clydesdale said that its entry on their credit file had been removed when it had sold their debt to the debt collection agency. The debt collection agency had recorded its own entry on their credit files, based upon the date the account defaulted at the bank, and this had been updated to say that the account was now satisfied. Clydesdale said that its recording on their credit files had been a true reflection of the way that the account had been conducted.

Our adjudicator recommended that the complaint should be upheld. She said that Clydesdale had made a number of errors with Mr and Mrs M's account, and the only time that they stopped making payments towards it was during the time that they had disputed the interest they were being charged. She concluded that the default on Mr and Mrs M's credit file was not a true reflection of the circumstances and said that it should arrange for the debt collection agency to remove the default. She also said that Clydesdale should pay Mr and Mrs M £100 for the distress and inconvenience caused.

Clydesdale did not accept the adjudicator's findings. It said although it had made errors with Mr and Mrs M's account, it had rectified these to put them back into the position they would have been in if they had not occurred. It said that Mr and Mrs M had stopped making payments to the account, and the default notice had been applied correctly. However, it offered to pay Mr and Mrs M £200 to resolve their complaint.

Mr and Mrs M chose not to accept Clydesdale's offer and asked that the complaint be referred to an ombudsman.

my findings

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

Clydesdale has accepted that it has made a number of errors with Mr and Mrs M's account, which all stemmed from the mistake which caused the account to be set up in the first place.

I do accept Clydesdale's point that it has looked to address these errors, to make sure that Mr and Mrs M were not financially disadvantaged by them. But I also find that its communication with Mr and Mrs M has often been unclear and confusing, and there have been delays in it responding to them or addressing the problems they raised.

Mr and Mrs M have said that the reason that they stopped making the payments to the account in November 2007 was because Clydesdale had begun charging interest to the account in May 2007 and had not looked to resolve this. I am satisfied from Mr and Mrs M's

later actions and the copies of the related correspondence that it was not the case that they did not want to repay the balance on the account. It was that they did not want interest and charges being wrongly applied.

In September 2008, Clydesdale acknowledged the errors that it had made in applying the interest and charges and agreed to refund these. But because it had already sent Mr and Mrs M's account to its collections department by this time, Clydesdale sent the amount of the refund and compensation to Mr and Mrs M by cheque.

If Mr and Mrs M had paid the cheque into the Clydesdale account, then it would have reduced the outstanding balance as Clydesdale had intended. It was Mr and Mrs M's decision to pay this cheque into another account, so I am satisfied that they did receive this money. But by this time, Clydesdale had already issued the default on their account, so it would only have made a difference to the outstanding balance and not the default itself.

I appreciate that it was a change of computer system that caused the interest to start to be applied to the account. But if this had been corrected for Mr and Mrs M earlier, then I consider it is unlikely that they would have stopped making the payments to the account.

In these circumstances, the account would not then have defaulted. Clydesdale was aware that the account was in dispute and its complaint acknowledgement letter said that recovery action would be put on hold. It is reasonable for Mr and Mrs M to have understood this to mean that no related information would be recorded on their credit files. But Clydesdale registered the default within a few days of sending that letter.

In all the circumstances, I am unable to conclude that Clydesdale acted fairly in defaulting Mr and Mrs M's account, or in selling the debt on to the debt collection agency. Clydesdale has offered to pay Mr and Mrs M £200 to recognise the time it has taken to address this complaint and for their inconvenience, and I agree this to be reasonable in the circumstances. But I also consider that the related entries on Mr and Mrs M's credit file should be removed.

As the debt was sold on, Clydesdale has already removed its entry on Mr and Mrs M's credit file. But the entry has been re-registered in the name of the debt collection agency. Mr and Mrs M repaid the full amount of the debt in 2011 and it is now recorded as being satisfied.

my final decision

My decision is that I uphold this complaint. In full and final settlement, I order Clydesdale Bank PLC to:

- write to the debt collections agency to explain that Mr and Mrs M's account should not have been defaulted or sold on, and to ask it to remove its related entry on Mr and Mrs M's credit files. Clydesdale should provide Mr and Mrs M with a copy of its letter, and of the debt collection agency's response.
- pay Mr and Mrs M £200.

Cathy Bovan
ombudsman