

complaint

Mr and Mrs H complain that National Westminster Bank Plc ('NatWest') has failed to release the legal charge over their property.

background

In 1986 Mr and Mrs H took out a £15,000 mortgage (secured by legal charge over their UK property) with NatWest. Mr and Mrs H repaid the mortgage in 1991, but NatWest has refused to release the charge.

NatWest submit that it has retained an equitable charge over the property because Mr H has an outstanding business debt (which, with interest, currently stands at about £24,000). It has confirmed that it will not enforce the debt (which in any event would not operate against Mrs H), but will await the outcome on any sale of the property. Mr and Mrs H have made unsuccessful efforts to settle the debt as NatWest was willing to consider any realistic proposals from them.

The adjudicator did not recommend that the complaint be upheld.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I have taken careful note of the further representations made by Mr and Mrs H since the adjudicator's letter.

Mr H is adamant that he did not have a business account or a business overdraft. He accepts that the debt arises under his personal account, and that it started from his defaulting on a credit card over 20 years ago. He says that the debt is unsecured and therefore NatWest should release the legal charge.

It seems to me that whether the debt arose from a business account or a credit card debt is of limited relevance. In my view NatWest is entitled to rely on its equitable charge pending settlement of the outstanding sum. Mr and Mrs H accept that there are sums owing – and indeed have made efforts through themselves and their advisors to reach a settlement.

While I am sympathetic to Mr and Mrs H's financial predicament and ill health, I do not think that NatWest is required to release the existing charge over their property until they have cleared the outstanding debt.

my final decision

For these reasons I do not uphold this complaint.

Charles Sweet
ombudsman