

complaint

Mr and Mrs H complain that National Westminster Bank Plc has not dealt fairly with them concerning the repayment of their business debt, has not responded properly to their questions and will not accept their reasonable repayment proposals.

background

Mr and Mrs H were two of three partners in a business. By 2008 the business had cash flow problems. NatWest gave the partners a loan which was used to repay the overdraft and provide cash flow for the business. Mr and Mrs H say that, with hindsight, they do not consider that the accounts for the business justified the risk they faced in taking the loan.

The business suffered in the subsequent downturn in the economic climate, and in 2009 the partners decided to close it. After taking advice, Mr and Mrs H entered into Individual Voluntary Arrangements ("IVAs") with creditors. NatWest preferred to rely on the security it held for the partnership debts, in the form of a legal charge which Mr and Mrs H had given it over their home in 1998.

In April 2009 Mr and Mrs H had a meeting with their business banking manager and another manager, in which there were discussions about how much they owed. Mr and Mrs H say they were told that they would be contacted again shortly about repayment of the debt.

Mr and Mrs H heard no more about the debt until November 2011, when they were given notice of formal demand. Mr and Mrs H say that the debt had increased significantly because of the application of interest, and that NatWest refused to give them a remortgage loan for their partnership liability or accept their offer of a lesser lump sum in settlement of the debt.

Mr and Mrs H are also unhappy that NatWest could not produce the original signed agreement for the 2008 loan, and have raised concerns about whether the loan was actually secured on their home. They say they feel harassed and intimidated by the communications they have received from NatWest.

In acknowledgement of its failure to respond in 2009, NatWest paid Mr and Mrs H £250 and offered to remove charges and interest accrued since April 2009 if satisfactory repayment arrangements were agreed. Mr and Mrs H did not consider this went far enough to address their concerns.

An adjudicator investigated the complaint. Although NatWest could not produce the signed loan agreement, the adjudicator was satisfied that the evidence clearly showed that the partnership had received and benefitted from the loan.

The adjudicator noted that the April 2009 meeting had not been followed up by NatWest. Equally, though, he noted that Mr and Mrs H were aware of the debt throughout that time and did not raise the matter either. He was not persuaded that the delay had disadvantaged Mr and Mrs H, given NatWest's subsequent offer to refund charges and interest once a repayment arrangement was agreed.

The adjudicator was also satisfied that the terms of the legal charge which Mr and Mrs H signed in 1998 were such as to cover the loan debt.

Mr and Mrs H did not agree with the adjudicator's conclusions. They wrote with detailed further submissions, which reiterated some of their earlier arguments. Their main points, in summary, were:

- They remain unhappy that the legal charge over their property should, properly, be regarded as securing the 2008 loan.
- They have found NatWest's communications intimidating, particularly in relation to possession proceedings, and have already made reasonable proposals about the debt.
- There is an anomaly in the debt schedule for their IVAs, in that a business debt to NatWest appears to have been included.
- There must be some reason behind NatWest's failure to take action sooner to recover the debt, or to produce documentation. That is likely to be because it knew the paperwork it was relying on was flawed.
- They are unhappy about the high valuation that NatWest must have placed on their former business partner's home when it agreed to make the 2008 loan. There has been recent press about banks forcing businesses into failure and their case seems to reflect this.

my findings

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

Mr and Mrs H have made a number of further representations following the letter from the adjudicator setting out his view of their complaint. Within those representations, they have detailed various points and raised a number of further questions. I have considered all they have said, but will keep my final decision focused on the complaint that has been investigated.

I do not consider that the fact NatWest cannot produce the original signed loan agreement means that it cannot ask Mr and Mrs H to repay it, or rely on its security in the matter. The unsigned copy loan agreement sets out the amount which is to be lent and the terms on which it is offered, and the evidence from that time shows that the money was paid into the partnership current account.

I am satisfied – from the evidence – that Mr and Mrs H intended to go ahead with the loan, having made their own assessment of what risk they were willing to take to try to revitalise their business. I do not consider that any assessment made by NatWest of the value of their business partner's home makes any difference to their liability for the partnership loan.

Unfortunately, the business did not thrive and was eventually closed. I can understand that this will have been a blow to Mr and Mrs H, and that they will have been concerned about the partnership debt. However, like the adjudicator, I do not consider that NatWest's failure to revert to them following the April 2009 meeting prevented them from following the matter up if they wanted to do so. I note that NatWest has paid some compensation for that, and has offered to refund interest and charges if a satisfactory repayment plan is agreed. That offer still stands and seems reasonable, in the circumstances.

The legal charge that Mr and Mrs H gave NatWest over their home in 1998 is clear as to its effect in covering past, present and future borrowing by Mr and Mrs H in whatever capacity. So, whilst I have noted the points that their legal representative makes, I cannot see any reason why the legal charge cannot cover Mr and Mrs H's partnership debt.

Mr and Mrs H have recently raised some questions about the schedule of debts drawn up in relation to their IVAs. As the adjudicator has explained, that is something more suitable for discussion by Mr and Mrs H with the party that dealt with the IVA applications for them.

Letters that are to do with recovery of a debt, particularly if possession proceedings are possible, will inevitably be very stressful to receive. I appreciate that Mr and Mrs H believe that there is no reason why NatWest cannot simply transfer their liability onto a mortgage loan, or accept their offer of a lesser sum in settlement. But I do not consider that NatWest is obliged to agree to those terms, and I am not persuaded that its communications in this case were oppressive or unfair.

my final decision

I have reached broadly the same conclusions as did the adjudicator. My final decision is that NatWest has already done enough fairly to resolve matters and so I do not uphold this complaint.

Jane Hingston
ombudsman