complaint

J complains it was mis-sold a fixed rate loan by Clydesdale Bank Plc.

background

J is a limited company. It took out a loan for £1,371,000 in January 2009 to refinance existing debts. £700,000 of this was taken at a fixed interest rate of 3.18% plus margin and costs; £300,000 as a discounted fixed rate range loan; and £371,000 at a variable interest rate. J says it looked into exiting the loan a year early but didn't because the break costs were too high. The loan therefore ran to term and ended in 2013.

Clydesdale upheld J's complaint about the discounted fixed rate range loan as part of its review with the Financial Conduct Authority. So the complaint J brought to this service was only about the fixed rate part of the lending.

I issued a provisional decision saying I was planning to not uphold J's complaint. I've attached my provisional findings and those form part of this decision. In summary I accepted there may have been shortcomings – both in terms of what J was told about the fixed rate agreement; and what it was told about the other products available. But I thought it would've still fixed the same portion of the loan even if everything had happened as it should.

Clydesdale responded saying it'd like to re-emphasise several points – that the way the loan was set up gave J flexibility; that a fixed rate loan was compatible with J's business model and aims; and that the term was reasonable.

J re-emphasised its belief it'd been pressured to hedge. It also said a suitable cap (4.95%) would've cost it £4,500 in January 2009 and this would've been affordable. It provided detailed calculations comparing how much the lending would've cost in January 2009 with a variable rate; the fixed rate it had; and a cap. And it said these show a cap was the logical choice. It said only businesses that held a strong belief interest rates were going to rise in the short term would choose a fixed rate. And it had been expecting rates to remain low for a while. It also said it wasn't told Clydesdale could increase the lending margin when it made payments to the variable part of the lending.

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 note J's comments about the fact one of the products it took had been upheld under the review. I understand why it's frustrated that the fixed rate part of the loan didn't fall under the review and that this service has reached different conclusions than the review on some points. But it's not my role to comment on that. My role is to look into the sale of the fixed rate part of the loan in isolation of anything the review decided on other products. I then need to decide whether anything went wrong, and if it did, decide whether that caused J to make a different decision.

For the same reasons as I set out in my provisional decision, I don't think there's enough for me to say J was told it needed to protect itself against interest rate rises – or that it was pressured to do this. Although I note J's comments about the sales practices at the time, I think in the circumstances of this case it's most likely that J did have an express wish to protect itself against interest rate rises.

I've therefore gone on to consider the detailed reasoning J has provided as to why a cap would've been the most attractive product if it'd been offered this.

As I set out in my provisional decision, I don't think J was planning to exit the fixed rate part of the loan early. I note J's comments about the nature of its business meaning it needed flexibility. But I think the way its lending was set up did give it a reasonable amount of flexibility. And although it now says it would've wanted the flexibility to move its borrowing to another bank, I haven't been provided with any persuasive evidence that this was in its mind at the time. Instead it seems this is a consideration that's become important to it with the benefit of hindsight. I therefore don't think knowing the break costs associated with fixed rate agreements would've affected its decision.

But a cap would've allowed it to benefit from low interest rates. J says it was expecting interest rates to remain low for a while and the premium for a cap would've been affordable. So it says it would've taken a cap if it'd been offered this. I accept a cap may have been affordable for J. But just because it may have been affordable, this doesn't mean J would've chosen to pay it.

I need to consider what would've been most attractive to J at the time. It isn't possible to know this for sure and so I have to decide what I think is most likely. I have to do this without taking into account anything we now know with the benefit of hindsight. Logically, J would've been looking to enter into the agreement that it thought would cost it the least amount of money overall. Looking back it's clear a cap would've cost less. But J didn't know interest rates were going to stay low – and in fact fall further.

J might've been expecting rates to remain low for a while. But I think it understood the concept of fixing and so understood it was agreeing to pay interest rates that were higher than what it'd be paying on a variable interest rate.

Taking everything into account, I think J was expecting interest rates to rise at some point. If interest rates went up by a large amount, it would've been paying considerably more under the cap of 4.95% it's quoted than what it was paying with the fixed rate it had. I acknowledge that still would've been less than it'd paid in the past. But I don't think that paying a premium and then still potentially having to pay rates of 4.95% would've been attractive to J. I also note that Clydesdale says a cap at 4.95% would've cost just over £20,000 – considerably more than what J's quoted.

I appreciate other – lower – caps would've been available. But these would've cost more. Clydesdale has said it would've cost J approximately £32,000 to cap the interest rate at the level it fixed it at. J says its investigations show a cap on these terms would've cost far less – £15,800 – and it's asked us to get a quote from an independent third party. But it would've been taking the cap out with Clydesdale. And I've been back to Clydesdale to check it's satisfied it's calculated the premium it'd have charged correctly. It's confirmed it has. Taking everything into account, I don't think there's enough for me to say the figure Clydesdale says it would've charged is wrong.

In the circumstances, I don't think a cap premium would've been attractive to J. Even if it'd been allowed to spread it out over time, it was still a significant amount of money compared with the cash funds J had in its account. And J would've been looking to keep costs as low as possible. At the time I think it would've thought a fixed rate would be the best way to do this.

It must be frustrating for J to know it's paid more than it could have. And it may well be that it'd have chosen to take a cap if everything had happened as it should. But taking everything into account, I don't think that's most likely. I still think it's most likely J would've chosen to fix the same portion of the loan on the same terms.

J says it wasn't told Clydesdale could increase the lending margin when it made payments to the variable part of the lending. As I set out in my provisional decision, Clydesdale has explained that it does this when its risk exposure changes, for example, taking additional borrowing or changing the security for a loan. Even if J wasn't told this at the time, I don't think it would've seemed unreasonable to it. And so I don't think it would've caused it to make a different decision.

my final decision

My final decision is that I don't uphold J's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask J to accept or reject my decision before 4 January 2016.

Laura Layfield
ombudsman

EXTRACT FROM PROVISIONAL DECISION

Clydesdale says J was given enough information to understand the possible break costs of the fixed rate loan. J says it wasn't. Taking everything into account I think it's most likely J was told break costs might apply. And I think it was told these could be "*substantial*". But I haven't been provided with persuasive evidence that it was given enough information to understand how substantial they could be.

I therefore have to consider what J would've done if everything had happened as it should. There isn't any way of knowing this for sure. So I have to decide what I think is most likely.

It doesn't seem it was a condition of the loan to protect the interest rate. So it's possible J wouldn't have hedged at all. And I note J's comments that Clydesdale was pushing the hedging products and led it to believe hedging was in its best interests. As well as its comments that it would've been able to handle a fairly large rise in interest rates comfortably.

But it does seem as though protecting the interest rate was attractive to J. I've been provided with a copy of a letter Clydesdale sent J in July 2008. This refers to the fact that interest costs were J's largest overhead. And it went on to confirm their discussion that this meant J had a strong desire to have a known worst-case repayment figure. I think if everything had happened as it should, J would still have chosen to hedge this portion of the borrowing.

J says it wasn't offered all the products it should've been. In particular, it says it should've been offered a cap. It says this would've allowed it to benefit from low interest rates whilst giving it flexibility because of the lack of high break costs. I haven't been provided with anything that suggests J was offered a cap. So I accept it may not have been and I've thought carefully about whether it would've chosen a cap instead if it'd been offered this.

Taking everything into account, I don't think J would've chosen a cap instead. Although they have advantages compared to fixed rate loans, the main disadvantage is that they involve large premiums. And although the fixed rate loan had potentially high break costs, I don't think J was anticipating exiting that part of the loan early.

I say this because the length of time J fixed for was reasonably short – less than five years. And although there does seem to have been some discussion about J repaying part of the loan early through the sale of a property, the letter Clydesdale sent in July 2008 suggested J's borrowings would still be over £1 million after that sale. Because J took a portion of the loan at a variable interest rate, it seems these sale funds could be used to repay the variable rate part of the loan without needing to touch the fixed part.

I note J's comments about the type of business it was in and its history of lending. But I haven't been provided with any persuasive evidence that J was planning to exit the fixed rate loan early. Taking everything into account, even if J had been offered all the products it should've been, I still think it would've taken out the same fixed rate loan.

J says whenever it tried to make changes to the flexible part of the borrowing – for example, repaying part of the variable rate loan or taking an overdraft – it was told the lending margin would be increased. Clydesdale says it has no record of this. But that this is something it sometimes does when its risk exposure changes. It says taking an additional overdraft or changing the security of a loan would be two possible triggers for this. Although I note the evidence J has provided from its previous relationship manager, changing the lending margin when its risk exposure changes would seem to be within Clydesdale's commercial discretion. Overall, I haven't seen enough to satisfy me it did anything wrong.