

Complaint

Mr and Mrs T are business partners. They complain about the actions of National Westminster Bank Plc regarding the management of their loan accounts.

Background

The partnership's business had banked with NatWest since 1980. Their accounts were transferred to the bank's Global Restructuring Group (GRG) in August 2007. The bank has said it made the transfer after the fourth year of losses, negative cash flow, excesses on the accounts and delays in getting management information.

Various restructurings were put in place but issues continued. Eventually in 2012 the business premises were sold to repay the partnership's borrowings.

The partnership has complained that interest charges and fees were unreasonable from 2008 until 2011. It has also complained that the bank focused on debt reduction rather than the long-term viability of the business.

The bank considered the partners' complaint as part of its review of matters related to the GRG. The bank had already refunded £8,700 in fees, plus interest, as part of the Automatic Fee Refund process and then in 2017 offered to repay all other fees, bringing the refund to a total of £11,820, plus interest. Following the partners' appeal to the Independent Third Party, the bank confirmed that the offer was unchanged. Unhappy with the bank's response, the partners referred their complaint to this service.

The partners said the enterprise had not been a business on the rocks but a healthy business, run by a dedicated team. Up to 2011 it showed consistent turnover and gross profit. Looking at it in a purely business light, the partners said their net profit was forfeited for a few years in order to benefit the long-term wealth of the business and properties. They said the business didn't make losses over four years – rather, the equity remained in the buildings, due to investment in the new facilities and a new department.

The partners said they were a victim of aggressive tactics by the bank. They said the hostility and excessive charges combined with the consistent hounding to reduce the borrowing more quickly than had been agreed had encouraged the partners to choose the only way to pay the bank back all of the borrowings to end the hostility and suffering. There was a consistent barrage of letters and meetings from the bank asking for the debt to be repaid.

Our investigator looked at all the evidence provided and concluded that the bank's offer was fair and reasonable. He gave the following reasons, in summary:

Arrangement fees

- In June 2008, the arrangement fees were raised to 4% a year (charged monthly) and in its review in 2017 the bank agreed that these fees were higher than they should have been. It made an offer to repay all fees, which brought the total redress, as described above, to £11,820, plus interest. Therefore all fees have either been refunded or an offer has been made to refund them, with interest.

- The partners say the bank proposed a fee of £7,500 for establishing a loan in 2009. This loan was never put in place and the fee wasn't charged, so there's no need to make a finding on it.

Lending margin

- The lending margin (the percentage the bank charges above the base rate) increased from 2.25% to 3% in early 2008, then later in the same year to 4%. These increases were made at the time of reviews and reflect increased uncertainty regarding the strategy of the business, and hence risk for the bank. The margins weren't out of line with market practice at the time. Given the circumstances, the investigator didn't think they were unfair or unreasonable.

The bank's focus on debt reduction rather than the long-term viability of the business, leading to the sale the business premises

- The bank's concerns over debt servicing went back as far as 2006 when the partnership requested capital repayment holidays, which were agreed to. The loan wasn't in default, but the lack of management information and recurrent losses were a concern of the bank when restructuring proposals were discussed in 2008. In 2010 the bank was uncomfortable with its lending and decided to ask the business to find alternative bankers. A restructuring deal was agreed in 2010 and in 2011, a new overdraft of £6,000 was agreed to allow the business to buy stock. The investigator thought that, despite worrying signs about the health of the business, these events seemed to indicate a reasonable degree of forbearance on the bank's part.
- The bank considered that the viability of the business was questionable at this time and acted accordingly. Losses were continuing, overdraft excesses were seen regularly, and it was agreed that the only source of repayment of the bank borrowing was the sale of either the partners' own personal property or the business premises. In late 2011 it was agreed a sale had to be made. By 2012 excesses weren't covered and the loan wasn't being repaid when due and was in default. It was the commercial property that was eventually sold in March 2012 to repay the borrowing.
- In the investigator's view, when the property sale took place the bank had concluded that the sale was only way of repaying the debt. He hadn't seen anything to suggest the bank was anything other than supportive. There was a good deal of forbearance by the bank to allow the partners to work out a strategy. It is also clear that the partnership was under pressure from other creditors.
- The investigator saw no evidence of bank interference with the sale which was carried out by agents appointed by the partnership. The eventual price arrived at was not as a result of anything the bank had influence over.

The bank's view of the viability of the business

- The investigator quoted evidence from the time about the bank's concerns in 2007 and 2008 about the financial health of the partnership business – about losses over four years of accounts, unprojected negative cashflow trends, delays in receipt of management information and problems in the sector in which the partnership was trading.

The tone of the bank's communications

- The investigator pointed to examples of the bank's correspondence with the partners between 2008 and 2010 which indicated that it was supportive and that the tone wasn't bullying. In his view the bank's tone was helpful, collaborative and not aggressive. As regards the sale of the property, he didn't think that between two and five emails a year about repayment of the debt amounted to bullying. He'd seen nothing that suggested the bank forced the partners into selling the property at a particular price.

The partners didn't agree with the investigator's conclusions. In an additional submission, Mr and Mrs T made the following points, in summary:

- The bank's offer demonstrates an admission that there were some wrong decisions, but it isn't enough to cover the losses and damage caused.
- Given the stock assets and the value of the land and buildings in excess of the partnership's borrowing, how could the business have failed, without the destructive implementation of the bank's policy at the time?
- The partners were very hands-on and the business ran consistently for 25 years with two development loans and an overdraft. It dealt with huge amounts of stock – ranging from £165,000 to £277,000 in the years between 2004 and 2008 – and employed many people. The partners ran their business affairs entirely manually but prided themselves on great communications with the bank.
- It was the bank's role to provide lending, listen to business requirements and help wherever possible with co-operative business people like the partners. RBS stopped all of that in 2007. The bank may have corresponded with suggestions and advice but they were not listening, and behind the helpful facade they were inflicting great damage from 2008. Most of the bank's advice and analysis of the business was totally unfounded and no one took the time to listen to what the partners were actually creating.
- The partners would never have sold up so soon after investing so much, had they not felt that they had no choice. There had been many emails and calls from the bank asking for a timeline on a quick sale.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done that, I'm sorry to tell the partners that I've reached the same conclusions as the investigator, and for largely the same reasons.

It's common ground that the bank should refund the remaining fees from the period in question, with interest. But the partners say it isn't enough compensation, for several key reasons. First, they say the lending margins were unfairly high. Secondly, they say the bank wrongly assessed the performance and prospects of their business, which was long-standing, viable and had invested for the future. They say the bank didn't listen to what they needed or give them enough support. Thirdly, they say the bank's focus on debt reduction,

coupled with its hostile and aggressive approach, caused losses because the partners were forced to sell the business premises.

I agree with the investigator that the lending margins charged on the overdrafts and consolidated loan weren't unreasonably high – they were within the bank's own guidelines and in line with general market practice at the time, and reflected the bank's assessment of the lending risk. I don't think the margins were unfair or unreasonable.

The partners don't accept that bank's concerns about its financial situation were valid. They point to their gross profit and their levels of retail stock, and argue that the net profit figures needed to be seen in the context of their investment in the business. Despite the bank's repeated requests for management information, they say that their communications with the bank were good. But having looked at all the evidence, I've concluded that the bank's concerns about the partnership's performance and prospects were genuinely held and were based on an assessment of the business's finances that wasn't unreasonable.

The property improvements and stock levels may have been positive elements of the partnership's balance sheet, but I'm not persuaded that they should have been seen as cancelling out the bank's concerns about net profits, cashflow, overdraft excesses, the scale of the partners' drawings and gaps in the management information.

I appreciate that the partners felt that the business was viable and strongly believed that, with continuing overdraft borrowing or renewal of the consolidated loan, it would have been able to maintain its physical retail facility while growing an online presence. But the bank was entitled to make its own risk assessments and to decide whether to renew the lending. I therefore don't think the bank acted unfairly or unreasonably when it decided to require the partnership to reduce its borrowing.

I don't doubt that Mr and Mrs T are sincere about their recollection of the tone of the bank's communications. But from the evidence I've seen, I agree with the investigator that the bank's tone was reasonable, collaborative and supportive. The partners say there were other communications that put unfair pressure on them, but I haven't seen evidence to support that.

I appreciate that the requirement to reduce their borrowing would have put the business in a difficult situation and meant that the partners had to make painful decisions, but I don't see the bank's communications as hostile or aggressive. In the circumstances I don't find that the bank behaved unreasonably or unfairly in its lending decisions or in communicating them.

I realise that the partners will be very disappointed by my decision and I understand the strength of their feelings about their complaint. But after considering all the evidence, I think the bank has made a reasonable offer to settle this complaint.

My final decision

The bank has already made an offer to settle this complaint. I think the offer is fair and reasonable in all the circumstances.

My final decision is that National Westminster Bank Plc should pay £3,120.00 to Mr and Mrs T as set out in the offer letter of 10 December 2018, plus 8% simple per annum from the date the costs arose to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs T to accept or reject my decision before 30 July 2021.

Colin Brown
ombudsman