

complaint

Ms E complains that National Westminster Bank Plc, “the bank”, is pursuing her for the debt of a company, “W”, under the terms of a personal guarantee that she believes isn’t valid.

background

W is a limited company that used to trade under a different name to the one it uses today. In July 2006, when W went by its previous name, it applied for an overdraft facility. The bank agreed to provide this on the condition that Ms E supported the borrowing by signing a personal guarantee, which she did.

In April 2010 W changed its name and this was recorded at Companies House.

In July 2013 W’s account was passed to the bank’s collections department because it hadn’t been able to reduce the overdraft facility in line with its agreement. The debt was later passed to the recoveries team, and in October 2013 a call was made upon Ms E’s personal guarantee.

Ms E said the bank wasn’t entitled to ask her to repay W’s debt because the personal guarantee referred to a company with a different name.

Our adjudicator considered her concerns but didn’t recommend that the complaint should succeed. She said that although W had changed its name it was still the same legal entity. She also concluded that the bank was able to seek to recover the debt owed to it from both W and Ms E at the same time.

Ms E didn’t agree. She said that the guarantee hadn’t been renewed at the same time as W’s overdraft facility. The complaint was then referred to an ombudsman for consideration.

my findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint. Having done so, I’ve reached the same conclusion as the adjudicator for the same reasons.

Although W changed its name in 2010, this doesn’t mean that it became a new company. As the company number that W was registered with didn’t change, this means that it remains the same legal entity no matter how many times the name is altered.

As such, my finding is that the guarantee provided to the bank remained valid after the name change.

Ms E argues that when the overdraft facility was renewed the bank didn’t ask her to sign a new personal guarantee. I’ve seen that the guarantee she provided in 2006 includes a clause which says it acts as *continuing security* and applies to all of W’s debt, whether owed at the time the guarantee was signed or in the future.

In light of this, my conclusion is that the bank didn’t need to obtain a new guarantee every time it provided a new overdraft facility.

I think that the adjudicator was also correct to say the bank is able to ask both W and Ms E to repay the debt owed to it, and can pursue both at the same time. However, it must take steps to ensure that it only recovers the amount owed rather than the full amount from both Ms E and W.

I would also remind the bank of its on-going obligations when dealing with a customer in financial difficulties should there be any further contact from Ms E.

my final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Ms E to accept or reject my decision before 7 April 2015.

Ashley L B More
ombudsman