

The complaint

Mr S1 and Mr S2 are business partners. They complain about the actions of National Westminster Bank Plc regarding the management of their loan accounts.

What happened

In June 2008 the partners took out three loans – which I'll call loans 1, 2 and 3 – from NatWest in connection with their property business. Loan 1 was for £615,000 to be repaid over 20 years. Loan 2 was for about £1.5m to be repaid in two years. Loan 3 was for £289,100 to cover VAT on a property transaction, to be repaid in six months when the VAT refund was expected. In addition to the properties financed by these loans, the bank required two other properties to be given as additional security for the lending.

The partners had difficulty in meeting all the required payments. Early in 2009, after loan 3 had expired, NatWest asked the partners for proposals for its repayment. The bank said loan 1 was also in default. The bank raised the interest rate on both these loans.

The difficulties continued and in December 2009 NatWest transferred the management of the partners' accounts to its Global Restructuring Group (GRG).

In February 2010 the bank informed the partners that all the loans were in default and it wished to end the relationship. NatWest said that interest would continue at default rates and that monthly management fees would also now be charged.

In April 2011, the bank received £1.43m from the sales of properties associated with the loans, leaving the outstanding debt at £970,680.

In the spring and summer of 2012, there were negotiations over a settlement of the debt. During this period the partners consulted an insolvency practitioner. In October 2012 the settlement was finally agreed, and the partners' accounts were closed. NatWest received £260,000 in settlement and wrote off £772,190 of the debt.

Later, as part of NatWest's general review of accounts managed by GRG, the bank made an automatic fee refund of £78,435, plus interest, in respect of account management fees. This was paid to the partners in August 2017. The bank's further review of actions by GRG gave its conclusions in 2020 and didn't offer the partners any additional compensation. The partners didn't accept the outcome of the bank's review and referred their complaint to this service.

The partners complained that the bank had acted unfairly by forcing them to sell assets for less than their true value, by asking them to raise finance from family and friends, and by charging unreasonable management fees. The partners also complained that the bank's staff had acted in a threatening and bullying way.

After considering the evidence, our investigator didn't recommend that NatWest should be required to pay anything further. In summary, he gave the following reasons:

- He understood that the banking relationship initially broke down because the partners had used their VAT refund to reduce outstanding debt with another lender, rather than repaying the NatWest loan 3 as agreed.
- The partners were experiencing financial difficulty – they had other borrowing, including over £9m debt to another bank – and were unable to provide a reasonable strategy to repay the NatWest debt. They were unable to refinance with other lenders and were left with little option but to sell some of their assets. It appears that the decision to put the properties up for sale was something the partners considered even before the transfer to GRG.
- By mid-2010, loan 2 had expired and was in default. At the time, other businesses run by the partners had entered into administration. The partners acknowledged that they were unable to repay the NatWest debt and had advised that they would arrange for the sale of assets to provide repayment.
- The bank didn't appoint receivers, but instead allowed the partners to retain control of the sale of the properties, and it wasn't until 2011 that the properties were sold.
- The investigator hadn't seen any evidence that the bank put unreasonable pressure on the partners to sell their assets. It was clear the bank showed forbearance towards the partners over a number of years, by extending their facility
- The investigator hadn't seen anything to suggest the bank had asked the partners to approach family members or friends for financial assistance. The partners did accept help from a family member towards the settlement payment in 2012, but the evidence indicated that the partners had suggested this.
- The bank said that under the terms of the loans it was entitled to charge management fees when the lending was in default, but it agreed that the monthly management fees charged in 2010 weren't appropriate to the circumstances. These were the fees refunded by the automatic fee refund in 2017.
- The investigator considered whether the partners had suffered consequential losses as a result of paying the management fees in 2010 which were later refunded. He concluded that the partners' hardship had resulted from wider difficulties which weren't caused by NatWest. They faced problems trying to refinance the properties, to secure tenants after the property market crisis, and to sell properties. The partners also had larger debts with other lenders, some in default.
- It wasn't unreasonable of the bank to charge interest on the lending at default levels, because the partners were in default of their loan obligations at the time. It's standard market practice to charge default interest.
- It's possible that the impact of the bank's messages regarding repayment of the outstanding debt may have been heightened by the stress and the financial difficulties the partners were going through. But looking at the written evidence, the investigator hadn't seen any evidence that the bank's staff had been threatening or bullying.

The partners didn't agree with the investigator's conclusions. On their behalf, their representative said the complexities of the complaint points hadn't been understood. She stressed that the core issues were the partners' distress, the sale of assets, and the refund of charges and interest.

After considering all the evidence and arguments, I issued a provisional decision in which I said that, for the most part, I'd come to the same conclusions as the investigator, and for largely the same reasons. But I was minded to require the bank to compensate the partners for distress and upset suffered in relation to the inappropriate management fees. In my provisional decision I explained my reasoning as follows:

The background to these events was that the partners ran into financial difficulties when the 2008 financial crisis led to very challenging conditions in the property market. Their business struggled and they had substantial debts, mainly with lenders other than NatWest.

After the first default, NatWest did seek proposals for repayment by the partners and, about a year later and after further defaults, the bank said it wished to end the relationship. Clearly NatWest was looking to the partners to say how they would repay the debt, which wasn't unreasonable in the circumstances. But I've seen no evidence that the bank put any unfair pressure on them to sell their assets. Despite holding the properties as security, NatWest didn't bring in receivers and it left control of the assets in the hands of the partners. Moreover, the bank showed forbearance towards the partners and it wasn't until 2011 that properties were sold, and the final settlement was in 2012.

Similarly, I've seen no evidence that NatWest put any pressure on the partners to raise funds from friends or family. It appears to have been suggested by the partners.

The bank charged default interest rates in line with the loan terms and conditions. I don't think it was unreasonable to charge default interest rates when the loans were in default. However, it's common ground that the management fees were inappropriately charged in 2010. Those fees were refunded to the partners in 2017, with interest.

I agree with the investigator that the management fees didn't cause any consequential losses. The fees were nearly all added to the loan debt at the time, so I can't see that they would have had a financial effect on the day-to-day running of the partners' business. At the time, the partners faced far greater pressures from other financial liabilities, so I don't believe that there would have been a different outcome in the absence of the management fees.

I've already noted that the bank showed forbearance over the repayment of the partners' debt. I haven't seen any communications with the partners in which bank representatives were rude or bullying. But I have thought carefully about the impact of the inappropriately charged management fees on the partners at a time of great financial difficulty. Initially, between February and April 2010, the fees were £2,625 per month, but then rose to £11,760 per month for the next six months. In the GRG review, the bank said it couldn't see how the amounts had been calculated. Even though the fees simply piled up in the partners' debts and therefore didn't impact their cashflow, and there were other and substantially larger problems elsewhere in the partners' business, I believe that regular fees at this level would have added unnecessarily to the partners' worries.

At the time the partners' business couldn't make ends meet – though I'm satisfied that it wasn't the bank's fault. But the business difficulties must have been a burden on the partners personally and, in my opinion, the bank's inappropriate fees must have made things more distressing. NatWest has made good the financial loss caused by the fees, but I think the partners should also be compensated for the

distress caused. It's not clear why GRG levied the fees – indeed, they seem at odds with the bank's general forbearance when dealing with the partners' difficulties – and after six months at the higher level the bank decided to halt them. In the circumstances, I think the fees would have caused considerable distress and upset over this period. For these reasons, I'm minded to require the bank to pay the partners £750 compensation.

I invited the parties to send me any additional comments or evidence.

In response, NatWest commented that the 8% interest already paid on the refunded management fees was partly a consequential loss payment. However, the bank went on to say that it accepts my provisional decision to make the £750 award.

The partners disagreed with the provisional decision. Their representative made the following points, in summary:

- The ombudsman should take a view of the consequential loss of the direct costs incurred in paying for refinancing properties and other costs such as legal and professional fees.
- Loan 3 expired without payment to NatWest because funds were inadvertently routed to another lender.
- The bank claimed the partners' business was failing, despite all the evidence, spoken exchanges, valuations and several meetings to assure the contrary.
- The evidence also shows that the partnership continuously made efforts to get a better price for the sale of the property financed by loan 2.
- The evidence shows pressure and demands for payment and threats of being passed to recoveries if payments were not made, even under circumstances of ill health.
- £750 is not enough for the distress and upset.

In support, the representative also submitted copies of a number of documents, letters and emails variously dated between 2008 and 2012.

The partners also said the bank's GRG review process had been unsatisfactory, particularly regarding the consideration of consequential losses.

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.

First I should say that I'm unable to consider the partners' complaints about the processes of the bank's GRG review. The mechanisms of voluntary reviews conducted by banks are outside the legal scope of the Financial Ombudsman Service. However, we are able to consider complaints about the outcomes of such reviews, and that's what I've done here. The partners disagreed with the outcome of NatWest's GRG review, and in my decision I've considered their substantive complaint about both direct losses and consequential losses.

I've carefully considered all of the partners' arguments, including their recent points, about the bank's handling of the loans and specifically the actions of GRG. I've also read all the documents, letters and emails, including those recently submitted. Having done that, I haven't changed my view from my provisional decision. I'll explain why.

Loan 3 expired without repayment, so I don't think NatWest acted unfairly or unreasonably when it regarded the loan as in default. The partners say the failure to repay loan 3 was a result of funds being applied to the debt with another bank because of the way their accounts with other parties were arranged. But even if that was the case, it wasn't the result of any action by NatWest, so I can't reasonably say NatWest was in error.

I don't believe it was unfair or unreasonable for NatWest to warn the partners of the possible consequences of failure to make loan repayments, or to repeat those warnings. Nor was it unreasonable for the bank to issue reminders when repayments were due or overdue. In any event, the bank continued discussions with the partners and didn't issue formal demands for immediate repayment or put the properties in the hands of receivers. The discussions included consideration of refinancing proposals. This forbearance continued until the agreed settlement in October 2012, when the bank wrote off over £770,000 of the partners' debt. Throughout these events, the properties and their sales were left in the hands of partners. I haven't seen any evidence that the bank put unfair pressure on the partners to dispose of their assets.

The partners say they made efforts to sell the property financed by loan 2 at a better price, and I don't doubt that. In the end they were disappointed by the price they received on the market. It was a sale that the partners agreed directly with the buyer and I can't see that it involved any bank error. Nothing here changes my view of the complaint.

None of the evidence I've seen persuades me that the bank was unreasonable in regarding the partners' business as being in difficulties. The partners have shown us a valuation report for the property financed by loan 2, which said it had the potential to increase in value, with development work and if a new thriving business were established within it. But this document dates from June 2008, which was before the events in this complaint. I don't see the report as evidence, either way, of the condition of the partners' business from 2009 onwards. I note that in the partners' original complaint, they said that after the 2008 recession, *"the property market collapsed, plus the decline in the consumer market made it difficult for us to secure any tenants and carry on servicing our debt."* So I don't have any doubt that the partners were facing serious business difficulties at the time.

The partners' representative argues that NatWest should compensate them for losses which were the consequence of their efforts to refinance and for the loss in value of assets which they sold trying to meet their debts. But my finding is that the bank didn't act unfairly or unreasonably except in respect of the account management fees. So I can't reasonably require the bank to pay any compensation, either for direct losses or for consequential losses, for anything other than the account management fees. Those fees have already been refunded with interest and, as I said above, they caused no consequential losses because at the time they were absorbed into the partners' debt.

I accept that the partners suffered stress and health problems during the period covered by the complaint. They were experiencing serious business difficulties, their other enterprises went into administration, and they had debts to other lenders which were much larger than their NatWest debt. I recognise that they had a wretched time. But, as I explained above, I find that NatWest didn't act unfairly or unreasonably except in respect of the account management fees, and those fees caused the partners no cash flow problems at the time. I do think the bank contributed to the partners' distress by charging the fees, but the partners' business and financial difficulties were almost all caused by factors which were no fault of

NatWest, so the compensation that I award must be proportionate. Overall, taking a balanced view, I still think a compensation payment of £750 for the distress and upset caused by NatWest is a fair and reasonable outcome.

Putting things right

For all the above reasons, I don't depart from my provisional decision. I find that NatWest didn't unreasonably or unfairly cause the partners any financial losses other than the inappropriate management fees, which have already been refunded with interest. But I find that the charging of those fees caused considerable distress and upset, and the bank should therefore pay the partners £750 compensation.

My final decision

My final decision is that I require National Westminster Bank Plc to pay a total of £750 to Mr S1 and Mr S2 jointly for their distress and upset resulting from the bank's actions while their loan accounts were managed by GRG.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S1 and Mr S2 to accept or reject my decision before 13 January 2023.

Colin Brown
Ombudsman