

complaint

Mr S complains that National Westminster Bank Plc ("NatWest") is holding him liable for an overdraft on the business account of his former limited company.

background

Mr S asked the bank to cancel the personal guarantee he had previously signed against a business current account. The bank never received his notice, but has explained that on receipt it would have reviewed the security held and responded accordingly - either declining the request, or asking for a replacement guarantee. As the company entered compulsory liquidation, the bank is now pursuing Mr S under the terms of his personal guarantee for the repayment of the overdraft. Mr S has also disputed a number of transactions on the account, and the application of the full overdraft renewal fee as the facility was removed after four months.

Our adjudicator did not recommend that the complaint should be upheld. She said giving notice would only have removed Mr S's liabilities entirely if the company was debt free upon the expiry of the notice. As this was not the case his liability would have been capped at the balance as of one month after he gave notice.

With regards to the overdraft renewal fee, she said there was no requirement for NatWest to obtain written agreement. If Mr S no longer required the overdraft then he was free to settle the debt and ask for the facility to be removed. The fee is a one-off charge for providing the facility and is not charged on a pro-rata basis. However, she said that NatWest may be prepared to waive some of the fee if Mr S contacts its Collections department to set up a payment plan.

Finally, the disputed transactions: the bank has no record of being told about suspected fraud on the account. However, it is prepared to reduce the overdraft debt by the amount of the two transactions referred to in Mr S's letter of 4 April 2012.

In summary, our adjudicator concluded that the bank's offer to refund the disputed transactions and to reduce the overdraft renewal fee if Mr S sets up a suitable repayment plan was fair and reasonable. She was satisfied that NatWest was not acting incorrectly in holding him liable for the debts of his business.

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 not persuaded that the bank needs to do anything differently. I find that Mr S remains liable for the outstanding debt. He had not been discharged from the guarantee and even if the bank had agreed to this, he would have been liable for the debt as at one month after he served notice: a figure higher than the amount the bank is currently pursuing him for. I can find no grounds for Mr S not to repay the debt and I would urge him to contact the bank to agree a mutually acceptable repayment plan. As he is aware, the bank intends to start court proceedings if this does not happen.

my final decision

My decision is that National Westminster Bank Plc's settlement offer is fair and reasonable in the circumstances. Subject to Mr S contacting it to agree a repayment plan, it should refund the disputed transactions and a portion of the overdraft renewal fee as it sees fit.

Rebecca Connelley
ombudsman