

complaint

Mr B and Mr C complain that National Westminster Bank Plc promised to give their company a loan. On this basis, they spent their company's cash reserves to start a project. They then found that the bank would not lend the company the money, which led to the company being dissolved. Mr B and Mr C say that it is unfair that the bank should ask them to repay company debts under their personal guarantees as the bank's actions contributed to the company's demise. They also want any debt to be split equally between them and for the bank to refund charges and interest.

background

Mr B and Mr C ran a limited company. In late 2011 they discussed a new loan with the bank. Believing that the loan would be forthcoming, Mr B and Mr C used the company's available cash to start a new project. In early 2012 they discovered that the bank did not want to lend the money. Eventually the company ran out of money and stopped trading. Over the next year Mr B and Mr C tried to both resolve their complaint about the loan they say they had been promised and discuss clearing their debt.

Mr B and Mr C say that they were told that the bank would lend at least one of them 50% of the debt on a personal basis, which he could then use to clear his liability.

The adjudicator did not recommend that this complaint should be upheld. She concluded that there was no evidence to show that Mr B and Mr C had been offered a loan. She also concluded that the guarantees signed by Mr B and Mr C were for joint and several liability, so the bank was entitled to pursue both parties until the full amount was recovered.

my findings

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

Firstly, I should say that the records the bank has provided about its relationship with Mr B and Mr C are sparse, and largely consist of records of the complaints that Mr B and Mr C raised since their company ceased trading. We have asked the bank to provide contemporaneous records, such as meeting notes, but it has not done this.

That means that, where the content of a discussion is disputed, I only have the recollections of each party to go on.

What I can see is that Mr B and Mr C acknowledge that they never completed an application form for a loan. That in itself is not conclusive, but it indicates that the request was not formalised. So I am unable to conclude that Mr B and Mr C were definitely told that the loan would be approved. And I can see that the relationship manager knew that the request for lending was above his personal limit and says that it was referred to a more senior manager and declined. When the decision to decline the loan request was communicated to Mr B and Mr C is not clear. But it was Mr B and Mr C's decision, as directors of the limited company, to spend its cash reserves in anticipation of a loan that had not been formally offered, and I cannot hold the bank responsible for this.

A couple of months later Mr B and Mr C decided to cease trading and met with the bank to tell it this and discuss their personal liabilities. Again there are no contemporaneous notes.

The bank says it would not have offered to split the liability between Mr B and Mr C as the guarantee is for joint and several liability. Having seen the guarantees I am satisfied that this is the case. That means that the bank is entitled to pursue either or both Mr B and Mr C until the debt is repaid.

It is probable that the bank discussed several options for Mr B and Mr C and they may have included them taking out personal loans to clear the debt. But there is no evidence that this was, again, ever formalised.

Since early 2012 Mr B and Mr C have been trying to resolve the complaint, which has eventually been brought to this service. That they have been the pro-active parties in this is clear from the bank's own records. I would urge Mr B and Mr C to contact the bank again to discuss settling their debt. If either party is suffering from financial difficulties, then the bank is expected to respond positively and sympathetically, within a reasonable timescale.

my final decision

Based on the evidence provided, I am unable to uphold this complaint.

Susan Peters
ombudsman