

The complaint

Mr T complains that Barclays Bank UK Plc have behaved unreasonably in pursuing him through a personal guarantee which he says he didn't provide.

What happened

Mr T told us:

- His limited company which I'll call 'C' had a business account with Barclays and took out an overdraft for £15,000 in November 2019.
- Due to the impact of the Covid-19 pandemic, C's income had reduced and in August 2022 he had to seek alternative employment. C continued to trade through a loan provided by him.
- From December 2022 onwards, Barclays repeatedly contacted him as C's overdraft was due to expire and the bank wanted to discuss different options for repayment and finance going forward. In March 2023, C's Relationship Manager confirmed that he'd given a personal guarantee for C's £15,000 overdraft.
- He'd told Barclays that he didn't give a personal guarantee and that he'd been told by the relationship manager when C took out the overdraft that if the borrowing was £15,000 or less a personal guarantee wasn't required.
- From April 2023 onwards, he'd been given conflicting information by Barclays about whether it held a personal guarantee from him. In July 2023, notification was given that C would be struck off Companies House, then in August 2023, he received a formal demand from Barclays requesting that he repay C's £15,000 overdraft.
- He asked Barclays for a copy of the personal guarantee, but it had sent him someone else's document. He'd told the bank this wasn't a personal guarantee from him and said that to settle the debt, he would put C into liquidation so Barclays could recover an outstanding loan held by the company, but it should stop pursuing him personally for C's overdraft.
- He felt Barclays had behaved unfairly by giving him incorrect information and not providing a copy of the personal guarantee it said he had given. He said the bank's actions had caused him distress as he was being pursued for a personal guarantee he didn't remember giving.

Barclays told us:

- Mr T had given a personal guarantee to support C's £15,000 overdraft, which it provided a copy of. It also said that it was Mr T's responsibility to seek independent legal advice before he'd signed the guarantee and before he'd started the liquidation process.

- It hadn't seen any evidence that Mr T had been told C's lending would be unsecured if it was less than £15,000, and its process was that all business lending was secured in some way. It also said that Mr T had provided five other guarantees for previous lending, and therefore ought reasonably to have been aware that some security would likely have been provided.

Our investigator didn't recommend the complaint be upheld. She thought that Mr T had given the personal guarantee to Barclays and was satisfied that the documents said Mr T should seek legal advice if he was unsure about providing this. So, she thought it was fair for Barclays to seek repayment of C's overdraft from Mr T. She noted that Barclays had sent Mr T a copy of the wrong personal guarantee which had caused frustration, however she didn't think that had a material impact as Mr T did now have a copy of the correct documents. She also acknowledged that Mr T wanted a single point of contact at Barclays, but that it wasn't the role of our service to tell the bank that it should provide this.

Barclays accepted the investigators view. Mr T didn't accept the investigators opinion and asked for an ombudsman to review his complaint. He said in summary that Barclays had plenty of opportunities to provide him with a copy of the personal guarantee that he'd signed but hadn't done so and because of this, he'd used personal funds to appoint a liquidator. He also reiterated that the bank had said a personal guarantee wasn't required for facilities of £15,000 or less, which is why that amount had been agreed. He also said he'd thought that where it said 'no security' on C's agreement, this meant he hadn't given a personal guarantee.

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've decided not to uphold it. I'll explain why.

Mr T says that Barclays has treated him unfairly because it is pursuing him personally for borrowing taken out by C and that he didn't give a personal guarantee. But I'm not persuaded that Barclays has treated him unfairly here. I agree that the overdraft was in C's name, and it was therefore responsible for any debt, repayments, and the consequences of not meeting its contractual obligations. However, I've also seen that Mr T had provided Barclays with a personal guarantee to support C's borrowing, and that when C didn't repay the overdraft balance, Barclays requested that Mr T repay this instead.

I recognise that Mr T says that he was given incorrect information by Barclays, and told in June 2023 that there wasn't any security on the overdraft. However, I've seen a transcript of the call between the bank and Mr T at that time and I'm satisfied that he was given correct information. I say this because Mr T asked if the overdraft was a secured overdraft (and therefore secured against a property) which it wasn't, he didn't ask if there was a personal guarantee in place – despite referring to this in previous conversations. I think it's also worth noting here that Mr T had already spoken to Barclays about C's overdraft facility in March 2023 and the bank confirmed it held a personal guarantee from Mr T, which he acknowledged. I haven't seen any evidence that Mr T asked for a copy of the guarantee at this point, so I think on the balance of probability that Mr T was reasonably aware from this point that there was a personal guarantee in place.

Mr T says that Barclays behaved unreasonably when it didn't provide him with a copy of his personal guarantee when requested. He also feels this was only provided because he brought his complaint to our service, but I'm not persuaded that's the case. I can see that

Barclays did provide a copy of a personal guarantee, albeit that this was for a different customer. So, I think it's likely that Barclays had always intended to provide Mr T with a copy of his guarantee, it simply sent him the incorrect one and there was then confusion as Mr T said he hadn't signed this one, not that it was for a different company entirely.

It's not for me to fine or punish a business for making a mistake and although I recognise this was frustrating for Mr T, I'm not persuaded it made a difference here. I say this because the bank had already confirmed the guarantee was in place when it asked Mr T to repay C's overdraft and Mr T has now been provided a copy of the personal guarantee which he signed. I also haven't seen any evidence that Barclays' recovery process would have been any different here if Mr T had received the correct personal guarantee initially.

I note Mr T's comments that because of the delay in the personal guarantee being provided, he used his personal funds to liquidate C. However, I'm not persuaded that's the case as I've seen an email from Mr T to Barclay saying that he thought it was best to take this action so that the bank didn't pursue him personally for the overdraft balance. So, I can't hold Barclays responsible for Mr T's decision here.

I also acknowledge that Mr T says he was told when he took out the overdraft that a personal guarantee wasn't required as the overdraft was less than £15,000 and that he was under pressure when he signed the overdraft document. However, I haven't seen any evidence to support Mr T's version of events here, and the agreement is clear that he should seek legal advice before signing it. So, I also can't hold Barclays responsible for Mr T's decision to sign the agreement and personal guarantee when he did.

Therefore, I'm satisfied that Mr T did give Barclays a personal guarantee for C's borrowing. However, if I am wrong about that and in fact Mr T did not give a personal guarantee, I would then have no power to consider his complaint at all.

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, 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. 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 T was acting in a personal capacity here - in that the guarantee was provided in his own name - this was done to obtain borrowing for C.

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 T wouldn't meet the criteria for a consumer. Furthermore, based on the evidence I've seen, I'm satisfied that Mr T did give Barclays a personal guarantee for C's borrowing, and Mr T is therefore a "guarantor" under our rules. However, if - as Mr T says - he did not in fact give a personal guarantee, that would mean he didn't meet the definition of an eligible complainant under the DISP rules, and as a result I wouldn't be able to consider his complaint.

I recognise that Mr T 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 Barclays has treated Mr T unfairly in his capacity as a guarantor. And if Mr T 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 T to accept or reject my decision before 9 December 2024.

Jenny Lomax
Ombudsman