

The complaint

Mr H complains that National Westminster Bank Plc is wrongly holding him personally liable for the debt of a limited company he used to be associated with. I will call that company R.

What happened

Mr H told us:

- In July 2022 he was a director of R. His fellow director wanted to arrange an overdraft from NatWest, and he agreed to explore that possibility.
- At NatWest's request, he completed some documents. But NatWest then told him that it required information from both himself and his spouse before it would agree to lend. He did not want to provide that information, and he did not want to give a personal guarantee – so he did not do either of those things. Instead, he decided not to proceed with R's overdraft application.
- He was shocked to discover that NatWest had approved the overdraft application anyway. He assumed it did so on the basis of information provided by his fellow director and that director's spouse.
- In October 2022 he stepped down as a director. He told NatWest that he was no longer associated with R, but it did not remove him from the company's bank account for many months. NatWest somehow confused his contact details with those of his fellow director, and he suspects that confusion might have contributed to its belief that he is liable for R's debt.
- R later went into liquidation, and is not able to pay its debt to NatWest. NatWest asked him to make a contribution towards that debt, up to the level of the personal guarantee that it says he gave – but his position is that he did not in fact give a personal guarantee. NatWest did not have up-to-date identity evidence for him, and did not do any due diligence as to whether the debt was affordable to him (and if it had done that due diligence, it would have discovered that the debt was not affordable).

NatWest told us:

- Mr H gave NatWest a personal guarantee for R's borrowing in July 2022. That guarantee was limited to £10,000, and covered "all of [R's] liabilities to the Bank (present, future, actual or contingent and whether owed alone or jointly with another)".
- Although it had asked for information from Mr H and his spouse in respect of R's overdraft application, it was able to agree the application without that information. The overdraft was covered by the personal guarantee Mr H gave.

- R made active use of the overdraft, including during the period that Mr H was drawing a salary from the company.
- It is sorry for the difficulties Mr H experienced with regards to the mandate for the company's account. It considers that some of those difficulties were not its fault – it was initially unable to process an instruction it received because the signature on that instruction did not match its records – but it accepts that there was confusion over the contact details for Mr H and R's other director. However, it does not consider that that confusion affects Mr H's liability for R's debt.
- The personal guarantee itself explained "The Guarantor, or the Guarantor's personal representative, may give one month's notice that the Guarantor will no longer provide this guarantee, but the Guarantor will remain liable for: all the Guaranteed Liabilities at the date notice is received by the Bank [and] any further Guaranteed Liabilities that arise before the expiry of the notice". Mr H did not tell it that he did not wish to guarantee R's debts until after the company had already fallen into liquidation, and so Mr H is liable under the personal guarantee he gave.

One of our investigators looked at this complaint, but didn't uphold it. He was satisfied that Mr H had given NatWest a personal guarantee for R's borrowing, and he thought that if Mr H had been unhappy about NatWest's decision to approve R's overdraft he should have said so at the time.

Mr H did not accept our investigator's conclusions, and asked for the matter to be referred to an ombudsman. He reiterated that he feels he was recorded as a guarantor based on due diligence checks on his fellow director and not himself. He accepts that resigning as a director does not remove a personal guarantee, but he explained that since he did not follow through with the company's application he didn't think he'd been recorded as a guarantor in the first place. Even much later, when he called NatWest it confirmed that after he completed the mandate he was not attached to R's account in any way.

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.

I think there are three issues here:

- Did Mr H give NatWest a personal guarantee for R's borrowing?
- Did NatWest treat Mr H fairly when it approved R's overdraft?
- Is it fair for NatWest to now pursue Mr H personally for R's debt?

I have considered each of those issues in turn.

The personal guarantee

I have considered the documents NatWest provided to us, and I am satisfied that Mr H did give NatWest a personal guarantee for R's borrowing. Mr H has acknowledged completing the online application for the overdraft, and in doing so he gave a personal guarantee for R's borrowing. That guarantee was not just for the overdraft R was applying for at the time; it covered all of R's liabilities to the bank.

I accept that Mr H believed the overdraft application would lapse after 28 days if he did not respond, but the personal guarantee was not conditional on the overdraft application going ahead.

On the contrary, the personal guarantee covered all of R's future borrowing from the bank – and explicitly said that the NatWest was entitled to “grant new facilities or credit” to R “without releasing or reducing [Mr H's] liability and without [his] consent”.

I acknowledge that Mr H says NatWest did not have an up-to-date copy of his driving license at the relevant time, but it was not required to have one – nor was it required to hold any other specific identity document.

I have noted Mr H's concern that NatWest's confusion over his personal details and those of his fellow director might be the reason that it recorded him as a guarantor. But I am satisfied that the reason NatWest recorded Mr H as a guarantor is a simple one; Mr H provided a personal guarantee in the process of applying for an overdraft for R.

The overdraft approval

I think some of the information NatWest provided to Mr H during the overdraft application process was confusing. I can understand why he thought the application would be cancelled if he did not provide the documentation NatWest had asked for; NatWest told him that is what would happen. However, I am also satisfied that he knew the overdraft had been granted. He now says he assumed NatWest decided to grant the overdraft to R based on his fellow director's information – which is indeed what happened – but the personal guarantee he signed made him liable for all of R's future borrowing, whether or not it was associated with the original overdraft application.

NatWest lent money to R, a limited company. That lending was unregulated, which means that the Financial Conduct Authority rules on irresponsible/unaffordable lending do not apply in this case. But in any event, I see no reason why NatWest should not have approved R's overdraft. I acknowledge that R was ultimately unable to repay its debt to NatWest, but I don't see anything unfair or unreasonable about NatWest's decision to approve the overdraft.

Debt recovery

I acknowledge that Mr H will strongly disagree with me, but I don't see anything unfair in NatWest's decision to attempt to recover R's debt from Mr H.

By the time NatWest called in the debt, NatWest knew that Mr H was no longer a director of R. But his resignation as a director, and his removal from R's bank account, did nothing to affect his liabilities to NatWest under the personal guarantee.

If Mr H is right to say that there were periods after his resignation when R was not using overdraft, then it might have been possible for him to have given notice to cancel the guarantee and then been released without having to pay anything. But he did not give notice to cancel the guarantee – presumably because he did not realise it was still in force. NatWest did not have any obligation to proactively tell him about the guarantee. In addition there is nothing in the personal guarantee to suggest it would be cancelled because the guarantor resigned as a director, nor does it suggest that being removed from the mandate for the company's bank account would have any impact on the guarantee.

Overall, I think NatWest has treated Mr H fairly.

My final decision

My final decision is that I do not uphold this complaint against National Westminster Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 6 February 2024.

Laura Colman
Ombudsman