

## **The complaint**

Miss T complains about the way National Westminster Bank Plc treated her in relation to a personal guarantee for the debts of her company.

## **What happened**

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NatWest told us:

- In November 2022, Miss T electronically signed a personal guarantee in support of an overdraft facility for her own limited company (which I will call S).
- Miss T is no longer a director of S, but the personal guarantee remains active.
- S is now in liquidation, and unable to meet its obligations to the bank. It is therefore relying on the personal guarantee to ask Miss T to cover those obligations.

Miss T told us:

- She would not have knowingly signed a personal guarantee. The bank gave her no indication that she was signing a personal guarantee, and did not tell her to take legal advice. She is very disappointed that the bank cannot provide a recording of the relevant telephone conversation.
- Finding out that she had given a personal guarantee was a huge shock, and caused her mental health to deteriorate.
- She does not believe that the personal guarantee is enforceable, in part because the bank has not provided the certificate required by clause 3.4 of the personal guarantee document.

One of our investigators looked at this complaint, but she did not uphold it. Our investigator thought NatWest had complied with the relevant industry standards. She also said that the personal guarantee document itself gave a clear explanation of the obligations Miss T would be agreeing to, and that it set out that Miss T should take legal advice. Finally, she explained that the Financial Ombudsman Service cannot determine whether an agreement is enforceable – that is a matter for a court.

Miss T did not accept our investigator's conclusions, and so the matter was referred to me.

## **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, whilst I am sorry to further disappoint Miss T there is very little I can add to what our investigator has already said.

I do not have the legal power to determine whether a personal guarantee is enforceable, but I do want to make a brief comment on Miss T's concern about clause 3.4 of the personal guarantee document. That clause says:

"A certificate signed by a Bank official as to the amount due from the Guarantor will be binding on the Guarantor, except if there is an obvious error."

I don't think the clause suggests that NatWest intended to provide Miss T with a certificate at the time the guarantee was signed, nor does it suggest that the guarantee will be invalid without a certificate. When NatWest asked Miss T for the guarantee, it could not have known the amount that it would later ask her to pay (or indeed that it would ever ask Miss T to pay anything at all – the bank could not have known that S would fail to meet its own obligations). Instead, the clause suggests to me that NatWest anticipated that it may wish to provide Miss T with a certificate at some future point, and the bank wanted that future certificate to be binding on Miss T.

However, as I've said I have no power to determine whether the personal guarantee is legally enforceable (with or without a certificate). All I have the power to do is decide whether NatWest treated Miss T fairly in attempting to recover money from her. I am satisfied that it did. My reasons are broadly the same as those of our investigator, but I will make some further comments below.

I acknowledge that Miss T does not recall giving the personal guarantee, but on balance I am satisfied that she did. (As an aside, I note that if Miss T did not in fact give the personal guarantee, she would not then be a "guarantor" as that term is defined in our rules – and so I would have no legal power to consider her complaint or investigate any of her allegations.)

I have taken into account the Lending Standards Board's Standards of Lending Practice, which aim to set benchmarks for good lending practice in the UK. Here, I am satisfied that NatWest complied with those standards. In my view, the documents NatWest has provided show that it clearly explained that it wanted a personal guarantee to support S's borrowing. I think Miss T's obligations under the personal guarantee were clear, and I am also satisfied that the personal guarantee document itself told Miss T that she "should take legal advice before signing". I have seen nothing to suggest that NatWest had any reason to doubt that Miss T understood what she was signing.

NatWest has provided one telephone recording of a conversation with Miss T (and with another person associated with S) on the date the personal guarantee was signed. That call was primarily about which part of NatWest's website should be used to make an online application for a business overdraft. NatWest's staff member confirmed that S would need to specify the amount it wanted to apply for, but he didn't mention a personal guarantee. Given the nature of the call, I wouldn't expect the staff member to have said more than he did.

Miss T told us there were other calls during which NatWest's staff mis-sold this product to her. NatWest says that after the single call it provided, the application process continued online and there were no other telephone calls.

On balance, I think it is unlikely that there were any other relevant calls between NatWest and S's representatives. The single call that I have listened to is about the mechanics of how S's representatives could make an online application for a business overdraft. S's

representatives clearly wanted to make an online application, and in the circumstances I accept NatWest's evidence that the rest of the application proceeded online. Even if there were other calls, I still think that the documents Miss T received made it clear that in signing them she would be giving a personal guarantee for S's debt.

I recognise that Miss T is now in a very difficult position, and I appreciate that she feels very strongly about this complaint. But based on what I've seen, I don't think NatWest has treated her unfairly in her capacity as a guarantor.

### **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 Miss T to accept or reject my decision before 4 April 2025.

Laura Colman  
**Ombudsman**