

complaint

Mr G complains that National Westminster Bank Plc lent money to him irresponsibly. He wants the bank to refund all the debt repayments made plus interest, remove its second charge over his home and compensate him for his distress and damage to his reputation.

background

Mr G wanted to buy a local business. After several unsuccessful attempts to find a lender prepared to finance the purchase he received a loan offer from National Westminster. The remaining finance required was provided by a brewery and by his parents.

Unfortunately the business was unsuccessful and later closed. It was sold at a loss and Mr G still owes money to the bank, which he is repaying on a weekly basis.

Mr G says that he only took on the business and entered into the loan because of advice he was given by a then member of the bank's staff. He considers that he was unreasonably influenced by the bank into entering into the transaction, and that the bank failed to take into full consideration his personal financial situation and the likely prospects of the business when it agreed to lend the money. He therefore considers the bank's lending to have been irresponsible and wants to be put back into the financial position he would have been in had the lending not taken place.

Our adjudicator did not recommend that the complaint be upheld. He concluded, in summary, that the bank did not give Mr G advice and carried out an appropriate assessment before agreeing to make the loan to Mr G.

Mr G does not accept the adjudicator's findings. He continues to believe that the bank acted as an advisor when he bought the business, and he has produced a statement from another person present at a key meeting to support his view.

my findings

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

From the very detailed evidence provided by Mr G I can see how strongly he feels that he was persuaded by the bank to enter into what has turned out to be a disastrous business investment.

However, I have to consider this complaint objectively and look at the evidence provided by both sides. Where this evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities - in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

There are several elements to Mr G's complaint which I consider to be key and I consider each below:

1. That the bank gave Mr G incorrect advice

This is at the heart of this complaint, in that Mr G says he would not otherwise have taken out the loans from the bank, the brewery or his parents.

There is no documentary evidence that the bank gave Mr G advice, but he is adamant that it was given at a key meeting. Unfortunately, the bank employee involved is no longer with National Westminster and I cannot question him about what he said at that meeting. Mr G is adamant that advice was given on which he relied, and he has produced a statement by another attendee at that meeting to support his argument.

That statement shows that some of what was said by the bank employee could possibly be interpreted as advice – in that it provided Mr G with a proposal for how the business purchase could be financed, including where the other funding required might be obtained. However, on the balance of probability I am satisfied that the bank was not acting as Mr G's financial advisor. It was suggesting to Mr G a potential solution to his financial needs, but it was for him to decide whether this met his requirements. I appreciate that there is a fine line here about when a suggestion becomes advice, but do not find that the bank stepped over this line.

I am not persuaded that the bank gave Mr G bad advice or put unreasonable pressure on him to enter into an inappropriate financial arrangement. Ultimately his decision to go ahead with the borrowing, despite any concerns he might have had at the time, was his alone to make.

2. That the bank did not assess adequately Mr G's ability to repay the loan

I have reviewed the bank's internal records relating to the assessment of the loan proposal. There is evidence of considerable analysis of the information provided in support of the application and consideration of the risks involved.

The assessment was based on the repayment ability of the business itself, and used financial projections provided by a book-keeper familiar with the business, acting on Mr G's behalf. It is fair and reasonable for the bank to have relied on those figures when deciding whether the loan repayments could be met. If Mr G did not consider the projections reasonable he should have challenged them himself rather than provide them to the bank in support of his loan application.

The bank also appointed a professional valuer to satisfy itself that the security value of the property involved was sufficient. Mr G has subsequently questioned the accuracy of that valuation and raised questions about how it was undertaken, but the valuer was acting on behalf of the bank. Any issues with the valuation's accuracy are between the valuer and the bank, and not Mr G.

Mr G says that the bank did not take into consideration his other financial commitments. However, I do not consider this unreasonable – it was assessing whether the loan repayments could be met by the business, and on the basis of the information provided by Mr G it could.

I therefore find that the bank did adequately assess the ability of the business to repay the loan, and that the lending was not irresponsible.

3. That the bank staff member involved manipulated the loan proposal to make it pass the bank's underwriting process

The bank's records show that independent bank staff were involved in the underwriting process, and carried out detailed analysis to assess the loan's repayment prospects. There is no evidence on the bank's file that there was any manipulation of information in the loan proposal to ensure that it was approved.

The bank staff member appears to have tried to guide Mr G about what would or would not make a loan application successful, such as the amount of lending the bank was asked to provide as a percentage of the total debt required. I do not interpret that as manipulation - it is giving an indication to a potential customer of the bank's likely risk appetite, to manage expectations.

I note that the staff member also spoke to the book-keeper preparing the business plan about what information needed to be included, but I do not see that this constitutes manipulation of key information. It was for the book-keeper, who was acting as Mr G's agent, to decide what assumptions were appropriate for the financial projections that underpinned that business plan.

4. That the bank did not take into consideration the need for a kitchen refurbishment, the completion of which would impact upon the initial trading of the business

The bank's records show that it was aware of the need for this refurbishment and the impact it would have on initial takings. I am satisfied that it did take this into consideration when assessing the loan application.

5. That the bank forced the sale of the property at an unreasonably low price

After the business failed there was a considerable period before a buyer was found for the underlying property and the sale price was lowered substantially. Unfortunately this was in a period when prices of this type of property were falling.

The property had been charged to the bank and it was therefore entitled to decide the sale strategy. I am satisfied that it achieved the best price available in the circumstances. Further delay in the sale was not certain to have resulted in a better price, and in the interim further interest would have accrued on the debt.

6. That the bank charged unreasonable fees, adding to Mr G's difficulties

Once the loan was in default the bank was entitled to recover its resultant additional costs in re-structuring and managing the loan. I do not find those fees to have been unreasonable in the circumstances.

7. That the brewery loan was unaffordable and irresponsibly lent

We are an informal dispute resolution service and our powers are laid by Parliament. Those powers are limited to certain types of financial institution, and we do not have the ability to investigate whether the loan provided by the brewery was irresponsible or not.

my final decision

My final decision is that I do not uphold this complaint against National Westminster Bank Plc.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr G to accept or reject my decision before 29 December 2015.

Malcolm Rogers
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