

complaint

Mr and Mrs C complain about the customer service they received from Clydesdale Bank Plc (trading as Yorkshire Bank) in relation to a debt they owe under a personal guarantee.

background

Mr and Mrs C are former directors of a company that I'll refer to as "A". A was dissolved in June 2014.

In 2007 Mr and Mrs C gave Yorkshire Bank a personal guarantee to secure A's debts. The guarantee was for £574,000 plus interest and costs. It was supported by a legal charge over their home. In 2012 the bank issued a formal demand for £361,535.93 under the guarantee. Mr and Mrs C say that they met their business manager in April 2012 and offered repayment proposals, but the proposals were dismissed. They feel that the bank was only interested in taking their home.

Our adjudicator didn't consider the complaint should be upheld. She said that at the relevant meeting Mr and Mrs C offered to bring A's accounts up to date and to continue making regular repayments. But the bank wasn't prepared to accept this and required full repayment of A's debt. She considered that the bank was entitled to call upon the guarantee they'd signed when the debt wasn't paid in full.

Our adjudicator said that the guarantee Mr and Mrs C signed was clear about what their obligations were. She was satisfied that they'd both received independent legal advice about the guarantee. So she didn't think the bank acted unfairly when it demanded money from them under it. Mr and Mrs C disagreed and asked for their case to be reviewed. They say that if the guarantee is to be called upon, it's only right that they're able to challenge the loan A had taken out. They say that the loan (a tailored business loan with a fixed interest rate) was mis-sold. But our adjudicator said that this issue couldn't be considered in this complaint as it has already been decided (in a previous complaint) that this service doesn't have the legal power to consider the complaint about the sale of the business loan.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've reached broadly the same conclusions as the adjudicator, and for much the same reasons. However, I will make the following observations.

personal guarantee

Like the adjudicator I consider that the bank was entitled to demand the debt (£361,535.93) from Mr and Mrs C. I find the guarantee they signed is clear that they're liable for A's debts up to a limit of £574,000 plus interest, costs, and interest on those costs. They saw a solicitor before signing the guarantee, and they both signed a certificate to say that they had understood the implications and nature of the guarantee. So the bank was entitled to believe from this that they had been properly and independently advised, and they understood the terms of the guarantee. In the circumstances, I find that they were aware (from 2007 when they signed the guarantee) that they could be held responsible for A's debts up to a limit of around £574,000.

customer service

I find the bank was entitled to reject the proposals Mr and Mrs C offered to repay A's debt. Having considered the evidence that's been provided, including the correspondence between Mr and Mrs C and the bank, I consider it was entitled to pursue Mr and Mrs C for the money under the guarantee. I appreciate the impact they say this decision has had on them, but it's not for me to interfere with the bank's legitimate commercial decisions.

sale of the loan

Mr and Mrs C say that if the guarantee is to be called upon, the sale of the loan A entered into should be investigated. But A has already complained to this service about that loan. The ombudsman that considered that complaint concluded that the sale of the loan couldn't be considered by this service, as A had entered into it, and A has now been dissolved.

Mr and Mrs C say that the underlying issues (whether the loan was mis-sold or not) don't go away simply because A has dissolved. I appreciate this, but the Dispute Resolution Rules (DISP Rules) that govern this service say, amongst other things, that:

DISP 3.3.4 R

The Ombudsman may dismiss a complaint without considering its merits if he considers that:

(6) the subject matter of the complaint has previously been considered or excluded under the Financial Ombudsman Service or a former scheme (unless material new evidence which the Ombudsman considers likely to affect the outcome has subsequently become available to the complainant).

Having considered Mr and Mrs C's previous complaint, I'm satisfied that my ombudsman colleague has already decided that this service doesn't have the legal power to consider the complaint about the sale of the business loan. I don't underestimate Mr and Mrs C's strength of feeling, or the importance of this matter to them. But they haven't presented us with any new material evidence about it, which wasn't available at the time. And so I don't consider it would be appropriate for this service to consider the sale of the loan in this complaint either.

In the circumstances, and for the reasons I have explained, my decision is that this aspect of Mr and Mrs C's complaint shouldn't be considered further by this service.

my final decision

My final decision is that I do not uphold this complaint about the personal guarantee and the bank's customer service in deciding to pursue Mr and Mrs C for A's debt.

My decision is that Mr and Mrs C's complaint about the sale of the business loan shouldn't be considered further by this service.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs C to accept or reject my decision before 13 February 2015.

Laura Forster
ombudsman