

## **The complaint**

Mrs T complains that National Westminster Bank Plc (NatWest) is pursuing her for repayment of an overdraft from a business she isn't involved with. She wants NatWest to contact her former business partner over the matter and there to be no impact on her credit rating.

## **What happened**

Mrs T was a partner in a business (the Firm) with her husband, Mr T. The Firm opened an account with NatWest in 2015. Mrs T says she left the Firm in April 2017. She says she and Mr T called NatWest many times to advise it of this and each time it said it would send a form to remove her from the account, but it never arrived. Mrs T says she assumed it had been dealt with and she didn't see any correspondence from NatWest after this. Mrs and Mr T subsequently separated, and Mrs T changed address.

In September 2019 Mrs T was called by a debt collector seeking recovery of an overdraft on the account with NatWest but this overdraft was under a different business name. Mrs T said this was nothing to do with her as the account hadn't had an overdraft facility when she was involved. She complained saying the debt was nothing to do with her and it should speak to Mr T.

NatWest said the Firm name on the account had been changed in October 2018. It said Mrs T was jointly liable for the debt with Mr T, as she was still party to the account. It couldn't find any calls from her requesting she be removed and said Mrs T appeared to accept the form to remove her had never been completed.

Mrs T said NatWest was harassing her but wasn't contacting Mr T. She sent a copy of a text from Mr T confirming her name shouldn't be on the account. She said NatWest had acted on Mr T's sole instruction to change the name of the account and to arrange the overdraft, which showed she wasn't involved.

NatWest said the mandate allowed one partner to sign for all matters apart from the removal of a party from the account. It said the overdraft facility had been agreed in November 2017, but the account hadn't been in credit since April 2018 and became a concern in May 2019. It said it couldn't discuss matters relating to Mr T due to data protection requirements.

Mrs T referred her complaint to our service. Our investigator didn't uphold it. She said there was no evidence that Mrs T had requested to be removed from the account. There was confusion about what NatWest's requirements were to remove a partner from an account and whether Mrs T could instruct this herself. NatWest said the mandate continued even if someone of them ceased to be a partner until a new mandate acceptable to it was put in place.

Our investigator said under the terms and conditions (T&C's) of the account Mrs T and Mr T were jointly and severally liable for any debt. This meant NatWest could approach each party separately to request full payment. She said the T&Cs allowed NatWest to seek recovery via

a debt collection agency. And it didn't need to remove Mrs T from the mandate even if Mr T agreed to pay it until the debt was cleared.

Mrs T said NatWest should check its call records. She the debt wasn't hers as she was never involved with the business and it was Mr T's liability and it should be pursuing Mr T not her.

Our investigator didn't change her view. She said NatWest couldn't locate any calls and only retained records for a certain period. And Mrs T hadn't been able to provide any evidence of when the calls took place. She said our service offered impartial dispute resolution and can only consider the evidence provided.

As Mrs T doesn't agree it has come to me to decide.

### **What I've decided – and why**

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 this complaint. I'll explain why.

I know my decision will be distressing for Mrs T and I have a great deal of sympathy for her situation. Mrs T has shown evidence that she advised HMRC she left the Firm in April 2017 and the overdraft facility wasn't arranged until after then. But there isn't any evidence that she gave NatWest notice that she had left the Firm and she was never removed from the account.

The mandate allowed either of Mrs T or Mr T to place instructions, including changing the name of the Firm or authorising borrowing. It also made Mrs T jointly and severally liable for any debts of the Firm owed to NatWest. The terms of the mandate continue until it is revoked in writing by a partner or replaced by a new mandate. Mrs T didn't revoke the mandate in writing and says the form wasn't received.

NatWest said that releasing Mrs T from the mandate of the account wasn't automatic and:

*"it doesn't matter what Mrs T advised us of and whether she was an account signatory or not. If she was party to the overdraft, then she will remain liable until the bank agrees to release her."*

But NatWest has agreed as there was no debt when Mrs T says she left, there would have been no reason for it not to release her, had it been requested. NatWest felt this was further evidence that the request hadn't been made.

Mrs T has confirmed that there wasn't a formal partnership agreement between her and Mr T. This means their Firm is subject to the provisions of the Partnership Act 1890.

s36 of the Act sets out the rights of those dealing with the firm after it's constitution has changed, such as a partner retiring or leaving. It says anyone dealing with the firm is entitled to treat all apparent members of the old firm as still being members of it until given notice of the change.

It sets out what notice is required, which is an advertisement in the London Gazette and Mrs T doesn't appear to have given this notice.

NatWest hasn't located any calls from Mrs T or Mr T, and I wouldn't expect telephone records to be available so long after the event. Unfortunately, Mrs T hasn't been able to provide evidence of them herself. But overall here, without any evidence of calls being made in the way she says – it's difficult for me to conclude, on balance, that NatWest was advised about this by Mrs T.

This is very unfortunate for Mrs T. There was no debt when she left but there was also no reason for NatWest not to release her. The procedural steps required to do what Mrs T wanted would have been either writing to revoke the mandate (which would have prompted NatWest to require a new mandate without Mrs T), completion of NatWest's specific form, or giving notice under the law that she had left the Firm. But none of those were completed here. And NatWest provided the overdraft believing she was still involved.

So, under the terms of the mandate and taking into account the relevant law here - NatWest is entitled to seek recovery of the debt from Mrs T and I can't say it's treating her unfairly or unreasonably in doing so.

### **My final decision**

My final decision is that I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 12 January 2021.

Nigel Bracken  
**Ombudsman**