

complaint

Mr and Mrs R complain that National Westminster Bank plc is unfairly seeking recovery of money under a guarantee they gave as former directors of L, a limited company now dissolved.

background

Mr and Mrs R were directors of L, which had an overdraft with National Westminster. The overdraft was backed by a personal guarantee they gave the bank. By May 2011, L was using most of the overdraft facility. A large deposit was made to L's account, which brought it back into credit. Mr and Mrs R didn't know where the money had come from. They asked National Westminster to look into the matter. But they were then contacted by D, a third party, who said he'd deposited the funds. That made sense to Mr and Mrs R, as they understood D was placing an order through L.

But D said he'd made an error in the amount he'd sent. He asked L to return the excess payment of just over £46,500. L approached National Westminster and asked it to make an urgent transfer to D, which the bank did. However, National Westminster was then told the deposit had been returned unpaid. It debited L's account with the original deposit amount, which left the balance significantly over the agreed overdraft.

Mr and Mrs R say that they used a good deal of their personal finances to try to maintain L as a going concern. But ultimately those attempts were unsuccessful and L was dissolved, owing National Westminster around £102,000. The bank has since called on Mr and Mrs R's personal guarantee of £58,800. Mr and Mrs R think this is unfair. They believe the bank was at fault in allowing the deposit and transfer in May 2011. They want National Westminster to write off the balance and pay them compensation.

Our adjudicator thought National Westminster had been remiss in the way it handled the deposit and transfer. But he also noted the overall amount L owed the bank was such that the bank would probably end up writing off more than L had paid away to D. The adjudicator also observed that much of the concern arose out of L's customer relationship with National Westminster, and drew the distinction between this and Mr and Mrs R's relationship as guarantors. Overall, he proposed that the bank limit the amount it was claiming under the guarantee to £55,695, rather than £58,800.

my findings

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

Mr and Mrs R agreed to guarantee L's debts up to a limit of £58,800. Although the overall debt rose to over £100,000, I'm conscious there were some significant shortcomings in the way the bank handled the fraudulent deposit.

Having reviewed the papers, I've got concerns over whether the bank should have ever accepted the deposit, given the amendments it contained. And banks are familiar with – and ought to be alert to – this type of fraud.

National Westminster has for some years required its cashiers to complete a 'Large Payment Pro-forma' for withdrawals where a cheque has been deposited recently.

The bank has been unable to provide a copy of that form, so I'm unable to say with certainty whether it was completed. But there was general confusion over where and how the deposit was made. I'm aware Mr and Mrs R told the bank they recognised the payment. However, it does seem Mr and Mrs R thought the money had been transferred directly to their account. Had the bank explained it was a cheque deposit, it might have alerted Mr and Mrs R to the possibility the deposit could still be returned unpaid. Their decision to transfer funds to D might then have been different.

That doesn't mean all the difficulties L experienced in business operation flow directly from this incident. As I've noted, L was already using most of the overdraft facility. That position wasn't significantly improved despite Mr and Mrs R's further personal investment into the business. So like the adjudicator, I think National Westminster's entitled to seek repayment under the personal guarantee Mr and Mrs R gave it. They were always going to be liable for much of the debt L owed, despite the bank's actions over the fraud. The adjudicator recommended that liability should be limited to £55,695. After carefully considering what's happened here, I think that's a fair way to resolve this complaint.

my final decision

My final decision is that in full and final settlement of this complaint, National Westminster Bank plc should limit Mr and Mrs R's liability under their personal guarantee to £55,695.

Niall Taylor
ombudsman