

The complaint

Mr A complains that Bank of Scotland plc is unfairly holding him personally liable for a loan taken out by his limited company. To resolve his complaint, he would like the bank to write off the debt.

What happened

Mr A told us:

- His limited company took out a loan in June 2019.
- His limited company was severely impacted by Covid, and ultimately he had to close the business and sell its assets. Before doing so, he spoke to the bank on three separate occasions in late 2022 and early 2023 and was told that there was no personal guarantee attached to the loan. Based on the bank's information, he believed that he was "safe to sell the business and use the money to pay off other loans and PG".
- He then sold his business, and used all the money to pay debts. After he sold the business, the bank contacted him and told him that there was a personal guarantee and he needed to pay back the loan personally. That was the first time he'd been told that a personal guarantee was in place.
- He has no ability or desire to repay the loan. He considers that the bank has been negligent – it had the opportunity for him to pay the money back, but because it didn't explain clearly that there was a personal guarantee in place he used the funds elsewhere. He considers that a fair outcome is for the loan to "go down with the business", and that the bank should release him from a personal guarantee that he never agreed to.

Bank of Scotland told us:

- Mr A signed the personal guarantee agreement in June 2019. At the time, Mr A's solicitor confirmed that he had explained the nature and implications of the personal guarantee and provided Mr A with legal advice on the matter.
- It is satisfied that Mr A did give a personal guarantee for his company's loan. The bank has not agreed to formally release Mr A from the personal guarantee, and maintains that Mr A is liable for the outstanding company debt to which the personal guarantee refers.
- At one stage Mr A's company had a second loan from the bank, supported by a joint personal guarantee given by Mr A his wife as well as by a second charge over their home. In July 2022 Mr and Mrs A remortgaged their property and repaid the other loan, meaning that the joint personal guarantee associated with the other loan was discharged and the second charge released. Those events had no impact on the loan at the centre of this dispute, but may have caused some confusion.

- It accepts that its staff did tell Mr A that there was no personal guarantee attached to his company's loan. It gave the following information about Mr A's calls to the bank:
 - In December 2022 Mr A called the bank and mistakenly said that there was no personal guarantee in place because he had repaid the loan subject to a personal guarantee earlier in the year. The bank employee did not challenge Mr A's view.
 - In January 2023, Mr A called response to a 'warning' letter he had received from the bank. He explicitly asked if there was a personal guarantee held for the loan at the centre of this dispute, and was told (wrongly) that there was not. The bank considers that its employee may have arrived at that conclusion by looking at the notes from the earlier call.
 - In February 2023, Mr A called from his solicitor's office as the sale of his business was imminent and the bank still held an outstanding floating charge over the business which was holding up the potential sale. Mr A said there were no personal guarantees, and that all security should have been released previously. The bank employee he spoke to was not authorised to approve the discharge of security, and so told Mr A that he would be contacted by the bank's Securities team.
 - In April 2023 there was a further call in which the bank explained that it held a personal guarantee for the loan and that Mr A was liable for the debt. He responded that he was unable to pay, because he had sold the business and the majority of the funds received had been used to settle a debt with HMRC.
- Overall, it considers that it fell short in the service it provided to Mr A. Its staff accepted Mr A's insistence that the loan was not secured by a personal guarantee, and should have done more to verify matters at the time. However, once it received a request to formally release all security, Mr A was given the correct information.

One of our investigators looked at this complaint, but she did not uphold it. Briefly, she said that she accepted that the bank could have provided Mr A with a better service by clearly explaining that there was a personal guarantee on the loan. However, ultimately Mr A did give a personal guarantee, and so she was satisfied that the bank made no error in pursuing him for the outstanding debt.

Mr A did not accept our investigator's conclusions, so the matter was referred to me as an ombudsman.

My provisional decision

I issued a provisional decision on this complaint in May 2024. I said:

"[M]y provisional conclusions are:

- Mr A did give a personal guarantee for his limited company's debt, and it would not be fair for me to order the bank to write the debt off.
- However, the bank's poor service caused Mr A significant distress – and it should pay him £750 in compensation.

I give more details about my findings below.

Did the bank make an error?

I am satisfied that Mr A did give the bank a personal guarantee for his company's loan in June 2019. I acknowledge that he says his solicitor did not fully explain the consequences of doing so, but the bank is not responsible for his solicitor's actions.

I am also satisfied that Mr A's company's loan has not been repaid. That means that when Mr A spoke with the bank in late 2022 and early 2023, there was a personal guarantee attached to his company's borrowing – and yet the bank wrongly told him that there was no such guarantee.

What were the consequences of the bank's error?

Where a bank has made an error, I will usually aim to put the complainant back into the position they would have been in if the error had not been made. To do that here, I need to think about what Mr A would have done differently if he had been fully aware of the existence of the personal guarantee in late 2022 or early 2023.

In light of the evidence currently available to me, I am not satisfied that Mr A would have done anything differently if the bank had made no error. However, I am issuing this provisional (rather than final) decision to give both parties the opportunity to provide me with further evidence. If Mr A is able to provide evidence that persuades me that he would have taken different actions if the bank had not misled him, then I might amend my findings as to compensation.

I think Mr A would still have sold his business whatever the bank had told him about the personal guarantee. The bank's records say that he told it in January 2023 that he didn't have enough money to keep the business going, and that he'd taken independent advice that his only realistic option was to sell the business and repay as much debt as possible.

I'm aware that Mr A has suggested that if he had known of the personal guarantee, he would have sold his business for more money. But I think it is unlikely that the existence (or otherwise) of the personal guarantee would have affected his desire to achieve the best possible price. In addition, I haven't seen any evidence to suggest that there was a buyer willing and able to pay more than Mr A actually received.

Mr A has also suggested that if he had known about the personal guarantee, he would have used the sale proceeds to repay the debt owed to the bank. He has said that at the point of sale he had the money to pay the bank, but because he didn't think there was a personal guarantee he used the money elsewhere. However, I understand that he also told the bank that he'd used the money to repay other personally guaranteed debts. In addition, I am mindful that the directors of an insolvent company do not have an entirely free hand to choose which of the company's debts they would prefer to settle.

Overall, I am not satisfied that Mr A would be in a better position now if the bank had given him the correct information in late 2022 or early 2023. That means I don't think it would be fair for me to order Bank of Scotland to write off the debt.

However, I do think that Bank of Scotland's error caused Mr A to suffer substantial distress. Whilst I think Mr A *ought* to have been aware all along that the personal guarantee was in force – given that he signed the document in 2019 – I am satisfied

that in fact he did not know. I am further satisfied that he made good faith efforts to ask the bank what his position was, and the bank had ample opportunity to tell him. Instead, the bank told him that he was not personally liable for his company's debts – and did not confirm the correct position until April 2023.

We publish information about our approach to awards for distress on our website at <https://www.financial-ombudsman.org.uk/consumers/expect/compensation-for-distress-or-inconvenience> . I think Mr A's distress here was substantial. He has explained that he is in financial difficulty, and even a payment of £400 a month would leave him unable to support his family. Given his financial position, suddenly discovering that he was liable for tens of thousands of pounds of debt – despite the effort he had made to ensure there were no personal guarantees – would inevitably have caused substantial distress.

Taking our guidelines into account and applying my own judgement, I consider that an award of £750 would be fair to recognise the distress that the bank's error caused to Mr A."

Bank of Scotland accepted my provisional findings in full. Mr A did not. Briefly, he said:

- Bank of Scotland did not make clear in 2019 that there was a personal guarantee attached to his company's loan. He believes that the member of the bank's staff who dealt with his company's loan application was later dismissed by the bank due to concerns about the service he provided.
- It is not sufficient to say that the bank "fell short" of the service it should have provided. That term does not even come close to what happened.
- A payment of £750 is not sufficient compensation for the stress and mental health issues that he has suffered for years because of this loan. The bank is clearly in the wrong, and should not be allowed to get away with paying only £750.
- When he put his business up for sale, he decided the price based on all outstanding personally guaranteed loans and any securities he had. He was completely honest with the bank about what he was doing. If he'd known that there was a personal guarantee in place on this loan, he would have increased the price to cover the loan. He had multiple offers for his business, and he didn't choose the highest – he chose the offer that gave the business the best chance to continue trading into the future. If the bank had given him the correct information, then all loans would have been paid and he wouldn't be in this situation.
- He does not agree that the bank confirmed the correct position to him in April 2023, and he would like to see proof of that.
- He simply cannot afford to pay the loan, and may have to declare himself bankrupt.
- He would like the bank to apologise, write off the loan, and pay him compensation of at least half of the outstanding loan amount.

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 have come to the same conclusions as I did in my provisional decision, for the same reasons. I now confirm those conclusions as final.

I acknowledge that Mr A is in a very difficult position, and that he will be disappointed by my findings. But I don't think the bank's mistake in telling Mr A that there was no guarantee means that it would be fair for me to require the bank to write off the debt, because I am satisfied that Mr A did in fact give a personal guarantee for his company's debt.

I am also satisfied that a solicitor told the bank that the implications of the personal guarantee had been explained to Mr A. The bank is not responsible for the actions of the solicitor, and so even if Mr A did not in fact understand the personal guarantee he was given I can't reasonably hold the bank responsible for that. That is true regardless of whether the bank staff originally involved in this matter remain employed by the bank, and regardless of the reasons for any departures.

I have carefully considered Mr A's additional evidence, but I am not persuaded that he would have sold his business for a higher price if he had known that the personal guarantee existed. Regardless of whether or not he had personally guaranteed his company's debt, the company still owed money to Bank of Scotland – and given everything else Mr A has said, I think he would have wanted the company to repay that debt if it had been possible.

Bank of Scotland told us that it confirmed the true position to Mr A in April 2023. Given that Mr A complained about this issue on 3 April 2023, I am satisfied that he knew on that date that the bank considered that he had given a personal guarantee for the loan.

I hope that Mr A and Bank of Scotland will be able to reach a mutually acceptable repayment plan, but if they cannot do so then I consider that Bank of Scotland is entitled to take action to attempt to recover the debt. If Mr A has not already done so, he may wish to contact a charity such as Business Debtline or StepChange for impartial, non-judgmental advice about the matter.

Putting things right

I know Mr A considers that a payment of £750 would amount to "a slap in the face". I stress that the compensation I am awarding is not intended to cover all of the distress Mr A has suffered (and may suffer in future) as a result of personally guaranteeing this loan. It is only intended to compensate Mr A for the distress caused by the bank's error in wrongly telling him that there was no personal guarantee. It is not intended as a punishment for the bank; I have no power to award punitive damages.

For the reasons I gave in my provisional decision, I consider that Bank of Scotland should pay Mr A £750 to apologise for the distress it caused to him.

My final decision

My final decision is that I order Bank of Scotland Plc to pay Mr A £750.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 5 July 2024.

Laura Colman
Ombudsman