

## **complaint**

Mr and Mrs M say National Westminster Bank Plc delayed giving them information about a debt it wanted repaying from Mr M2's estate and this means the estate has made a financial loss.

## **background**

I've attached my provisional decision from June 2015, which forms part of this final decision.

In that decision I set out why I wasn't planning on upholding this complaint. Given everything I'd seen, I thought Mr M2's personal guarantee was probably still in force, and the company's business account overdrawn, at the date he died. So I didn't think there was anything wrong with NatWest trying to recover £50,265.36 from Mr M2's estate. And I didn't think NatWest should have to refund the £600 per month mortgage costs.

Having read my provisional decision Mr and Mrs M said, in summary, that:

- The Financial Services and Markets Act 2000 (FSMA) requires all FSMA-related records to be kept for at least six years. So NatWest has breached the act by failing to keep the original overdraft facility letters and other correspondence sent to them. NatWest's poor record keeping mean it can't be considered a reliable witness.
- The law says that it's for NatWest to prove Mr M2's estate owes it money. The bank has provided a copy of the signed personal guarantee and shown the business account was overdrawn when Mr M2 died. But it hasn't provided the original February 2011 overdraft facility letter which links the guarantee to the overdraft debt. This gap in NatWest's record keeping means Mr M2's estate should not have to repay the overdraft debt.

NatWest didn't reply to my provisional decision.

## **my findings**

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so I haven't changed my mind about whether this complaint should be upheld.

I have to keep in mind all relevant laws and regulations when making my decision, but I'm not bound by the law in the same way a court is. I've made my decision based on what I think is fair and reasonable overall having weighed up everything that's been said and provided and given what I think most likely happened. In this case, I think the bank has done enough to show the link between the personal guarantee Mr M2 gave and the money owed by his business when he died. The courts may reach a different decision if Mr and Mrs M put forward the same arguments again if NatWest decides to enforce repayment of the debt through the courts.

For the reasons explained in my provisional decision, I think NatWest can fairly try to recover the debt from Mr M2's estate and shouldn't have to pay the mortgage costs Mr and Mrs M have claimed.

**my final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs M to accept or reject my decision before 20 August 2015.

Ruth Lewis  
**ombudsman**

## **copy of provisional decision**

### **complaint**

Mr and Mrs M say National Westminster Bank Plc (NatWest) haven't shown that Mr M2's estate owes it money and the bank's delay proving the debt means the estate has made a financial loss.

### **background**

In 2001 Mr M2 was the director of a limited company. And he gave NatWest a personal guarantee to protect up to £73,176 of the debts the company might run up. Mr M2 died in February 2011 and the limited company was in debt to NatWest at that time. In July 2011, the bank asked Mr M2's estate to repay £50,265.36 in accordance with Mr M2's personal guarantee.

Mr and Mrs M are Mr M2's son and wife and also the executors of his estate. They say when NatWest asked the estate to repay the money it should also have provided evidence to show the personal guarantee was still in force and that the company was in debt at the time of Mr M2's death. Without this information they say they couldn't be sure the estate really owed the money. They say NatWest delayed providing this information for years and this meant they couldn't settle the estate. So the estate had to pay money out to a mortgage on a property Mr M2 had held jointly with one other person. The mortgage cost the estate £600 per month from the date Mr M2 died until his share of the property was handed over to the joint, surviving owner in September 2013. They say NatWest should pay the estate an amount equal to those mortgage payments.

Mr and Mrs M also complained that NatWest sent a number of letters addressed to Mr M2 after it knew he had died. This was inappropriate and greatly upset Mrs M.

In January 2014 NatWest apologised for not giving Mr and Mrs M more evidence sooner about the debt. And it sent Mrs M overdraft renewal letters from 2010 and 2011 and a statement of the company's account at the date Mr M2 died. But it said the personal guarantee document had been sent out before the grant of probate had been obtained from the courts. NatWest said the estate could have been settled without the overdraft renewal letters and account statements, so it refused to refund the mortgage costs.

NatWest agreed it shouldn't have addressed letters to Mr M2 after he had died. It apologised and originally offered £250 compensation to Mrs M, but increased this to £500 after the complaint was referred to us.

Our adjudicator didn't think the guarantee had been revoked and Mr and Mrs M should have been able to settle the estate without additional information. Mr and Mrs M disagreed.

### **my findings**

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

First of all I should point out that Mrs M has accepted the bank's offer of £500 compensation for the upset she suffered when she repeatedly received letters addressed to the late Mr M2. As that matter now seems to be resolved to everyone's satisfaction I'll say no more about it.

Having thought carefully about what Mr and Mrs M have said I don't currently think NatWest should have to pay the mortgage costs and I think it can try to recover the debt from Mr M2's estate. I say this because:

- Mr and Mrs M haven't disputed that Mr M2 gave the personal guarantee linked to his company's debts. They simply think the bank hasn't shown it was still in force when Mr M2 died. But there is no end date on the guarantee and I've seen nothing which suggests the guarantee had been

withdrawn. It looks like there was an overdraft in place, and probably being used, for some years on the company's business account. I've seen statements which show the account was substantially overdrawn when Mr M2 died (and a number of direct debits and standing orders went out after that, further increasing the debt). And, in my experience, lenders will rarely allow this sort of guarantee to be revoked while a debt remains outstanding.

- Mr and Mrs M say the overdraft facility letters don't prove anything because they aren't signed and don't refer to the personal guarantee, but I disagree. I wouldn't expect NatWest to keep original documents or copy documents indefinitely. I've no reason to doubt the overdraft facility letters the bank has produced from 2010 and 2011 are accurate copies of the ones Mr M2 would have been given at the time. I've only been given the 2010 letter but I think the 2011 would probably have been similar. This confirms the amount of the overdraft, that the facility can be used *"when the bank is satisfied with...all security and any related insurance"* and *"security for the facility is detailed in the schedule"*. So it's clear there would have been more paperwork than just this letter and some sort of *"security"* had been taken. And it seems likely to me the *"security"* in this case was the personal guarantee Mr M2 gave in 2001.
- It appears that, in July 2011, NatWest sent a 'call up' notice to Mr M2's representative at his home address which confirmed how much needed to be repaid. And a copy of the personal guarantee was sent to the company address. This was some months before the grant of probate was obtained in December 2011 and I understand the estate could not have been distributed before the grant of probate was issued. So it doesn't really seem fair to say the bank should pay the mortgage costs from the date Mr M2 died or any date before the probate was obtained.
- Mr M2 would probably have been sent regular statements over the years showing the activity and amount owed on the company's account. I've been told Mr M2 generally passed all paperwork relating to the company to his accountant. And, after Mr M2 died, Mr and Mrs M had problems getting information out of both that accountant and another accountant who had been employed to handle the voluntary liquidation of Mr M2's company. I'm sorry they had these problems but they don't seem to be related to anything NatWest did or didn't do. And if the accountant had been asked for the paperwork upfront then Mr and Mrs M might have had all the evidence they now say they need to determine how Mr M2's estate should be distributed. But in any event, it looks like the problems with the accountant contributed to the delay settling the estate.
- Mr and Mrs M say NatWest should have automatically provided more evidence of the money owed but I don't agree. NatWest probably assumed that all the paperwork relating to the company, including its bank accounts would have already been held. As I've already said, the bank would probably have sent regular statements and Mr M2 would have been given copies of the personal guarantee and overdraft facility letters at the time these were agreed. I don't think NatWest would have known, or should have assumed, any of these documents needed resending unless Mr and Mrs M had asked for them.
- I've seen a copy of a letter Mr and Mrs M's friend sent to the bank on 16 February 2012 asking for more information about the company's accounts and debts. This refers to earlier phone calls that proved unfruitful and also thanks the bank for its letter of 19 July, enclosing the personal guarantee document. It could be argued the bank should have replied promptly to this. But the records the bank has given me suggest this letter wasn't received. If this letter, or any others around that time, had been received then I'd have difficulty understanding why the bank didn't reply or why its records show it sent a letter to Mrs M's home address on 24 December 2012 asking for the executor's details. It's not until May 2013 that the bank first records having been asked for copies of the business account statements and overdraft facility. From then on there is more regular correspondence between NatWest and Mr and Mrs M about the debt and related paperwork. I think it's possible Mr and Mrs M wrote to the bank sooner than this but it doesn't look like the letters reached their destination. In the same vein Mr and Mrs M might not always have received the bank's letters. But, overall, I don't think I can fairly say that the bank deliberately ignored Mr and Ms M's requests for paperwork relating to the company's accounts and Mr M2's guarantee.

- I've been told Mr and Mrs M decided to sign over the entire house and mortgage to the surviving owner in September 2013. If they were willing to sign over the property in 2013, when the estate wasn't yet settled, it seems to me they could have done this sooner and saved the estate the mortgage costs.

Given what I've said above, I currently think Mr M2's personal guarantee was still in force, and the company's business account was overdrawn, at the date he died. So there's nothing wrong with NatWest trying to recover £50,265.36 from Mr M2's estate. And I don't currently think NatWest should have to refund the £600 per month mortgage costs.

**my provisional decision**

My provisional decision is that I don't uphold this complaint.

Ruth Lewis  
**ombudsman**