

complaint

Mr C complains that National Westminster Bank Plc is pursuing him for a debt under a personal guarantee which he says is invalid. He also says that the bank stole money from his current account.

background

Mr C was the director of a limited company which I will call C. He signed a personal guarantee for C's debts. C later stopped trading and dissolved, and NatWest required Mr C to pay C's debts under the guarantee. But Mr C says that the guarantee is no longer valid, because C changed its name after he signed the guarantee and the guarantee had never been updated with the new name. Mr C also has a current account of his own with NatWest, and he complains that the bank stole money from that account and paid it towards the disputed debt.

NatWest said the fact that C had changed its name did not affect the guarantee, which still remains in force. And it provided bank statements to show that it had never withdrawn money from the current account, apart from one unarranged overdraft fee a couple of years earlier.

Our adjudicator decided that our Service did not have jurisdiction to consider Mr C's complaint, because he was not eligible to complain under our rules. But she also agreed with what NatWest had said. Mr C asked for an ombudsman's decision.

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 agree with our adjudicator that we can't consider Mr C's complaint about the personal guarantee. Mr C can't bring a complaint on behalf of his company, because it no longer exists. And he can't complain in his own right either, because he's not an eligible complainant under our rules. To be eligible to complain about the guarantee, he would have to be a "consumer." A consumer is defined as a person who is "acting for purposes outside his trade, business or profession." But a company director who guarantees a loan to his company is helping the company to obtain credit. So Mr C wasn't acting outside of his business – he was acting to help his business. It follows that he is not a consumer, and therefore not eligible to complain to our Service about the guarantee, or about the debt arising under it.

However, Mr C is eligible to complain about his own current account. That said, the statements do show that NatWest hasn't taken money from the account, apart from the overdraft charge. (And even if NatWest had done so, it would usually be entitled to off-set Mr C's debt under the guarantee against the money in his current account, providing that this did not cause him financial hardship.)

my final decision

So my decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 14 November 2016.

Richard Wood
ombudsman