

The complaint

A company, which I'll refer to as "C", complains that National Westminster Bank Plc ("NatWest") set up its business loan in the name of another company.

One of C's directors, Mr P, brings the complaint on the company's behalf.

What happened

C was incorporated in March 2019. Its two owners and directors, Mr P and Ms M, also own a second company that is of relevance to the issues in this complaint. I'll refer to this second company as "J".

Prior to C's incorporation, the directors approached NatWest with a view to taking out a loan to fund C's purchase of a property. A loan was agreed in principle in February 2019, with the purchase scheduled for completion in late April 2019.

On receipt of the agreement for a £300,000 loan from NatWest in mid-April 2019, C's directors identified a number of errors. Most notably, the agreement stated that the borrower would be J rather than C. The directors made a number of amendments to the agreement by hand – including the proposed term, monthly repayment amount and provider of a debenture – and returned it to the bank.

NatWest issued a revised agreement, but it still named J as the borrower and there were still areas of dispute. By this time, the scheduled completion date was imminent. The relationship manager dealing with C's application wrote to the company to offer some reassurance as to the core terms of the agreement – including that the loan term and repayments would be as C's directors expected, and that the only security taken for the loan would be charges over the purchase property and a second property owned by J.

Pressed for time, C's directors signed the agreement and the purchase was completed on 29 April 2019. So while it was C that had purchased the property, the loan with NatWest was in J's name. The directors also identified shortly after completion that NatWest had registered a debenture against J by way of security for the loan, to which they say they didn't agree or sign any paperwork.

Recognising that the loan should've been provided in C's name rather than J's, NatWest offered to correct the position. It ultimately agreed to restructure the loan by providing a £160,000 loan to C and a £140,000 loan to J. This was only concluded some time later, in February 2022.

NatWest agreed to refund all interest applied under the original loan, as well as the charges it had applied for its arrangement. It didn't charge any fees for the replacement loans, which it also says were offered at a better interest rate than that of the original loan. The bank has also paid C compensation of £850 for the inconvenience caused by the remedial action. And it's covered other associated costs in rectifying matters, including those relating to court action required for the removal of the debenture against J.

Mr P doesn't think that NatWest has yet done enough to put matters right, so he referred the matter to us. In summary, he says:

- The original loan was mis-sold and the debenture was obtained fraudulently. For the latter, he is seeking an additional compensation payment of £2,500 for what he describes as a breach of the bank's duty of care and a breach of trust.
- It has been a long and challenging process to rectify matters, including the court action to remove the debenture. It took over two years to resolve the issues with the loan, with delays on NatWest's part. He would like the bank to issue a formal apology for the loss and distress it has caused.
- C's directors were sworn at and spoken to disrespectfully on several occasions by members of NatWest's staff in conversations about resolving the matter. He is seeking a further compensation payment of £1,000 for the distress this caused.
- C's directors spent over 240 hours of time in sorting things out, for which they are seeking reimbursement at their hourly rates – amounting to a sum in excess of £17,000.

C's complaint has been reviewed by one of our investigators, who didn't recommend that NatWest take any further action. Noting that there was no dispute that the bank had made errors, he thought the steps it had taken to put things right represented a fair resolution.

Mr P didn't accept our investigator's view, so the complaint was passed 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.

The issuance of the loan to J, rather than C

NatWest made a significant error in issuing the loan agreement in J's name rather than C's. It was clear to the bank from the outset that the loan was to support a purchase being made by C, and that the intention of the company's directors was for that loan to be in C's name. C's directors notified NatWest of this error on receipt of the paperwork, with the bank having sufficient time – in my view – to take corrective action. It didn't, and while paperwork was reissued, it still named J as the borrower.

The bank has suggested that C should take some responsibility for what followed, as they proceeded to sign the agreement in the knowledge that it contained this error. C's directors could, it is argued, have mitigated the impact of this mistake by taking other action. But I don't think it was unreasonable for C to have proceeded in the circumstances. They had an imminent deadline for completion and *not* proceeding with the purchase as agreed could also have had significant consequences.

NatWest has addressed the fundamental issue of J being the borrower by way of the replacement loans issued to C and J. It seems that the bank was unwilling to lend the full £300,000 to C, but C hasn't raised any objection to the structure of the lending, so this appears to be a satisfactory way forward.

The replacement loans were set up at no cost to C, with NatWest having waived any of the usual arrangement fees that would have applied and covered all the legal fees. So the

restructuring of the loan hasn't led to C incurring any additional costs. And the bank also reimbursed the arrangement fees charged in setting up the original loan.

It took NatWest far longer than ought to have been necessary to arrange the restructure. The incorrect loan was set up in April 2019 (with the bank being aware of the problem at the time), and the restructure was only completed in February 2022. That hasn't led to C incurring any additional costs in respect of the loan than it would otherwise have done. On the contrary, NatWest didn't charge any interest under the original loan agreement – meaning that C had the benefit of the £300,000 loan without paying any interest for almost three years (when, under the terms of the agreement, this would've cost the company around £1,000 a month). So, in that respect, C is in a far better position than it otherwise would've been. Further, the replacement loans were subject to a lower interest rate, at least initially – being at a fixed rate of 3.24% for the first five years, compared to 3.5% above the Bank of England base rate under the originally-agreed terms.

I recognise that it is not just direct financial losses that will have impacted C. Its directors have had to spend a lot of time and effort on resolving the matter with NatWest, having to engage in substantial additional correspondence, meetings and legal formalities. Mr P has compiled a claim for what he calls “management costs”, being the time spent by the directors dealing with these issues – which he estimates to be 240 hours – at their respective hourly rates.

It's hard for me to verify whether Mr P's estimate of time spent is wholly accurate, but it doesn't look patently unreasonable. However, we don't typically award compensation based on units of time or a complainant's hourly rate – rather, we look at the overall impact that the financial business's mistake had. I don't think it would be appropriate to deviate from that approach here. I've not seen that the time C's directors had to spend on the matter caused them a loss of business elsewhere, and so I don't think it would be fair to compensate them for dealing with this matter at the rates they may charge in their fields of expertise.

I can see why Mr P doesn't think the £850 that NatWest paid to compensate C for the inconvenience is sufficient. C was put to some considerable trouble in sorting things out, and had no other offer been made then I would likely be minded to make an additional award.

However, I think it is fair to take into account the betterment of C's position overall from the steps that NatWest has taken – most notably, that the company wasn't required to pay any of the interest that would otherwise have been payable on the loan for almost three years. That significant saving alone – of around £30,000 – far outweighs any additional amount I might otherwise have awarded to compensate C for the inconvenience it was caused by the bank's errors.

Lastly on this point, I note that Mr P believes that – in refusing to pay C's management costs – NatWest is reneging on its promise to indemnify the companies for “*all costs incurred in the process*”. The bank didn't describe in any detail what this might or might not cover. But it is debatable as to whether the management costs were in fact a “cost” to C at all, given they won't actually have had to make any payments to their directors (rather, they are being claimed as a loss of opportunity). Either way, I don't think this alone is sufficient for me to require that NatWest pay this aspect of C's claim in light of all I've said above.

I understand Mr P is seeking what he calls a “formal” apology from NatWest for the errors and the impact they've had on C. I've seen that the bank has already apologised on a number of occasions, most notably in its response of 12 December 2019. NatWest has reiterated its apology in dialogue with our Service about the matter. The bank has said it is willing to issue a further apology in light of Mr P's requests, which is as much as I could reasonably ask of it. I leave it to the bank to decide how best to convey its apologies to C.

The registration of the debenture against J

In addition to the issuance of the loan to J rather than C, NatWest erroneously registered a debenture against J by way of security for the original loan.

That strikes me as more of a matter for J to raise as a complaint, being the company that was affected by it. I couldn't award any compensation to J through this complaint for any impact that it may have been caused by this error. Most notably, the obtaining of the court order and remediation of records filed with Companies House were matters that could only have been dealt with by J. Even though it would still have been Mr P and/or Ms M that were dealing with the matter, they would've been doing so in their capacity as J's directors rather than C's.

I don't see any basis on which to award any additional compensation to C in consideration of the issues relating to the debenture. Mr P is seeking £2,500 on the basis that he considers the debenture to have been obtained fraudulently, thereby representing a breach both of trust and the bank's duty of care. We don't calculate compensation by reference to the error but to the impact. I can't see that C was impacted by the registration of the debenture against J such that a further award would be appropriate.

Disrespectful communication with C's directors

Mr P says that two members of the bank's staff used inappropriate language and gestures during conversations held in May and June 2019. He says these concerns weren't properly addressed by the bank.

While I don't agree that no action was taken, I can understand why Mr P is frustrated and sees the matter as unresolved. In its letter of 4 May 2021, NatWest said that it had referred Mr P's comments to the relevant team to investigate – but that the details of that investigation and outcome would be kept confidential. I can see why Mr P would've wanted the bank to reach a view on what happened and to share that with him. It did, however, apologise for the way Mr P was "made to feel" on these occasions.

There is limited evidence for me to assess what happened during these interactions, but ultimately I have little reason to doubt what Mr P has said – especially as he has been consistent in his recollections throughout the course of the matter. Quite obviously, it was wholly inappropriate for any member of the bank's staff to have used abusive and offensive language when speaking with Mr P and Ms M.

However, I can't make a further award to Mr P and/or Ms M in their capacity as individuals for any distress this might understandably have caused them. Under our rules, the eligible complainant here is C – so it is only C to whom I can make an award. And as C is a limited company, it can't suffer distress or upset. So even accepting what Mr P has told us about these incidents, there is no basis on which I can require NatWest to pay any additional compensation.

In closing, I would underline that there were errors of some magnitude on NatWest's part in how it processed the original loan and these have had a significant impact on C. I hope that my findings – in focusing more on whether NatWest needs to do anything more to put things right – isn't read as downplaying either of these points. It is just that the question for me to decide here has, primarily, been whether or not the settlement that NatWest has already implemented is a fair way to resolve C's complaint. For the reasons I've explained, I think it is – and so, on that basis, I'm not upholding the complaint.

My final decision

For the reasons set out above, 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 28 April 2023.

Ben Jennings
Ombudsman