

complaint

Mr L, as court-appointed deputy for Mrs B, has made a number of complaints against Clydesdale Bank Plc, which I summarise as follows:

- irresponsible lending in 2007;
- mis-sale of a further advance in 2008;
- Clydesdale's failure to prevent financial abuse and fraud by a third party;
- the validity of possession proceedings taken by Clydesdale.

Mr L is asking Clydesdale to compensate Mrs B for *"the loss occasioned by the advancement of the mortgages."*

background

In December 2007, through a broker, Mrs B took out an interest-only mortgage with Clydesdale, borrowing £150,799 over five years. The mortgage repaid her existing mortgage of about the same amount with another lender.

In June 2008 Mrs B took out a further advance of £50,000, directly through Clydesdale, again over five years and on an interest-only basis.

Unfortunately the family business from which Mrs B derived her income went into administration in 2010. It seems efforts were made to save the business, but it went into liquidation in 2012.

It wasn't until 2012, when the mortgages were reaching the end of their terms, that arrears began to accrue. At this point, Mrs B asked Clydesdale to deal with her son, Mr B. Without a formal third party authority, Clydesdale wasn't able to discuss the account with him in detail.

In 2013 the mortgages came to an end and in December 2013 Clydesdale issued formal demand for repayment. In 2014 Clydesdale began possession action. The court made a possession order and granted a money judgement in August 2014.

In September 2014 Mrs B was diagnosed with a type of dementia. Mr B became involved in the proceedings, and in December 2014, in the course of an application to suspend the warrant of eviction, the court appointed Mr B as Mrs B's Litigation Friend.

After receiving evidence of Mrs B's circumstances, eviction was suspended.

In December 2015 Mr L was appointed deputy and complained to Clydesdale about the mortgage and further advance, and its conduct of the possession proceedings. Unhappy with its response, Mr L brought the complaint to us, where it was considered by one of our adjudicators. She didn't recommend it should be upheld. Mr L has asked for an ombudsman to review the complaint.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Mr L has made very detailed submissions, but I trust he won't consider it a discourtesy if I don't respond at similar length. I'm not required to address each and every point he's made.

No discourtesy is intended by this; it simply reflects the informal nature of the ombudsman service and my role within it. I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to consider it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

There are a number of issues that I'm not going to address. This is because the extent to which the Financial Ombudsman Service is able to look at those issues is limited, either by the nature of the matter complained of, or the involvement of third parties.

Mrs B's mental capacity in 2007 and 2008: Mr L has told us that it wasn't until September 2014 - after the mortgage and further advance had reached the end of their terms - that Mrs B was diagnosed with dementia. Mr L told Clydesdale that Mrs B's cognitive impairment dated back to around August 2013.

No medical evidence has been produced to show Mrs B lacked mental capacity in 2007 or 2008 when the borrowing was taken out. In the circumstances, therefore, I am entitled to conclude Mrs B was capable of managing her finances at the time she took out the mortgage and further advance. I'm not required – nor am I medically qualified – to make my own assessment of Mrs B's mental capacity in 2007 and 2008.

allegations of financial abuse, undue influence and fraud: Mr B isn't a party to this complaint, and so I don't have his permission to investigate any allegations made against him. The investigation of criminal matters is, in any event, more suitable for the police or the courts.

validity of possession proceedings: I can see Mr L has raised a number of concerns about the conduct of the possession proceedings. But if Mr L considers the possession proceedings are invalid, that's something he will need to raise with the court which made the orders in those proceedings. I don't have the power to interfere with an order made by a court.

So the only issue I will be considering is whether there was irresponsible lending or mis-sale of the mortgage in 2007 and the further advance in 2008.

2007 mortgage: Mrs B applied for the mortgage through a broker, who provided Mrs B with advice on the most suitable mortgage for her circumstances. She applied for a mortgage of £150,000 (plus fees of £799) on an interest-only basis, over a five year term. The mortgage was on a discount tracker rate for the first three years of 0.24% above base rate, after which it reverted to 0.79% above base rate for the remainder of the term. The loan-to-value ratio was 43%.

The mortgage was used to redeem Mrs B's previous mortgage for almost the same amount with another lender. As a result Mrs B's net borrowing position was unchanged from what it had been before she took the mortgage out. The interest rate was competitive and this may have been the reason why the remortgage with Clydesdale was taken out, rather than staying with her previous lender.

Clydesdale was entitled to rely on the information provided by the broker as accurate. I see that Mrs B is recorded as a director of her family company in the broker's paperwork, when she was no longer in that role. But where her income was derived from the family company,

there was no onus on Clydesdale to carry out a search at Companies House to ascertain whether or not Mrs B had given the broker misleading information.

The lending was less than 4 x stated income, which was within acceptable multipliers in 2007. Mrs B's income derived from a family business. I'm not persuaded Clydesdale should have had any concerns over Mrs B's age in 2007.

The solicitors acting for Clydesdale on the remortgage made it clear that, although they would keep Mrs B informed about the progress of the remortgage, if she needed advice, she would need to have independent advice from her own solicitors. This appears in the first paragraph of the solicitors' letter, and is clearer than most I have seen in explaining the solicitors' role in the transaction.

I appreciate lending criteria is now different, but I've seen nothing to persuade me that Clydesdale acted irresponsibly in approving the remortgage in 2007. There is also no asset loss to Mrs B, as the mortgage replaced one of almost identical value which she already had on the property.

2008 further advance: In June 2008, six months after completing on the remortgage, Mrs B applied for a further advance of £50,000 on an interest-only basis. Clydesdale has explained that its procedure at the time was for there to be a telephone interview. Given the passage of time, no call recording is available. There's nothing sinister about this, the application was made more than seven years before any concerns were raised by Mr L about the further advance.

There is a contemporaneous record of the information compiled at the time of the application. Clydesdale obtained proof of income, and there is nothing in the available evidence to persuade me Clydesdale should have had any concerns about the application. I have seen the letter from Mrs B's family business. I disagree with Mr L that this created a guarantee liability for payment of the mortgage interest. If Mr L believes that it does, then he would need to take that up with the liquidators of the company.

Mrs B's current account (from a different bank, not Clydesdale) was a type that was offered only to customers with substantial income and assets (or who already had a mortgage with that bank, which wasn't the case here). The account statements showed sufficient income from the family business and Mrs B's old age pension to support the mortgage and further advance. The account was in credit and the balance did not drop under £1,000 throughout the period January-April 2008, and was usually substantially higher. I can see that Mrs B used the account for her utilities and for leisure and domestic purchases. There is nothing to suggest she had another account that Clydesdale should also have looked at.

This income was broadly in line with the amount Mrs B had declared. I can also see from her bank statements that from about 7 January to 2 April 2008 Mrs B had travelled to Australia, which doesn't suggest that she was frail, infirm or vulnerable.

The further advance increased the borrowing to about £200,000, a 57% loan-to-value, which was within acceptable lending margins. Mrs B told Clydesdale that she intended to repay the mortgage out of her business investments. Given Clydesdale had been provided with evidence of Mrs B's family business, this doesn't seem unreasonable. But in any event, Clydesdale made it clear that it was Mrs B's responsibility to ensure she had a repayment vehicle in place.

Refusing to lend to Mrs B, who qualified for the loan and was able to afford the interest repayments simply on the basis of age would amount to discrimination. I've seen nothing to persuade me Clydesdale should have treated Mrs B as a vulnerable customer, purely on the basis of her age.

In all the circumstances, I've seen no evidence to persuade me that the 2008 further advance was mis-sold or that the lending was irresponsible.

my final decision

My decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L, on behalf of Mrs B, to accept or reject my decision before 5 May 2017.

Jan O'Leary
ombudsman