

complaint

Mrs F guaranteed the debts of P, a limited company. She says National Westminster Bank Plc ("NatWest") misled her about the extent of the guarantee. So she doesn't think NatWest should be able to enforce it.

background

In 2008, NatWest loaned money to P. Mrs F signed the guarantee at the same time. P paid the loan off. But at a later date, P stopped trading. When it did, it had an outstanding credit card bill. That debt didn't exist at the time Mrs F signed the guarantee. But the guarantee Mrs F signed didn't just cover the loan. It was an "all monies guarantee". This means that Mrs F was agreeing to repay all of P's debts, present and future. So NatWest told Mrs F she would have to pay the credit card debt personally.

Mrs F says she was misled by NatWest at the time she signed the guarantee. She was told that it only covered the loan. She says she wanted to take some legal advice but the NatWest adviser was rushing to another meeting and told her just to sign some documents. So she signed them without really understanding what they said. For those reasons, Mrs F says NatWest shouldn't be allowed to enforce the guarantee.

When Mrs F wrote to NatWest to complain, she also complained about the level of service she had received from one of its staff members. NatWest said that, in its opinion, it hadn't done anything wrong in relation to the guarantee. But it did think that its staff member hadn't given Mrs F the customer service he should have. So NatWest said it would enforce the guarantee but offer £50 for the failings in its service.

Mrs F then brought her complaint to us. Following this, NatWest asked debt collection agents to enforce the guarantee on its behalf. The collection agents wrote to Mrs F but it appears that NatWest gave them the wrong date of birth for Mrs F. So when she called to discuss the matter, she couldn't pass the standard security checks. Additionally, the letter didn't say how much the debt was. It simply said the original debt was £11,500 which is the maximum amount Mrs F is liable to pay under the guarantee. Mrs F says she found this confusing.

Our adjudicator thought that NatWest was entitled to enforce the guarantee. But because the collection agents were acting on NatWest's behalf, she thought NatWest was responsible for their actions. This included the confusing way in which the amount of the debt was set out. She additionally thought NatWest had caused Mrs F inconvenience by giving the collection agents the wrong date of birth. So the adjudicator recommended that NatWest pay a total of £250 in compensation.

NatWest agreed with the adjudicator and offered £250 in settlement of the complaint. Mrs F didn't agree with the adjudicator's opinion so the complaint has been passed to me.

my findings

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

NatWest has provided a statement from the adviser who dealt with the guarantee. Understandably, he says he can't remember this particular meeting. But he says he always

explains why a guarantee is necessary and that the consumer can seek legal advice. He says he has never done otherwise.

As I note above, Mrs F says this isn't what happened. She says that the adviser was rushing to another meeting and told her just to sign the documents, which she did. She was told that the guarantee only covered the money being loaned to P at the time, not any future debts. She says her solicitor's office was very close to the bank branch so she would have gone there if she'd had the chance. But she says she trusted the adviser and so signed the documents without fully understanding them.

I have copies of the documents Mrs F signed at the meeting. One is the guarantee document. At the top of the document in capital letters and bold type, it says: ***"THIS IS AN IMPORTANT DOCUMENT. YOU SHOULD TAKE INDEPENDENT LEGAL ADVICE BEFORE SIGNING..."***. The document goes on to say that the guarantee covered: ***"All the Debtor's liabilities to the Bank of any kind... (whether present or future...)"***.

Mrs F also signed a waiver of legal advice. That form is headed in bold: ***"Waiver of Legal Advice"***. The waiver states that Mrs F has been given enough time to read the guarantee. It also says the bank has advised her to take independent legal advice but that she doesn't want to. Mrs F has signed in a box at the bottom. Just above her signature, again in bold type, it says: ***"Although I have been strongly advised to do so by the Bank's representative I do not intend to take independent legal advice."***

I can't know what happened for certain. So I will have to decide what I think is more likely than not. I treat what's been said by NatWest's adviser with some caution. That's because he can't actually remember what happened, although he can tell me what his standard practice is.

I think Mrs F may well be right when she says the adviser was rushing to another meeting and so didn't explain the documents as well as he should. That's because what she's said is quite specific. But I also think the documents made it clear that this was an important decision and legal advice should be sought. And I think Mrs F would have understood this. As there's been no suggestion from Mrs F or NatWest that Mrs F needed to sign the guarantee immediately, I think if Mrs F hadn't understood the documents she would have taken them away for her solicitor to consider.

So when I balance all the evidence, I think it's more likely than not that Mrs F would have understood what she was signing. Mrs F says P wasn't normally in debt. So it may well be that she didn't consider the possibility that P would incur more debts in the future. But I still think in all likelihood that Mrs F knew what she was signing.

For those reasons, I don't think it would be fair and reasonable to stop NatWest enforcing the guarantee.

I have also considered the amount of compensation NatWest has offered for the distress and inconvenience caused by its customer service failures. Mrs F's first complaint about NatWest's service is that she went to see an adviser about her personal account. She wanted to talk about P also but the manager refused. This appears to have been because he wasn't the manager for that account. Mrs F says that – even if he couldn't discuss it – he should have organised an appointment with someone who could. So the effect of him not doing so is that the dispute about the amount owed by P – and the amount Mrs F owes under the guarantee – was delayed.

Additionally, NatWest appears to have given collection agents the wrong date of birth for Mrs F. This caused her delay in discussing this matter. It seems this lasted for a month or so. Although once the error was highlighted to the collectors they went back to NatWest to request correct information rather than simply continuing to try to enforce the debt.

Looking at all the circumstances, I think NatWest's failings caused Mrs F a moderate amount of inconvenience. But apart from causing some delay, the failings didn't stop Mrs F pursuing her complaint either to NatWest or to us. And she wasn't, for example, chased by the collection agents once they'd been told they had the wrong information. So overall I think NatWest's offer of £250 is fair.

my final decision

For the above reasons I don't uphold Mrs F's complaint about the enforcement of the guarantee. But I do direct National Westminster Bank Plc to pay Mrs F £250 for the distress and inconvenience caused by its other failures.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs F to accept or reject my decision before 18 June 2015.

Ross Crawley
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