

The complaint

Mr T complains that Barclays Bank UK PLC has pursued him for a guarantee they said he gave to support lending to his business without responding to his many requests for a copy of the signed guarantee.

What happened

The circumstances of this complaint are familiar to both parties. In summary:

- On 26 September 2023, Barclays wrote to Mr T with a demand to pay a large sum of money pursuant to a guarantee they said he'd provided to support lending to his business in 2020.
- Mr T says that on 28 September he wrote to Barclays requesting a copy of this guarantee. However, Barclays has no record of receiving this letter from Mr T.
- On 4 November, Barclays wrote again to Mr T to inform him that they would shortly be transferring his case to a debt collection agency to recover the debt.
- On 9 November, the debt collection agency wrote to Mr T to begin their pursuit of the debt.
- Also on 9 November, Mr T wrote again to Barclays, repeating his request for a copy of the signed guarantee.

Mr T said that Barclays had failed to respond to his letters in a timely manner; had failed to provide a copy of the signed guarantee from 2020; and had engaged a debt collection agency prematurely, prior to making reasonable efforts to discuss matters with him. He also said that Barclays had acted in breach of data protection laws by passing his personal details to a debt collection agency without any legitimate reason or his prior consent.

In response to Mr T's complaint, Barclays apologised to Mr T for not responding to his letter of 28 September. It said it could not be sure whether this letter had been received or not. However, Barclays said it did not believe it had done anything wrong in engaging a debt collection agency to recover the amount owed.

Not content with this response, Mr T brought his complaint to our service.

After looking into matters, our investigator said that she believed Mr T had given the guarantee to Barclays in 2020, and Barclays was therefore entitled to pursue him for the debt. She also said that she didn't think Barclays had done anything wrong in engaging a debt collection agency, notwithstanding that Mr T was in dialogue with Barclays about the debt, or in passing Mr T's personal details to the debt collection agency.

As Mr T did not agree with this response, he asked for an ombudsman's 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.

There are two questions for me to consider:

1. Did Mr T give the guarantee in January 2020? This is also determinative of whether we have jurisdiction to consider this complaint.
2. Did Barclays do anything wrong in how it responded to Mr T's request to see the signed guarantee agreement and in how it engaged a debt collection agency to recover the debt.

Did Mr T give the guarantee?

Barclays has been unable to provide either Mr T or us with a signed copy of the guarantee, and Mr T has said that he does not remember signing a personal guarantee in January 2020. However, Barclays has provided us with a copy of the form Mr T would have been presented with to extend his business overdraft in January 2020, which clearly includes a guarantee, and Barclays has also provided us with a detailed explanation of the online process Mr T followed to complete this form. Barclays has also demonstrated that the extended overdraft was drawn down a couple of days later. On the basis of this evidence, I agree with our investigator that it is more likely than not that Mr T gave the guarantee in January 2020 to support the additional lending to his business.

For this reason, I believe we have jurisdiction to consider this complaint.

I have listened to the call between our investigator and Mr T in April 2024, in which our investigator indicated that, if Mr T had not signed the guarantee, we would not have jurisdiction to consider this complaint. However, our investigator issued her formal view to Mr T and Barclays subsequently in writing. In this view, she explained why she believed it was more likely than not that the guarantee had been given by Mr T. In reaching my decision, I have reviewed all the evidence afresh to form my own independent opinion but have reached the same conclusion on this matter as our investigator.

Did Barclays do anything wrong in how it handled matters subsequently?

Given I believe Mr T gave the guarantee to Barclays, and given the outstanding liabilities, I believe Barclays acted reasonably under the terms of the guarantee in pursuing Mr T personally for the debt. I believe the two letters from Barclays to Mr T on 26 September and 4 November explained clearly and fairly what Barclays needed Mr T to do and the action they would take.

Accordingly, I also believe Barclays did nothing wrong in engaging a debt collection agency, and the letter from this agency to Mr T on 9 November explained clearly and fairly what it was seeking from Mr T. As I do not believe Barclays did anything wrong under the terms of the guarantee in engaging the debt collection agency, I do not believe Barclays acted unreasonably in passing Mr T's personal details to this agency.

At the heart of Mr T's complaint is that Barclays has not provided him with a copy of the signed guarantee despite him requesting this several times. However, as set out above, it appears that Barclays cannot provide Mr T with what he is seeking because of the way in which the guarantee was given. Barclays has provided the unsigned form which clearly includes a guarantee, but because the form was signed online, it cannot demonstrate a signature. While this is frustrating, I do not believe there is any way around this, and I do not believe Barclays has treated Mr T unfairly in not providing him with the evidence he wanted. As set out above, I believe it more likely than not that the guarantee was given.

Barclays has admitted that it may have lost Mr T's letter of 28 September. This is unfortunate as it caused a delay in Barclays providing Mr T with any evidence that he had given the guarantee in 2020. Mr T had to write a second letter in November to request this information. However, as I can see no material harm arising from the delay, I believe Barclays' apology for possibly mislaying this letter is appropriate.

I know that this decision will not be what Mr T was hoping to hear. However, having considered all the circumstances of this complaint, I believe that, although Barclays has been unable to supply Mr T with a signed copy of the guarantee from January 2020, it probably was given by Mr T. I therefore believe Barclays acted reasonably in pursuing Mr T under this guarantee and did nothing wrong in how it engaged a debt collection agency to recover the outstanding amount. In the process, Barclays may have mislaid one of the letters from Mr T but, as I don't believe this resulted in any material harm, I don't require Barclays to take any further action.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 4 February 2025.

Andy Wright
Ombudsman