

The complaint

A company, which I'll refer to as T, complains that Barclays Bank UK PLC hasn't cancelled two guarantees which ought to have expired in 2017.

What happened

In the 1990s, T carried out work for a national utility company in a foreign country, under two contracts.

Two bonds were issued by the country's national bank to guarantee the performance of T under the contracts. The national bank issued the bonds based on receiving counter-guarantees from Barclays. T therefore placed £57,626.46 on deposit with Barclays and T's account was subject to a charge for potential liability.

The arrangement was extended and was then due to expire in 2017. T says that Barclays is now insisting on extending the guarantees without any authority to do so. But Barclays says it's unable to cancel the guarantees until instructed by the beneficiary's holding bank. T has made efforts to contact its client in the foreign country to obtain the instruction to release the guarantees, but hasn't received an answer.

T says that because the guarantees are a charge against the company, it's required to show this information in its accounts, which it considers 'dead money'.

T would like Barclays to cancel the guarantees and release the liability against T.

Our investigator looked at T's complaint about the continued existence of the guarantees and she concluded that Barclays had acted fairly. She gave the following reasons:

- Barclays has said that because the guarantees are governed by the laws of the foreign country, it was unable to cancel them until it received confirmation from the beneficiary's bank that the guarantees had been cancelled.
- The bonds were entered into by T and the national bank. Barclays issued the counter-guarantees to the national bank.
- Barclays has no influence over the cancellation, or otherwise, of the bonds. But the investigator could see that Barclays has continued to write to the national bank annually to ask if the bonds have been cancelled but hasn't received this assurance. She thought Barclays' actions were fair.
- It appears that the charges registered against T at Companies House have now been recorded as satisfied. But ultimately, in the event that the foreign national bank calls on the performance guarantees, and T couldn't or wouldn't pay, then Barclays would be protected by the guarantees it holds.
- T is also at liberty to withdraw funds from its bank accounts

- As a gesture of goodwill, Barclays has waived any future charges in respect of the guarantees.
- Barclays has reasonably suggested that T contact it to discuss finding a way forward regarding the cancellation without the agreement of the national bank. This would involve input from a lawyer with experience of the law in the foreign country.

T asked for an ombudsman to review the case. On behalf of the company, its director said that the two guarantees could go on ad infinitum, which isn't fair.

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.

I'm sorry to disappoint T's directors, but I've reached the same conclusion as the investigator and for largely the same reasons.

I note that civil war broke out in the foreign country several years before the date the extended guarantee arrangements were due to end. The political and security situation remains volatile, with ongoing military action from neighbouring countries. I think that's a likely explanation for the lack of communication from the parties in that country. But it leaves the UK parties – T and Barclays – with uncertainty over any future liability related to the original contracts.

Part of the guarantee arrangement is subject to the law of the foreign country. In the absence of an assurance from the national bank that the arrangement has ended, I think it's reasonable for Barclays to believe that it faces a risk that its guarantees will be called upon. Even if the likelihood of the risk crystallising is low, I can't reasonably require Barclays to accept the risk itself and to release T from any potential liability. In other words, as there is still uncertainty about the possibility of a future claim from the foreign parties, I can't reasonably require that Barclays should ultimately meet any such claim rather than T.

In the meantime, Barclays has, in my view, done what it can to minimise the day-to-day impact on T. It no longer charges T any fees for the guarantees, and T is no longer constrained by any charges against its assets – I can see from Companies House filings that all charges in favour of Barclays have now been marked as satisfied. T now has access to all of its funds with Barclays.

I appreciate that these unusual events leave T with uncertainty over a potential future liability. But I don't think Barclays has acted unfairly or unreasonably, for reasons given above. I note that T's directors have said they will consider Barclays' suggestion of involving a lawyer with experience of the foreign country to see if the bonds can be cancelled without the agreement of the national bank. It's now up to T's directors to decide whether they wish to explore that option further with Barclays.

My final decision

My final decision is that Barclays Bank UK PLC hasn't acted unfairly or unreasonably, so I don't require it to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask T to accept or reject my decision before 5 February 2025.

Colin Brown
Ombudsman