

complaint

Mr Y complains about the way he has been treated by National Westminster Bank Plc, in connection with both his personal accounts and a guarantee he gave for the debt of a company of which he was a director.

background

personal accounts

Mr Y had a personal loan account and a mortgage with National Westminster. The loan account was in the joint names of Mr Y and his wife. Repayments on both fell into arrears, and the bank defaulted the debts. Subsequently, Mr and Mrs Y have both entered into Individual Voluntary Arrangements.

Mr Y's specific complaints about his personal accounts are:

- That the bank failed to respond to his complaint about the way his accounts had been managed.
- That the bank failed to respond to his proposals for repayment of the personal debt.
- That he has received letters from two different offices of the bank, and that there is a lack of co-ordination between the two.
- That it wrongly wrote to his wife about the loan debt.
- That the bank had only pursued him for his personal debts after he had failed to repay the company debt under his personal guarantee.

National Westminster has already accepted that its initial handling of Mr Y's complaint was poor, and that it failed to respond adequately to his repayment proposals. It has paid him £50 for the inconvenience caused.

personal guarantee

Mr Y was also a director and joint guarantor of a company which banked with National Westminster. That company got into difficulties and the bank required repayment of its debt under his personal guarantee. Mr Y's specific complaints about this are:

- That he has resigned as a director of the company, and is no longer a shareholder, and that the bank should not therefore be able to require him to make payment under his personal guarantee.
- That a member of the bank's staff told him that the bank would not require him to make payment under his guarantee.
- That the bank is pursuing only him and not the other company director and guarantor for payment.
- That he was caused considerable embarrassment and inconvenience when he visited a branch to discuss the situation.

National Westminster has already apologised for any incorrect information about the guarantee given by a staff member, and has accepted that Mr Y was not treated appropriately when he visited the branch. It has paid Mr Y £150 for the embarrassment caused, and an additional £9 for the cost of a lengthy telephone call he said he had to make to the bank. Mr Y was not satisfied with the bank's responses to the various parts of his complaint, and referred them to this service.

Our adjudicator did not recommend that the complaint should be upheld. She concluded, in summary, that the bank had already apologised and paid adequate compensation for the errors that it had made, but that it had not otherwise acted wrongly. She did not consider the bank should pay Mr Y any further compensation, or be required by this service not to seek recovery of the various debts from Mr Y.

Mr Y has not accepted the adjudicator's conclusions. He says, in summary, that the adjudicator has failed to consider the 34 separate issues that he has raised, or the many telephone calls he has had to make to the bank. He continues to believe that the bank has acted unprofessionally, and without appropriate due care and attention.

Mr Y has subsequently raised a new issue with us – that National Westminster is wrongly continuing to pursue him for repayment of his debt despite him having made an Individual Voluntary Arrangement. We have referred this back to the bank for investigation, and if Mr Y is dissatisfied with its response, it will be considered by this service under a separate complaint reference. I will not consider this issue in my decision here.

my findings

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

As the adjudicator has already explained, we are an informal complaints resolution service, and were not established to act as a customer's champion in a dispute with a bank. We make an independent assessment of the circumstances of an individual complaint and decide what we think is a fair and reasonable outcome. In doing this, it is for us to consider what are the key elements of the complaint relevant to reaching that decision, and in this case many parts of Mr Y's complaint are very similar in that they relate to the bank's failure to reply to correspondence and the lack of co-ordination between its offices. I am therefore satisfied that the summary of Mr Y's complaint I have written above is complete and accurate, and that I can make my decision here using that summary as the basis of my investigation and findings.

I will consider each part of this complaint in the same order as summarised above.

personal account

1. Failure to respond adequately to Mr Y's complaint.

I find that National Westminster did fail to respond adequately when it received Mr Y's initial complaint. However, I consider that the compensation already paid for this is fair and reasonable.

2. Failure to respond adequately to Mr Y's proposals for repayment of his debts.

Again, I find that the bank did not respond as it should have done to Mr Y's proposals, causing him to have to contact the bank many times. It appears to me that this may in part have been due to more than one part of the bank being involved in the collections process, but that is not an adequate excuse for such a service failure. Nevertheless, I consider the bank's apology already made, and compensation paid, adequate remedy for the bank's failure here.

3. Involvement of two bank offices

How a bank chooses to manage its internal operations is for it to decide, and this service does not have the power to require National Westminster to change the way it manages its collections process. It appears possible from the evidence presented that one bank office was dealing with the personal debts and the other with the guarantee of the company debts. Greater co-ordination between the two might have reduced some of the inconvenience caused to Mr Y but, as I have said above, I consider the already-paid compensation adequate for this.

4. Writing to Mr Y's wife about the loan debt

As the loan was in the joint name of Mr and Mrs Y the bank did nothing wrong in writing to her about the outstanding loan debt.

5. Only pursuing the personal debts when the guarantee debt was not paid

The loan and mortgage were both in repayment arrears, and the bank had started its collections process, before the guarantee of the company debt was called. I am satisfied that there was no change of the bank's collections actions on the personal accounts directly as a result of the company guarantee not being paid.

personal guarantee

1. Failure to recognise that Mr Y is no longer liable under the guarantee

Although Mr Y is no longer a director or shareholder of the company concerned, this does not change his personal obligation to repay the company's debts under his guarantee. I am satisfied that he remains liable under the guarantee.

2. Being told by a staff member that he was not liable under the guarantee

National Westminster has accepted that this wrong information may have been given to Mr Y. Although this raised a false hope, it does not change the legal position that he is still liable under the guarantee.

3. Only pursuing Mr Y for payment under the guarantee

The guarantee was given on a joint and several basis. This means that the bank is entitled to seek repayment of the full debt from each guarantor, rather than on a 50/50 basis, until the full amount has been received. If all the money is received from one guarantor, it is then for that person to seek recovery of the other's share directly. However, it is not appropriate for the bank to tell Mr Y what steps it is taking to recover the guarantee amount from the other guarantor, for confidentiality reasons – just as it is inappropriate to tell the other guarantor what it is negotiating with Mr Y. I therefore find that the bank is acting correctly in demanding the repayment of the full amount from Mr Y, and in not telling him what steps it is taking to recover the amount from the other guarantor.

4. Causing embarrassment and inconvenience during a branch visit

National Westminster has already apologised for any embarrassment or inconvenience caused, and has paid £150 for this. Having considered the circumstances fully, I find that this is a fair and reasonable amount for it to pay.

I therefore find that while the bank did make some errors in the way it managed both Mr Y's personal accounts and his guarantee liability, it has already apologised and paid adequate compensation for these service failures. I do not consider that the bank acted wrongly in the other parts of Mr Y's complaint. I appreciate that he has found the bank's demands for repayment distressing, but it is entitled to recover both the personal and company debt from him (and his wife in the case of the loan), subject to the Individual Voluntary Arrangements now in place.

my final decision

My decision is that I do not uphold this complaint.

Malcolm Rogers
ombudsman