

## **complaint**

Mr B complains that Clydesdale Bank Plc sold his debt to an overseas company which isn't regulated in the UK.

## **background**

Mr B had a commercial real estate loan with Clydesdale which came to the end of its term in 2014.

At that point, Clydesdale agreed to continue to allow Mr B the facility to borrow the same amount of money, but as an overdraft.

Clydesdale subsequently sold that debt to a business based overseas and unregulated in the UK (I'll refer to them as "company X").

Mr B says he continued to make interest payments on the debt, but company X put it into default. When he paid off the debt, company X charged him £50,000 as a default interest payment. Mr B says he had no choice but to pay the £50,000 because otherwise, company X would've refused to release their securities on his properties.

Mr B made a complaint to us about the agents working for company X. He wanted the £50,000 default interest payment re-paid. We explained that we couldn't look into the complaint – which was about the actions of company X rather than their agents – because company X are not regulated in the UK.

Mr B then made a complaint to Clydesdale about the fact that they'd sold his debt to an unregulated business, which he said had led to unfair consequences for him. He also pointed out he'd lost money on two properties he'd sold because Clydesdale's sale of the debt meant the properties were sold later than he'd planned - and for less money.

Clydesdale didn't uphold his complaint, so Mr B complained to us. Our investigator looked into it and didn't think Clydesdale had done anything wrong.

Mr B disagreed and asked for a final decision from an ombudsman.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As Mr B knows from our answer to his previous complaint, we can't look into the default interest payment he was required to pay by company X. My decision at this point is simply about whether Clydesdale acted fairly and reasonably in the way they handled Mr B's debt.

Mr B owed Clydesdale more than £2 million. His loan expired in June 2014. And Clydesdale would have been entitled, at that point, to ask for full repayment. Instead, they offered an overdraft facility to Mr B, which was then extended through to February 2015.

I understand Mr B made offers to Clydesdale to repay part of the debt, but these weren't accepted. I believe Mr B tried to sell the two properties - which he says he later had to sell for less money - as part of the proposed process of repaying some of his debt.

Clydesdale were, of course, entitled to ask Mr B to pay off the debt in full and to reject his offers of part-payment.

Financial institutions are also entitled to make commercial decisions about transferring debt. There is no legal or regulatory bar, at present, to selling debt to businesses which are not regulated in the UK.

In the absence of any such general prohibition, a business might nonetheless be said to have acted unfairly if it did something contrary to the contract between the parties or the terms and conditions applying to the relationship between them.

In this case, I can see that Mr B signed up to Clydesdale's terms and conditions when they agreed and extended his overdraft facility. At paragraph 6.2 of the schedule, these said:

*"The Bank may (1) assign any of its rights or benefits and/or (2) transfer... any of its obligations... to another bank or financial institution or a trust, fund or any other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities and other financial assets or to any other person or persons..."*

So, there was no legal or regulatory bar to Clydesdale selling the debt to company X. And such a sale is specifically permitted in the terms and conditions of the overdraft arrangement, which Mr B signed up to.

Of course, we'd still more broadly expect Clydesdale to act fairly and reasonably in selling on the debt.

I can see Clydesdale gave Mr B every opportunity to repay the debt before it was sold. And he didn't settle the debt, even after he was aware it was going to be sold to company X.

Before selling on their debts of this type to company X, Clydesdale sought and received undertakings that company X would manage the lending in accordance with the standards of a "reasonably prudent" lender.

And, in fact, the terms and conditions applying to Mr B's overdraft didn't change after transfer to company X. The overdraft facility came to an end in February 2016, which is what Mr B agreed with Clydesdale when it was last extended. And if Mr B had repaid the overdraft at that point, he'd have been in the same position he'd have been in if Clydesdale had retained the debt.

Again, we can't look at what company X decided to do after Mr B defaulted on his debt. But, bearing in mind the safeguards they put in place, I'm satisfied Clydesdale didn't act irresponsibly, unreasonably or unfairly in selling the debt to company X in the way that they did.

### **my final decision**

For the reasons set out above, I don't uphold Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 26 October 2018.

Neil Marshall  
**ombudsman**