

complaint

Mr A complains that National Westminster Bank Plc (“NatWest”) is wrongly pursuing him for a debt under the terms of a personal guarantee. He says the bank was aware he no longer wished to be a guarantor. He is also unhappy that the bank has asked him to repay a personal loan when his business had agreed to make the repayments.

background

Mr A was a member of a limited liability partnership, which I shall call “D”. When D took on borrowing from NatWest, Mr A agreed to provide personal guarantees. However, when Mr A left D he no longer wished to do this.

The bank was told that Mr A was to leave the business. Mr A said he told the bank that he did not wish to be a guarantor for D’s debts. The bank has confirmed it told Mr A that it would release him from the personal guarantee if the other members of D provided alternative security. It also told Mr A that this security was not provided so he was not released from the guarantee.

Mr A also complained that NatWest is pursuing him for repayment of a personal loan. He said he took out the loan but used the money to help D. In return D promised to make the monthly repayments but it stopped doing this when Mr A ceased being a member.

Our adjudicator looked into this complaint and she concluded, in summary, that:

- The bank should have told Mr A of his right to provide written notice of his intention to withdraw from the guarantee. Had it done so, she believed Mr A would have exercised this right and his liability would have crystallised when the notice expired.
- If D agreed to repay the personal loan, but did not do so, this is a dispute between Mr A and D rather than a mistake made by the bank.
- The bank is not responsible for the way in which D operated its accounts.

The bank accepted the adjudicator’s view and agreed to limit Mr A’s liability to £31,483.18, which was the amount owed by D at the time the month’s written notice would probably have expired. But Mr A did not agree. He made these points:

- The bank had failed in its duty of care.
- He should only be liable for 10% of the debt as that was the extent of his interest in the partnership.
- He is having difficulty locating the other members of the partnership in order to pursue any claim he has against them.
- He is having difficulty making payments towards his personal loan.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I am sorry to tell Mr A that I have reached the same conclusions as the adjudicator, and for much the same reasons.

the personal guarantee

I am satisfied that the bank should have dealt with Mr A's concerns more effectively when it was aware he would be resigning from D. The bank should have reminded Mr A that he had the right to give one month's written notice of his intention to withdraw from the guarantees. And it should also have made clear what this would mean.

I agree with the adjudicator that if those things had been explained, it is likely that Mr A would have given formal notice to the bank. But this would not have meant he no longer had any potential liability. Instead his liability would have been limited to the amount owed by D on the day his notice expired. Of course if D had repaid its debt then no call on Mr A's personal guarantee would have been necessary.

Mr A has said he should only be liable for 10% of the debt as he only had a 10% stake in D. Whilst I understand Mr A's logic, I do not agree with him. The bank would not have been party to any agreement made between the members about the payment of debts and, under the terms of the guarantee he signed, Mr A had agreed that the bank could ask him to repay the whole of the debt owed by D up to a specified limit.

The bank has agreed that it will limit Mr A's liability to the amount owed when his notice would have expired. I would, however, remind Mr A that the bank is entitled to apply interest to this amount from the date the guarantee was called upon. It can also ask him to pay certain costs it incurs seeking recovery from him.

the personal loan

The bank was not party to the agreement that Mr A says he made with D regarding the loan repayments. His agreement with the bank was in the terms of the personal loan. I sympathise with Mr A if the members of D cannot be traced, but his potential cause of action is against them, not NatWest. So I find that the bank is entitled to seek repayment of the personal loan from Mr A in the normal way.

The bank does have separate obligations to treat its customers in a positive any sympathetic manner if they are in financial difficulties. Should Mr A contact the bank to discuss his difficulties and ability to repay the debt, I would expect the bank to be mindful of these obligations.

my final decision

My final decision is that National Westminster Bank Plc should limit Mr A's debt under his guarantee to £31,483.18 plus appropriate interest and costs, less any payment he has made to reduce it.

Colin Brown
ombudsman