

complaint

Mr and Mrs G complain that National Westminster Bank Plc is acting unfairly in dealing with their liability under a personal guarantee they gave to support company borrowing.

background

Mr and Mrs G gave a guarantee for £84,991 in April 2005 in favour of their company. In 2010 the company was unable to repay a loan as it could not sell a property. A consolidation loan was agreed for a year. The property was not sold and a call was made on the guarantee in January 2012. Mr and Mrs G began making payments of £500 per month in July 2012. The sale of the company property was made in January 2014 leaving a shortfall after costs of approximately £35,000. After assessing their circumstances NatWest said that it wanted Mr and Mrs G to provide a second charge over their home voluntarily to avoid a court judgment and additional costs. It said that there is sufficient equity in their property to secure this.

The adjudicator did not recommend that NatWest do any more than it had offered and which was to pay Mr and Mrs G £150 for not registering their complaint earlier. She said that:

- The guarantee covered the consolidation loan of the company.
- NatWest allowed a reasonable time for the property to be sold.
- It was entitled to pursue Mr and Mrs G for the remaining liability and this could include taking legal proceedings to secure this.

Mr and Mrs G did not agree and said, in summary, that they had no choice but to agree to the consolidation loan for their company and the additional interest and fees. They said that the guarantee was intended to relate to a specific loan on a specific property and that they understood it had lapsed. Even if the guarantee was legal, this did not make it right to rely upon it. They said that they would have been better putting the company into liquidation. Instead they have been affected personally by what happened and they expected NatWest to reach a settlement on the guarantee. They do not know how they will ever pay this debt back and there is insufficient equity in their property to secure the guarantee.

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 have looked at the guarantee that Mr and Mrs G signed in 2005 and can see that it covered all liabilities of the company. It had no expiry date. Clearly the precise amount involved had related, as Mr and Mrs G say, to a specific transaction and the guarantee was never altered when company borrowing increased. But I am afraid that unless NatWest agreed to rescind the guarantee then this continued to support all company borrowing.

Had the company not agreed a consolidation loan then I consider NatWest would have still relied on this guarantee for any shortfall and this included if the company had gone into liquidation.

The amount required under the guarantee here was dependent on how much the company could sell a property for. I know that Mrs G wanted NatWest to refinance the borrowing onto a buy to let mortgage but it was not required to do this. Mr and Mrs G seemed to have time

to try and refinance this borrowing to another bank or to sell the property. NatWest did not insist that it be put in an auction or force a sale itself as it could have done. I know that the price was less than Mr and Mrs G wanted but I think they probably knew that this was all that could be achieved at that time.

I have read in detail the letter and statement Mr and Mrs G have made about the impact all that has happened has had on them. I understand the personal cost to them and that they are very concerned about this debt. As a result I know that they will be extremely disappointed to learn that I am unable to require NatWest to act differently. It has a legitimate debt and is entitled to seek repayment. It has considered the personal circumstances of Mr and Mrs G.

It is up to Mr and Mrs G whether they agree to a voluntary charge over their property. If they do not it remains open for NatWest to take court proceedings and it might be successful in having a charging order made over their property. I fully appreciate the implications of this for Mr and Mrs G and they will probably want to access professional advice.

my final decision

In light of the above my decision is that I am unable to require National Westminster Bank Plc to take any action other than it has offered to do and this is to pay Mr and Mrs G £150.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs G to accept or reject my decision before 10 July 2015.

Michael Crewe
ombudsman