

complaint

Mr P complains that National Westminster Bank Plc (“NatWest”) has not treated him fairly in that it used a right of set-off to transfer money from his sole account to repay a debt on the joint account he held with his ex-wife. He says his ex-wife had undertaken to repay the debt, so the bank should not have used his money. He would like the bank to refund the money to his sole account.

background

Mr P held a joint account with his ex-wife which had an overdraft facility. In 2015, NatWest wrote to Mr P to tell him that the overdraft facility needed to be repaid and that it would be removed from the account. Mr P has said that his wife had undertaken to repay the debt, so he did not make any repayments towards it. NatWest sent further letters requesting repayment, but when the debt was not repaid by the due date, it exercised its right of set-off under the account terms and conditions, transferring the money from Mr P’s sole account to repay the debt. Mr P considers the bank had no right to do this, and that it should have taken repayment from his ex-wife.

Our adjudicator did not recommend that the complaint should be upheld. She noted that the account terms and conditions allow the bank to exercise its right of set-off in certain circumstances, and she considered the bank had provided Mr P with the necessary notice of the need for the debt to be repaid. She considered that the dispute over who should repay the debt was a private matter between Mr P and his ex-wife, and that this did not affect the bank’s right to act under the terms and conditions.

Mr P does not agree, saying that as his ex-wife had agreed to repay the debt, the bank should have taken repayment from her, not him.

my findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

I can understand why Mr P was dismayed and frustrated to discover that NatWest had taken money from his sole account to repay a debt which Mr P says his wife had assumed responsibility for. However, while the joint account remains open, both parties are jointly and severally liable for the debt attached to it, and the bank is able to pursue either or both for repayment of it. Mr P has said that he signed the form to release himself from the account several years ago, but it appears that the necessary formalities have not been completed to action this, and that he remained on the account, and liable for it.

The terms and conditions of the account allow the bank to exercise a right of set-off in certain circumstances. NatWest has shown that it wrote to Mr P on several occasions to tell him that it required repayment of the debt and that it would take money from his sole account if the debt was not otherwise settled. As the debt was not repaid in time, the bank exercised this right. While I can understand why Mr P was extremely unhappy that this occurred, I can’t find that the bank has acted unreasonably. The undertaking from Mr P’s ex-wife to make repayments was a private undertaking to him, and unless she actually repaid the debt, would not release Mr P from his liability to the bank for it.

Mr P is able to seek repayment of the money from his wife, but I'm afraid I'm not able to order the bank to refund the money it took, as this was permitted under the terms of the account and Mr P was still bound by these when the bank acted.

my final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 27 June 2016.

Catherine Wolthuizen
ombudsman