

## **The complaint**

The Estate of Mr R's complaint about National Westminster Bank Plc (NatWest) relates to a loan secured by way of a charge over one of Mr R's properties, which I shall refer to as ABC. Mrs R redeemed that charge in February 2022 and believes she should not have been asked to do so. She wants the monies she paid refunded together with interest.

## **What happened**

Mr R took out a business loan with NatWest providing security against the property ABC, which he owned. After Mr R passed away in 2021, his two daughters obtained letters of administration in order to administer his estate. They learned of the secured loan and Mrs R redeemed it in February 2022 thus releasing the charge on ABC.

Mrs R has argued that she ought not to have been required to redeem the loan because (1) her solicitor didn't see a charge against the land when securing a separate mortgage, (2) she doesn't think the loan was legal and (3) the loan had already been repaid by Mr R prior to his demise.

NatWest say that when Mr R took the loan out, he did so as a sole trader and consented to it being secured over the property ABC. NatWest have been unable to provide the original loan agreement or charge but have provided account documentation and notes evidencing the existence of the loan and charge. They have been unable to say what the purpose of the loan was except that it was a business loan. NatWest have also said that the loan was never redeemed by Mr R and the only redemption payment made was by Mrs R. They invited Mrs R to provide some evidence of her belief that there was an earlier redemption by Mr R, but she has not been able to provide any.

The Estate of Mr R were unhappy with NatWest's final response and so approached this service to see if we could assist in resolving the dispute. Our investigator thought that on balance there had been a loan taken out by Mr R and secured on the property ABC. Further, it had not been redeemed prior to Mr R passing away and so it was fair and reasonable for NatWest to request it be paid out of his estate. As such he concluded there had been no poor service by NatWest.

The Estate of Mr R didn't agree and asked for the complaint to be passed to an Ombudsman for a final decision.

## **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.

My summary of what happened is brief and I know the parties went into a lot more detail. I'm going to focus on what I think are the key issues. Our rules allow me to do this, and it reflects the nature of our service as an informal alternative to the courts. So, if there's something I've

not mentioned, it isn't because I've ignored it, it's because I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

I've taken account of both sides' views and I've looked at the issues raised and considered all the available evidence. Where evidence is not complete, I think about what is more likely to have happened in the light of the evidence which is available. This is often termed as finding the facts based on the balance of probabilities.

Mrs R has repeatedly asked NatWest to provide a copy of the charge and loan agreement. NatWest have said that due to the passage of time they do not have these documents, which I must say I find a little surprising. That said if they don't actually have the documents anymore they cannot produce them.

Mrs R has throughout her complaint correspondence with our investigator made reference to various documents and she has been invited to submit those on a number of occasions but has never done so. So, whilst she makes reference to them I cannot take them into account as I have never seen them or read what they say.

As to the existence of the loan itself, neither the Estate of Mr R, or Mrs R have disputed that there was in fact a loan taken out. NatWest have supplied a statement of the loan account transactions which reveal that when the loan commenced on 18 November 2010, £82,150 was drawn down. Loan repayments were made, and interest added over time, and on 31 December 2021, shortly after Mr R passed away, the balance stood at £53,125.25.

I have also seen some evidence of a guarantee being provided for £50,000 although the actual guarantee I have not seen. Whilst not definitive, this is sufficient evidence for me to find that it is more likely than not that Mr R took out a business loan for which he gave a guarantee of £50,000.

The loan account also shows that at the time of Mr R's death the loan had not been repaid since there was a balance outstanding. The Estate of Mr R, and Mrs R, dispute that, believing it to have been repaid at an earlier time, but they have provided no evidence to support that contention. In the absence of evidence showing that they did in fact redeem the loan, I find it is more likely than not that the loan was not repaid which is also supported by the loan account statement.

Although I have not seen the loan document or the charge itself, I have seen documentation which refers to the charge. Mrs R has also confirmed that there was such a charge too, since she refers to it in the context of her solicitors not seeing it. Again, this is sufficient evidence for me to find that it is more likely than not that there was a charge on the ABC in order to secure the loan.

I know Mrs R has said her solicitor didn't see the loan when s/he was carrying out some mortgage work, and I don't know why they did not, but it has no impact on my findings that this loan did exist and had not been repaid. I also note that Mrs R has claimed the loan was not legal. I imagine that argument is advanced because she has not seen a copy of the agreement itself. The absence of the written agreement does not mean that the loan never existed, and for the reasons given above I am satisfied it did. And, I have seen nothing which would persuade me that the loan was illegal.

Having made the above findings I think NatWest were entitled to seek recovery of the loan from Mr R's estate and in any event it was covered by the charge over ABC. Had Mrs R chosen not to repay the loan NatWest would have had the option of seeking an Order from the court to force a sale of the property to recover the outstanding loan balance. So, I can't say NatWest has acted unfairly or unreasonably here and I'm not upholding this complaint.

**My final decision**

For the reasons set out above I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr R to accept or reject my decision before 12 January 2024.

Jonathan Willis  
**Ombudsman**