DRN-5340767

The complaint

Mrs C complains in her capacity as a guarantor that LDF Finance No. 3 Limited trading as White Oak UK has treated her unfairly by pursuing her for repayment under a guarantee. She also complains that she didn't understand the implications of the "all monies" clause and that there were no checks as to whether the guarantor could afford to repay.

What happened

Mrs C and her husband were both directors of a limited company, which I'll call H. Mrs C was not actively involved in running H.

In January 2020, H took out a £30,000 three year loan for from White Oak via a broker. A condition of this loan was an unlimited guarantee from all directors. Mrs C signed the guarantee in person.

In January 2022, H obtained a further £190,000 loan from White Oak via the same broker. On this occasion, the agreement and guarantees were signed via an e-signature. Mrs C wasn't present and has said that she knew nothing about this loan and didn't e-sign a guarantee.

In February 2023, Mrs C's husband sadly passed away. H ceased to trade and was unable to repay the second loan.

White Oak began to pursue Mrs C as guarantor for repayment of the balance owed by H.

In May 2024, Mrs C complained. White Oak didn't uphold the complaint. It accepted that Mrs C hadn't been present when the loan agreement and personal guarantee were signed in 2022. But White Oak said that the guarantee provided in 2020 covered the more recent loan anyway.

Mrs C referred her complaint to the Financial Ombudsman. One of our investigators looked into what had happened, but didn't recommend upholding the complaint. She said, in summary, that the guarantee signed by Mrs C in 2020 covered future liabilities and that White Oak was therefore not acting unfairly by holding Mrs C liable for the January 2022 loan. She said that White Oak did not have to check whether Mrs C could afford the liability and it hadn't made an error by not requiring Mrs C to seek independent legal advice.

Mrs C disagreed with our investigator's conclusions and asked for an ombudsman's decision. She made the following points, in summary:

- It was unrealistic of White Oak to assume that a director would have enough knowledge to enter into a guarantee, and in particular, to understand an "all monies" clause.
- It is considered best practice for lenders to advise guarantors to seek independent legal advice and White Oak hadn't done this.

- The Financial Conduct Authority ("FCA") said that lenders should ensure there is transparency and clarity in communications with guarantors and that lenders should make an assessment of guarantors' understanding of their obligations. This applied to guarantors for business loans and these guidelines were not followed by White Oak.
- In 2020, she did not think it necessary to explain her lack of understanding of the guarantee, as she was only signing for a £30,000 loan to buy a van.
- She and her late husband had disputes about his borrowing. He would have known that she would not have signed for a £190,000 loan.
- The 2020 guarantee was now being used as a back-up because of the catalogue of errors around the signing of the 2022 guarantee.
- Mrs C disputed that the 2022 loan was affordable. H's financials did not show affordability. And White Oak had told her it was in arrears at the point her husband passed away.

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'm very sorry to disappoint Mrs C, but I agree with the conclusion reached by our investigator. I appreciate that this leaves Mrs C in a very difficult position and I will explain why I don't think it would be fair to direct White Oak not to pursue the guarantee.

I would like to make it clear that I accept Mrs C's testimony that she knew nothing about the second, larger loan and did not sign any of the documentation for it. I understand that White Oak accepts this position too. But this does not change the position that the original guarantee, which no-one disputes was signed in person by Mrs C in 2020, contained an "all monies" clause. As our investigator explained, this means that the 2020 guarantee continues to exist and is not limited to the amount of that (repaid) loan, but covers any and all future liabilities of H to White Oak.

Mrs C is right that it is generally considered best practice to recommend third party guarantors seek independent legal advice before signing a guarantee – and that such legal advice would be likely to include an explanation of the "all monies" clause and its implications. But whilst Mrs C may in reality have had little involvement in H, she was nonetheless a company director.

Company directors, whether they are actively involved or not, are responsible for the running of the company and are expected to have oversight of what their company is doing. They are legally required to carry out their duties as a director with reasonable care, skill and diligence. I know Mrs C feels it was unrealistic of White Oak to assume a director would understand the obligations of an all monies guarantee, but I don't think this was unreasonable given that the guarantor was a director.

The loans were taken out through a broker, so White Oak may not have been aware that Mrs C had no direct involvement in the company. But whether this was the case or not, I don't consider that White Oak did anything wrong by not requiring Mrs C to take legal advice before signing the 2020 guarantee.

I also think it's likely that, in the context of a relatively modest loan for a van in 2020, Mrs C would have waived the requirement for legal advice anyway. So whilst we can't know for sure, I'm not persuaded that it would have made any difference to the events that followed, even if White Oak had included a recommendation to seek legal advice in 2020.

As our investigator explained, the lending that took place here was not regulated by the FCA. So I cannot reasonably say that White Oak should have complied with the FCA's rules for regulated lending, as they didn't apply. This means that White Oak was not obliged to carry out any checks on the affordability of the guarantee to the guarantor. I note that it has nonetheless shown that it carried out an individual credit check on Mrs C in both 2020 and 2022 and that in neither case was there any information that indicated she might not be suitable as a guarantor.

I know Mrs C considers that the events around the e-signing of the 2022 loan show that White Oak has not acted in an ethical or responsible manner. But I don't consider those events to be relevant to the decision for me here. It is unarguably convenient for White Oak that it has a 2020 all monies guarantee to rely on, since it clearly intended to take a new guarantee in 2022. But nothing that happened in 2022 changes the existence or validity of that 2020 guarantee. And for the reasons I've already explained regarding the obligations of company directors, I don't think it was unreasonable of White Oak to believe that all company directors would be aware of the 2022 loan.

Mrs C has also questioned the affordability of the 2022 loan to the borrower, H, a complaint that I can consider only insofar as it is relevant to her guarantor relationship with White Oak. In any case, White Oak is entitled to decide its own risk appetite for lending and I would not interfere with its commercial discretion. Nonetheless, I have reviewed the information White Oak relied upon to make this lending decision, which included unaudited accounts. I can see that, whilst this was a far larger loan than the 2020 one, it was lending to a company with a track record of repaying debt, improving turnover and profitability and a rationale for why H needed the funds. And I can also see that H did maintain its repayments on the new loan until a payment was missed in December 2022.

This is a very unfortunate case and Mrs C has my sincere sympathies for the situation she has found herself in here. I realise it must feel very unfair to be held liable for a large debt of which she had no prior knowledge. However, I have not found that this was the result of an error on the part of White Oak so I cannot reasonably direct White Oak to take any action. That said, White Oak is now aware of the vulnerabilities of Mrs C's position and I would hope it will be able to take these circumstances into account when considering any offer of settlement.

My final decision

For the reasons set out above, I am not directing LDF Finance No. 3 Limited trading as White Oak UK to take any action.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 3 June 2025.
Louise Bardell
Ombudsman