

## **complaint**

Mr H complains on behalf of C, a limited company, that Clydesdale Bank Plc sold its debt on to a business (P) that isn't regulated by the Financial Conduct Authority ("FCA"). He also complains that the debt (the outstanding balance from C's tailored business loan (TBL)) was converted into an overdraft before it did this. Mr H says Clydesdale shouldn't have done this. He has concerns that C's current account has been transferred to P.

## **background**

I set out the background to this case in my provisional decision. Rather than repeat everything here I've included a copy at the end of this final decision. Both parties have since had an opportunity to respond and I've summarised their comments below.

### *Clydesdale's response*

- The legal interest transferred to P was the right to receive payment for the outstanding loan balance, as per the terms of the TBL. It was the debt created by the TBL that was sold, not the feeder account.
- Clydesdale agreed no new terms of borrowing when it debited the loan from the feeder account and nor did the action of debiting convert the loan to an overdraft.
- Clydesdale did not rely on the terms of the feeder account in selling the debt. It only relied on the terms of the TBL.
- The TBL terms allowed the bank to transfer its rights to "any person". The acts of holding, exercising and enforcing rights to receive payment of the loan are not activities regulated by the FCA.
- Clydesdale's accounting system wouldn't allow for the TBL to sit in a default position and the feeder account would have been automatically debited. There was no formal overdraft facility in place.

### *C's response*

- C believes that it was in fact the overdraft that was sold as it's been referred to numerous times in correspondence from Clydesdale and the ombudsman service should make a finding to state whether that is the case or not.
- C has taken my provisional decision to say that I agree it has lost the right to refer complaints to this service and highlights the question of compensation. It further says, because of this loss of rights, the terms and conditions of transfer under the feeder account have not been met and so Clydesdale wasn't allowed to sell the debt on.
- C further requests sight of the transfer deed, specifically the schedule of assets.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I'm not upholding it.

*the sale of the debt*

In my provisional decision I said it made little practical difference as to whether it was the TBL sold or the overdraft. And I remain of that view. But I've also considered what each party has said since.

I'm satisfied that the only lending agreed by Clydesdale was that set out in the TBL. That is the source of the underlying the debt and the legal right to collect it.

It appears the only reason for that debt to have been presented in any other form is because of the system limitations at Clydesdale. I'm not persuaded to say that such limitations mean that Clydesdale wasn't entitled to enforce the rights it agreed with C for the TBL.

The TBL and the terms connected to it didn't cease to exist with the moving of the debt to the feeder account; the loan hadn't been properly settled. The terms were still applicable, even though the feeder account may have had its own set of terms and conditions.

I remain satisfied that Clydesdale was entitled to sell the debt under clause 14.2 of the TBL terms and conditions.

*loss of the right to complain to this service*

I did discuss the possibility of compensation in my provisional decision. But that was in relation to C being told that the right to refer complaints to our service wouldn't be affected. That was stated in a letter from Clydesdale in May 2015 and it has turned out not to be true. That is why I mentioned the issue of compensation. Not because I believed Clydesdale had removed the right to refer when it shouldn't have been able to do so.

C would have been able to complain about debt collection activity carried out by Clydesdale itself. That's not because it's a regulated activity; it isn't. It's because the debt collecting would be ancillary to the lending which is within our jurisdiction. But this doesn't prevent Clydesdale from selling on a debt. It's still able to pass on the ability to collect payment even if that means C can no longer complain to us about such activity. And as I said in my provisional decision, Clydesdale might have sold to a UK based and FCA regulated debt purchaser. But in such circumstances C still wouldn't have been able to complain to us about the actions of the debt purchaser.

C may well still be able to complain about the actions of P. But any such rights will lie elsewhere.

*the transfer deed*

C has asked that the transfer deed, or at least the schedule of assets, be disclosed. I've not asked Clydesdale to do that. The schedule contains commercially sensitive information and also details of customer's other than C. I'm satisfied with the evidence and explanation I've been presented with in reaching my findings.

**my final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 10 October 2018.

Ben Murray  
**ombudsman**

## Copy of Provisional Decision

### complaint

Mr H complains on behalf of C, a limited company, that Clydesdale Bank Plc sold its debt on to a business (P) that isn't regulated by the Financial Conduct Authority ("FCA"). He also complains that the debt (the outstanding balance from C's tailored business loan (TBL)) was converted into an overdraft before it did this. Mr H says Clydesdale shouldn't have done this. He has concerns that C's current account has been transferred to P.

### background

C took a five year tailored business loan for £2,177,000 in March 2009. The terms of lending were set out in:

- a facility letter dated 26 March 2009, with schedules; and
- Clydesdale's standard terms and conditions for tailored business loans.

Clydesdale says the relevant terms and conditions required C to open a separate account with it (the feeder account) to repay the loan. C opened a current account, which in turn was subject to the bank's standard business current account conditions. But C didn't transfer enough money into that account to enable it to pay off the loan on maturity in 2014. So, in April 2014, Clydesdale debited the outstanding amount of the loan from the feeder account – leaving it in an overdrawn position. The bank says the relevant terms and conditions allowed it to do this.

Mr H accepted C owed money to Clydesdale. But he doesn't accept Clydesdale could pay off the loan from the current account and create an overdraft.

Clydesdale then made the decision to sell the debt on to a third party, P. Clydesdale was withdrawing from the UK commercial real estate market and didn't wish to keep on C's liability.

Mr H doesn't accept that the debt could be transferred in the way that it was. He says the relevant transfer deed (that transferring the debt from Clydesdale to P) refers to a product (the loan) that did not exist on transfer because it had been settled and the debt converted to an overdraft

Mr H also complains that the sale has removed his right to bring further complaints to this service as P isn't regulated by the FCA.

Our adjudicator thought Clydesdale was able to act as it did. That's because condition 18.3 of the bank's tailored business loan terms and conditions say:

*"We may (but are not obliged to) debit to your account any amount due and payable by you (but unpaid) under the Loan Documents."*

She also said that the general terms and conditions for business current and savings accounts said that Clydesdale could transfer its rights to all or part of a customer's account to a third party.

Our adjudicator appreciated that Mr H was unhappy that C's debt had been transferred to an unregulated third party. But she said that P didn't need to be authorised by the FCA to buy C's debt. She understood that Mr H wanted to be able to complain about P to our service should anything go wrong. But she said that because P isn't authorised by the FCA, we couldn't consider a complaint about it. She also said that if the debt had been sold to an FCA regulated debt purchaser C would still be unable to complain to this service, as we can't look at all complaints about debt collecting.

Mr H remained unhappy about what happened. So I've been asked to review this complaint.

### **my provisional findings**

I've considered all the currently available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Subject to further submissions from either party, I don't intend to uphold it.

#### *the conversion of the loan to an overdraft*

Condition 18.2 of the tailored business loan terms and conditions required C to maintain an account with Clydesdale to facilitate loan payments. The loan was (under condition 2.3) credited to the same account. And when the loan term came to an end in April 2014 Clydesdale made a transfer from C's current account to clear the loan balance. That left a significant overdrawn balance on C's current account.

Condition 18.3 said that Clydesdale could debit the current account with any amount due and payable under the Loan Documents. "Loan Documents" included the Facility Letter. At the end of April 2014, when the loan balance fell due, there was £2,179,370.47 outstanding. So I agree with the investigator that Clydesdale was entitled to debit the current account with the amount due under the Facility Letter, even if that left the current account overdrawn.

#### *the sale of the debt*

By this time the loan had gone unpaid at the point of maturity and other covenants on the loan had also been broken. Clydesdale took steps to sell the overall liability on to P. It doesn't make any practical difference whether the debt was technically held in the feeder account or as an outstanding loan balance. There's no dispute that the money was owed and that by this time payment was overdue. C was obliged to make payment to Clydesdale.

Clydesdale had the right to sell that debt on under condition 14.2 of the tailored business loan conditions. It states:

*"We may assign or otherwise transfer any of our rights and/or obligations under the Finance Documents to any person."*

This term can't really be relied upon if it was in fact the overdraft balance was sold. Clydesdale has said that it agreed no new terms of lending with C when it debited the current account and so the underlying liability, along with associated terms, remains the same. But in any case the current account terms themselves provided for the sale of the debt. Condition 3.11.3 of the current account terms said:

*"The Bank may at any time assign all or part of the Bank's rights under these Conditions (which includes our right to payment of any sums due to us by you) and may disclose to any actual or potential assignees."*

I'm satisfied therefore that Clydesdale was entitled to transfer the debt to P. Either under condition 14.2 of the tailored business loan conditions or under condition 3.11.3 of the current account conditions.

I've seen account history and statements which show the overdrawn balance moving out of C's current account at the time the debt is sold to P. I'm satisfied the debt now sits with P. And although C disputes the fairness of that I think Clydesdale was entitled to sell the debt and in the way that it did. Either the negative loan balance was owed or the overdraft was. I'm satisfied that Clydesdale and P have arranged the transfer of the debt and it is only P seeking to recover it.

Mr H complains that he hasn't been provided with a copy of the transfer deed that assigns C's debt to P. Or at least that the copy he's received has been redacted. It appears that his aim is to demonstrate that the transfer hasn't been handled correctly. But as I've said above, I'm satisfied the debt has been transferred to P. If C wishes to challenge the transfer deed further it'll have to be outside of this service. In terms of what's fair and reasonable here, I'm satisfied Clydesdale could sell the debt and it's P that now requires payment.

*C's rights to complain to this service after the sale of the loan*

Mr H is concerned that Clydesdale sold the loan to a company that isn't regulated by the FCA. I understand Mr H's concerns on this issue and that he feels C's lost some protection. C's loan reached a position where it hadn't been paid and the terms had been breached. Clydesdale was within its rights to sell the debt on to a debt purchaser. But even if it had decided to sell to a debt purchaser that was regulated by the FCA it doesn't mean C would be able to complain to this service about that debt purchaser's actions.

We can't look at complaints about P because, as Mr H has correctly said, it isn't regulated. It doesn't need to be. It doesn't carry out activities that need FCA authorisation, or at least not in respect of C's complaint. It does then at first appear as though C's rights have been adversely affected by the sale. But there's more to consider on this point.

We can look at complaints about debt collecting, but only in limited circumstances. Most commonly we see private individuals complaining about debt collectors and we can normally look at those complaints. But such complaints from limited companies don't benefit from the same protections, given under the Consumer Credit Act 1974. A limited company isn't covered by that legislation. Lending and debt collection against limited companies isn't a regulated activity under the Act.

It's true C might have been able to complain about Clydesdale if the debt had stayed with it. Specifically it might have been able to complain about collections activity. But it's only if Clydesdale had retained the debt and pursued C itself that we'd be able to consider such a complaint as the activity of debt collection would then be ancillary to the lending itself and so would be something we could consider a complaint about. But that doesn't prevent Clydesdale from being able to sell the debt on, even to an unregulated third party.

Mr H has said C was assured that its rights wouldn't be affected by the sale of the debt. I agree it was told as much. Clydesdale wrote to C in May 2015 and said its rights and obligations under the original terms wouldn't be affected. That's proven to not be true as C now can't complain to us about P in the same way it could have done against Clydesdale if it was seeking recovery of the debt itself. But that only means that the information was incorrect, not that the sale of the debt couldn't go ahead.

I can understand how learning of the loss of a right to complain to us would have been distressing for Mr H and the other directors of C. But as C is the complainant here, and is a limited company, it can't suffer distress or upset. And so I can't make any award of compensation on that basis. I can make an award for inconvenience or undue trouble C has been put to. But as I've not found that Clydesdale has done anything wrong in the selling of the debt such an award wouldn't be fair or reasonable here.

*Clydesdale's obligations for the sale*

Clydesdale had certain obligations under the Lending Code (since replaced by the Standards of Lending Practice, but the Lending Code was relevant at the time) when it came to selling the debt on. These obligations are covered through sections 228 to 238 of the Code. I won't repeat all that's said in the Code, but the provisions concern ensuring a sale such as this being made to a suitable debt purchaser. I've not seen anything to suggest those provisions haven't been adhered to or that there's any complaint about how P has since handled the debt. And it's worth noting that some of those provisions do still apply following the sale and so Clydesdale may still need to respond to complaints raised, depending on their nature.

**my provisional decision**

My provisional decision is that this complaint should not be upheld.

I'll consider any further information presented by either party before issuing my final decision. Any further submissions should reach me by 27 June 2018.

Ben Murray  
**ombudsman**