

complaint

J, a limited company, complains that National Westminster Bank Plc didn't release security over its properties. It asks that NatWest release the security without charge. J is represented by its director, who I will call Mr B.

background

J had given a fixed charge over its properties to secure a loan from NatWest and a cross guarantee with a related company, which I will call J2.

In October 2014 heads of terms were agreed for the restructuring of debts owed by J2 to NatWest. It was intended that J's debt to NatWest would be repaid. Mr B says the conditions set out in the heads of terms were satisfied, but NatWest didn't release the security over J's properties.

The adjudicator didn't recommend that the complaint should be upheld. She said several of the conditions set out in the heads of terms hadn't been met. J is party to a cross guarantee with J2 and both owe debts to NatWest. There was nothing to suggest NatWest mismanaged J's accounts. It wasn't reasonable to require NatWest to release its security.

J didn't agree. Mr B said, in summary, that the conditions for the restructuring had been met and provided a statement from J's former finance director to support this.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Heads of terms were agreed between NatWest and J2 to restructure J2's debts. It was intended that J's debt to NatWest would be repaid. The heads of terms say they are not legally binding. While Mr B says the heads of terms are legally binding, whether this is the case is a matter that can only be decided by a court. I need to decide here whether it's fair and reasonable to require NatWest to release the security over J's properties.

NatWest says the conditions set out in the heads of terms weren't met, in particular the requirement for £1.2 million to be invested into J2. Mr B disputes this and says other conditions were also met or became irrelevant.

On balance, I'm not persuaded the conditions were met. But I don't think it's necessary to set out why in detail here. This is because there's another reason why I find it's not reasonable to require NatWest to release the security.

NatWest says the restructuring of J2's debts couldn't continue after a winding up petition was issued against J2 in December 2014. J2 is currently in liquidation. I don't think it's reasonable to say NatWest should continue with the restructuring set out in the heads of terms in these circumstances.

J and J2 owe debts to NatWest which are secured on J's properties directly or via the cross guarantees. In the circumstances, I think it's reasonable for NatWest to decline to release the security over J's assets.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask J to accept or reject my decision before 25 November 2016.

Ruth Stevenson
ombudsman