

The complaint

Mr H complains about the actions of National Westminster Bank Plc ('NatWest') in pursuing him personally for a debt owed by his company.

Mr H is represented by his solicitors, but for ease I'll refer to Mr H throughout.

What happened

Mr H told us:

- His limited company which I'll call 'U' wanted to borrow £100,000 via the Government's 'Enterprise Finance Guarantee' ('EFG') Scheme. The original lender was unwilling to lend to U as he didn't want to give personal security for the loan.
- The original lender referred U to a broker, and the broker approached a number of lenders, including NatWest. NatWest agreed to provide U with the loan provided the company also took out an invoice factoring facility to run alongside this.
- U hadn't requested the invoice factoring facility, but his understanding was that both facilities would be required for NatWest to grant the EFG loan. He thought that the invoice factoring facility would be held as security for the loan, instead of any personal assets or guarantees, as this gave NatWest control of U's debtor book.
- From August 2019 onwards, he was in discussion with NatWest about the facilities, and in December 2019, he agreed to provide a limited £25,000 personal guarantee for the invoice factoring facility. No guarantee was given for the EFG loan.
- The discussions about the facilities continued into early 2020. In March 2020, he was given an agreement to sign which he was told was just standard terms. There was no reference to a personal guarantee being provided for the EFG loan. He thought the terms would be the same as discussed originally, so he signed the agreement without seeking legal advice.
- U was unable to continue making its loan repayments and NatWest started chasing him personally for the repayment of the full EFG loan balance. He wasn't even aware that he'd signed a personal guarantee until January 2024 when the bank provided a copy of the agreement.
- It's unfair that NatWest are pursuing him personally for U's debt, particularly when he felt the bank had contributed to U's failure.

NatWest told us:

- It provided U with an EFG loan for £174,000 in March 2020. The loan was supported by a personal guarantee from Mr H. As part of the loan agreement, Mr H had been advised to seek legal advice before signing it – as he would personally be bound by

the terms. It had also called Mr H before it had issued the loan agreement for signing, and he had confirmed that he understood that he would be signing a personal guarantee and would be 100% liable for U's debt if the company were unable to pay it.

- U started making its loan repayments in July 2020 and the repayments continued as agreed until the October 2022 payment which wasn't made. U then made the November 2022 payment late and didn't make the December 2022 payment either.
- U was liquidated in May 2023, so the company's loan was moved to its specialist business team and an event of default was triggered under the terms of U's loan. It therefore issued a formal demand for the outstanding loan balance in early June 2023. As U was unable to repay the outstanding balance, it contacted Mr H and asked that he repay the outstanding balance in line with the personal guarantee that he had given for U's loan.
- It was satisfied that it had acted in line with the terms of the EFG loan and hadn't done anything wrong in calling upon the personal guarantee which Mr H had accepted as part of the loan agreement.

Our investigator didn't recommend the complaint be upheld. He said in summary that:

- The documents from NatWest were clear that Mr H would be providing a personal guarantee for U's borrowing.
- He'd listened to a call between NatWest and Mr H where the bank had clearly said that Mr H would be acting as a personal guarantor and that it would look to recover the full amount of any debt that U didn't repay from Mr H personally. On the call, NatWest suggested that Mr H seek legal advice if he was unsure, but he said he understood.
- Mr H had two weeks between this call and signing the agreement, so he was satisfied that Mr H had been given enough opportunity to make an informed decision.
- We couldn't look at any complaints from U about the loan as part of this complaint, as this complaint was in a personal capacity and a separate complaint would need to be made for U.

Mr H didn't agree and asked for an ombudsman to review his complaint. In summary he said that:

- The approach adopted by our service about the structure of the guarantee without considering the background of the negotiations was unreasonable.
- The personal guarantee wasn't discussed as supporting the EFG loan, only the invoice factoring facility which was in lieu of the personal guarantee.
- He had only signed the agreement on U's behalf because he believed the invoice factoring facility would stand as security without the need for a personal guarantee.
- The personal guarantee was forced on him in the middle of the Covid-19 pandemic and he signed this without understanding the impact of the personal guarantee, or that the terms had changed from what was initially discussed and presented as 'routine paperwork'.

What I've decided – and why

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'm sorry to disappoint Mr H, but there's not much more that I can add to what our investigator has already said.

I understand that Mr H is frustrated that we cannot look into his concerns about what happened to U before the personal guarantee was given. But the complainant in this case is Mr H, in his capacity as guarantor, and I am therefore only able to consider whether Mr H has lost out as a result of an error by NatWest. U is not the complainant here, and so I cannot consider whether NatWest treated U fairly. We're governed by rules set by the industry regulator, the Financial Conduct Authority (FCA). They're called the DISP rules and can be found in the FCA's handbook. They set out the complaints that we can (and can't) investigate – we have to strictly apply the rules about what we can and can't consider - we don't have discretion when it comes to our jurisdiction.

Mr H also said that the personal guarantee wasn't discussed as being provided as security for U's loan, and he only signed the loan agreement because he thought the invoice factoring facility was the only security. But I'm not persuaded that's the case. I can see that Mr H initially said that he didn't want to provide his home as security for the loan, however that I'm not satisfied that means personal guarantees were not discussed, particularly as Mr H has provided evidence of discussions about a £25,000 personal guarantee for the invoice factoring facility.

However, even if I am wrong about that and Mr H didn't discuss a personal guarantee for the EFG loan initially, I think there was enough subsequent information provided by the bank for him to question this. I say that because I've listened to the call between NatWest and Mr H in March 2020, and I think the bank was clear that Mr H was going to be providing a personal guarantee for U's loan. There was a specific part on the call where NatWest says, *"I can see that you have agreed to act as a guarantor in support of the loan, it is important you understand that any personal guarantee provided under the scheme is given for an agreed monetary amount not a percentage of the outstanding debt [...] in the event of a default we would look to recover the amount from you"*.

The bank said that if Mr H required any further clarification, that it recommended he seek independent legal advice. It also asked Mr H to confirm that he understood what the implications of the personal guarantee were – which he confirmed he did. So, if Mr H was unsure about giving a personal guarantee, I think he had the opportunity to query what this meant for him on the call – particularly as the call handler asked Mr H if he had any questions.

Furthermore, based on the call, I'm not persuaded that the bank was pressuring Mr H to decide immediately about accepting the loan, and I've seen that there is a reasonable period between the call with NatWest and Mr H signing the loan agreement. So, I think that even if there was confusion about the personal guarantee from the initial call, Mr H was clear that he was giving a personal guarantee for the £174,000 loan which NatWest was providing to U and he had enough opportunity to query this. I say this because there is a separate page of the loan agreement which shows the security being provided to support the loan is a personal guarantee from Mr H and a debenture from U. The agreed security for the loan isn't hidden within the wider agreement terms, and it's clear what security is being given. So, I can't fairly hold NatWest responsible because Mr H says he didn't read the agreement thoroughly before signing it.

I've seen that U's loan agreement says that Mr H should seek independent legal advice before agreeing to be bound by the terms. I haven't seen any evidence that Mr H made NatWest aware that he didn't understand the implications of what he was signing, and I also think it's reasonable to believe that if Mr H was unsure of what he was signing or that he'd misunderstood what was required by the 'personal guarantee' that he could have sought legal advice prior to signing the document.

Therefore, I'm not persuaded that NatWest has treated Mr H unfairly here. I agree that the EFG loan was in U's name, and it was therefore responsible for any debt, repayments, and the consequences of not meeting its contractual obligations. However, I'm satisfied that NatWest had a personal guarantee from Mr H, and that when U didn't make its repayments, the bank told Mr H it would be seeking repayment of the outstanding debt from him under this personal guarantee.

For the reasons I've given above, I'm satisfied that Mr H did give NatWest a personal guarantee for U's borrowing. But if I am wrong about that and in fact Mr H did not give the personal guarantee, I would then have no power to consider his complaint at all. As I have explained above, the Financial Ombudsman Service isn't free to consider every complaint that's brought to us. We're governed by rules set by the industry regulator, which set out the complaints that we can (and can't) investigate. I have to strictly apply the rules about what we can and can't consider - I don't have discretion when it comes to our jurisdiction.

The rules also set out who is eligible to refer complaints to our service. There are various categories which a complainant can fit into, but only the guarantor and consumer categories are potentially relevant here. Under the rules, a consumer is defined as "an individual acting for purposes wholly or mainly outside that individual's trade, business, craft, or profession". While Mr H was acting in a personal capacity here - in that the guarantee was provided in his own name - this was done to obtain borrowing for U.

Based on what I've seen, I think the guarantee was given for a purpose connected with the business he was a director of at the time - which means that Mr H wouldn't meet the criteria for a consumer. Furthermore, based on the evidence I've seen, I'm satisfied that Mr H did give NatWest a personal guarantee for U's borrowing, and Mr H is therefore a "guarantor" under our rules.

I recognise that Mr H will be unhappy about this, and that he'll be disappointed with my decision. But based on everything I've seen I don't think NatWest has treated Mr H unfairly in his capacity as a guarantor. And if Mr H was not a guarantor, I would then have no power to make an award to him because in that case he wouldn't meet the definition of an eligible complainant.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 10 January 2025.

Jenny Lomax
Ombudsman