

complaint

Mr V complains that National Westminster Bank Plc is acting unfairly in pursuing him for a debt he owes in relation to a personal guarantee.

background

Mr V and his colleague who I shall call "Mr Z" were both co-directors of a company I shall call "Q". Mr V and Mr Z signed a personal guarantee to secure funding for Q.

Q had financial problems. A decision was taken to liquidate Q. In 2010 Mr V discussed these plans with NatWest. Mr V said NatWest told him it would write off Q's debt and close its account. By this point Mr V and Mr Z had already went their separate ways.

Then Mr V said "*out of the blue*" NatWest contacted him four years later asking him to pay off Q's debt under the guarantee. NatWest's version of events is different. It says it had been looking for Mr V but he had gone "AWOL". Although it accepted there were mistakes in how it administered the debt and communicated with Mr V after December 2010.

Mr V responded that he should not have to pay anything. NatWest disagreed. Thoroughly dissatisfied Mr V brought his case to us.

Our adjudicator recommended that part of the complaint should succeed. She considered that there had been a breakdown in communications between the parties for a sustained period of time. She said NatWest was responsible for this in part. As a result the debt had ballooned. But in recognition of this NatWest offered to only pursue Mr V for £26,998.61 that is the amount owed at the end of 2010 rather than the £63,000 it was initially asking for.

Our adjudicator considered this was a fair offer because it put Mr V back in the position he was in before communications broke down.

Mr V rejected this offer. He said it was unfair. He reiterated his earlier stance that he bank had misled him about what it was going to do with this debt and had let him down. He also suggested in any event he should only be responsible for half of the debt because Mr Z was responsible for the other half.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where there is a dispute about what happened, I have based my decision on the balance of probabilities - in other words, on what I consider is most likely to have happened in the light of the evidence.

the bank lent money to Q and it is entitled to recover it

There is no disagreement that Mr V signed the personal guarantee. I am satisfied that based on the information available to me that Q had the benefit of the money that Mr V guaranteed. In these circumstances I would expect NatWest to be able to get back the money it loaned. Because it only lent the money on the basis that it would be paid back by Q, Mr V or Mr Z. I see nothing wrong therefore in NatWest pursuing Mr V for this debt.

Mr Z questions the amount of the debt he says when last he spoke to the bank about the debt it was under £9,000. In particular he questions the “*banking error*” that led to a sum of around £17,000 being taken from Q’s account. But NatWest has explained that this sum was placed in the account by mistake. It says it returned the money at the request of a third party bank. I am satisfied that this was correctly dealt with on the basis of the information I have seen.

under the guarantee NatWest can pursue either Mr V or Mr Z or both as it chooses

I recognise that Mr V considers he is being treated unfairly. He says why he should have to foot the bill all by himself when Mr Z is apparently being allowed to walk away from his responsibilities. However it seems that Mr V did agree to the guarantee. Under the guarantee he is jointly and severally liable for the debt. This means he is responsible for the entire debt by himself - as is Mr Z. But NatWest can choose, if it wants, to only pursue Mr V for the whole of the debt and that’s what it’s doing. I have no power to tell it not to do this or to insist it should also seek payment from Mr Z instead or as well.

should the bank write off the debt nonetheless?

Mr V tells us that when he told NatWest Q was going to be wound up - it assured him it would write off the debt. Further he says NatWest should have raised the issue of the personal guarantee when he told it about his plans for Q.

It’s not clear if one person at NatWest did tell Mr V it would write off the debt. Its final response letter to Mr V says he was given “*incorrect information*” about his business account. Even if one person told him this as he suggests – I consider the further information he was sent by NatWest at the time made it quite clear that NatWest was not writing off the debt and was going to enforce the guarantee. It seems NatWest sent this correspondence to the address that it had on record for Mr V. I see nothing to suggest he gave them any new address he might have had. Further Mr V’s business manager at the time has provided a statement. The business manager denies that Mr V was told the debt was going to be written off as he suggests.

Taking all of this on board, on balance I consider Mr V was on notice or should reasonably have been on notice of NatWest’s intentions to pursue him for the debt. It follows I do not consider I can fairly tell it to write off the debt.

NatWest says that it is willing to write off part of the debt. It will only pursue Mr V for the amount he owed before it lost contact with him. In the circumstances I consider this is a fair offer for the reasons set out above. It says it will now follow its normal debt recovery practice. It will issue a new “*call up*” notice to Mr V for the sum of £26,998.61 and interest will run on this sum only from the date of the new call up notice.

my final decision

My final decision is that National Westminster Bank Plc should as it has already offered to do - issue a new call up notice to Mr V for the sum of £26,998.61 with interest on this sum to run only from the date of issue of the new call up notice.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr V to accept or reject my decision before 18 March 2015.

Joyce Gordon
ombudsman