

## **complaint**

Mr N and Mr S complain that National Westminster Bank Plc ("National Westminster") sold properties of their company to repay its debts for less than their true value.

## **background**

Mr N and Mr S's company went into voluntary liquidation leaving an outstanding debt with National Westminster. This debt had been secured by legal charges over two of the company's properties and by a personal guarantee from both Mr N and Mr S.

National Westminster took possession of the two properties and began to arrange for them to be sold at auction. The proceeds of their sale would then go towards the outstanding liability of the former company, and any amount remaining would be claimed under the guarantees provided by Mr N and Mr S.

Mr N asked National Westminster to defer the auctioning of the properties so that he could take action to try and secure a higher price for each of them. The planning permission to build on one of the properties had expired and Mr N had reapplied for this, and the other property needed to be cleared and cleaned.

Four months later, the properties were both sold at auction.

Mr N complained that he had not been given enough notice that the properties were being sold, and that the prices that they achieved were significantly less than when they were last valued. This meant that Mr N and Mr S were left with more of the company's debt with National Westminster remaining.

National Westminster said that it was in correspondence with Mr N before the properties were auctioned and that he was aware of its intentions. It had obtained reports on the properties from its appointed agents before the auction, and that the sale prices were based on their market value and condition at the time. It considered that it had allowed Mr N sufficient time to sell the properties himself before it placed them into auction.

Our adjudicator did not recommend that the complaint should be upheld. He concluded that National Westminster had given Mr N and Mr S sufficient time before putting the properties up for auction, and it was not wrong to do so. He said that buyers would often make lower offers for a property sold by a lender in possession.

Mr N did not accept the adjudicator's findings and said that the bank knew that the properties were not ready to be sold. He said that National Westminster sold the properties negligently, and without any care for the interests of him and Mr S as guarantors.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

When Mr N and Mr S's company went into voluntary liquidation, the powers that they had in the company were effectively turned over to the liquidator. The liquidator was appointed to sell and collect the company's assets and distribute them between any creditors the company had.

The debts the company had to National Westminster were secured in part by legal charges over two properties. When the liquidator asked the bank to confirm its intentions for these properties, it said that it would be repossessing them to be sold at auction.

However, it was not until some months later that the properties were sold. Although I understand that a further application for planning permission had been applied for on one of the properties, and this was delayed for other reasons, Mr N and Mr S would have had the opportunity to clear the other property if they considered this may increase the market value.

Overall, I am unable to conclude that National Westminster acted unfairly in putting these properties into auction before Mr N and Mr S were able to complete work that they believed would have improved the price they fetched. Although Mr N has said that he did not know about the auction until shortly before it took place, National Westminster had written to him to confirm this at the address he was using. I also understand from the contact records that he had received other letters sent to this address.

Mr N and Mr S were no longer able to make such financial decisions with their company as this had become the responsibility of the liquidator. National Westminster made the decision to auction these properties for the value to be paid towards the debts of the company, which had been secured by a legal charge. I am satisfied that the bank obtained reports on the market values of the properties before they were auctioned, and therefore looked to ensure that they achieved a fair price based upon their condition. It is because of this that I am unable fairly to conclude that National Westminster should be required to reduce the remaining liabilities of Mr N and Mr S under their personal guarantees.

### **my final decision**

My final decision is that I do not uphold this complaint.

Cathy Bovan  
**ombudsman**