DRN-5426898

The complaint

J complains that LDF Operations Limited trading as White Oak are pursuing it for two cross-company guarantees provided to two other companies, which I'll refer to as D and P.

Mr M, the current director of J, says J was unaware that it had been entered into these guarantees.

What happened

Mr D was a director of D, P and J at the time D applied for a loan from White Oak in August 2023 and P applied for a loan in October 2023. As a condition of the loans, Mr D was asked to provide guarantees as security for the lender in case D or P were unable to repay their debts to them.

Mr D provided guarantees to White Oak at the same time as signing and accepting the loan agreements. Mr D provided a personal guarantee and a cross company guarantee from J to secure D's lending. And in the case of the lending for P, Mr D provided a personal guarantee, and two cross company guarantees from J and D. All the loan applications and guarantees were signed by Mr D.

Both P and D defaulted on the loans and White Oak called upon the guarantors, including J, for repayment of the debt.

Mr M complained to White Oak on behalf of J, as he had no knowledge that the guarantees had been given in J's name.

In the meantime, the matter with D was resolved and J was released from its liabilities in relation to D's debt. However, it was still being pursued by White Oak for P's debt.

White Oak considered J's complaint but didn't uphold it. They said the cross-company guarantees were taken in good faith from a director and shareholder of the company, and they were not required to clarify the acceptance of the guarantee with any other director.

Mr M was unhappy with this response, so he brought J's complaint to our service. One of our investigators looked into the matter, and she thought White Oak had acted unfairly by pursuing J for the guarantee as Mr M, in his capacity as a director of J, was unaware that a guarantee had been provided on J's behalf. As such, she upheld the complaint and asked White Oak to relieve J of its liability as a guarantor.

White Oak didn't agree that they needed Mr M's permission, so they asked for an ombudsman to review the case. It was passed to me to decide.

On 3 March 2025, I issued a provisional decision to both parties as my preliminary conclusions differed from our investigator's findings.

I said:

> 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 reached a different conclusion to our investigator.

Let me start by acknowledging what a difficult and frustrating situation this is for Mr M to find his business in as the remaining director of J. I can fully understand Mr M's arguments however, I've not seen that White Oak have done anything wrong here and I've explained why below.

Section 40 of the Companies Act 2006 covers the power of directors to bind the company. It provides that, in favour of a person dealing with the company in good faith, the power of a director to bind the company is deemed to be free of any limitation in the company's constitution.

According to Companies House, P, which Mr D was the sole director of, was a shareholder of more than 75% of the shares in J at the time Mr D entered it into the cross-company guarantees. And Mr D was listed as a director of D.

In addition, it wouldn't be highly unusual for one director to act on behalf of a group of companies in respect of entering into lending and providing guarantees. Nor is it unusual for a lender to ask for enough security, in this case in the form of guarantees, to satisfy its lending criteria and risk appetite. So, I can't see that there was anything obvious that would've made White Oak question Mr D's authority to sign the documents.

I appreciate that Mr M has questioned why no documentation was sent to J as Mr D had provided an email address relating to one of his other companies. The application and guarantees were signed and accepted through DocuSign and as Mr D was a director of all companies involved, I can't say that White Oak have done anything wrong by not asking for more than one email address from him.

I understand that J and Mr D had an agreement in place from 31 August 2023 stating Mr D had no authority to sign anything on behalf of J without prior authority. However, this was an internal agreement and not a public one and is not something that White Oak could or ought to have reasonably been aware of. It was for Mr D to act in good faith and stick to his agreement with J, so this isn't something I can hold White Oak responsible for.

In conclusion, there was no obligation or requirement for White Oak to seek acceptance from all directors of J prior to accepting a cross-company guarantee on its behalf. Nor was there any requirement for it to ask about any limitations to Mr D's authority in relation to J.

So, whilst I don't dispute that Mr D may not have acted with the best interests of J in mind, the dispute between J and Mr D isn't one our service can consider. So, J may wish to pursue this matter in a court of law.

I concluded by saying my provisional decision was that White Oak hadn't acted unfairly or unreasonably in pursuing J for the cross-company guarantee. And I therefore didn't require them to take any action in respect of this complaint.

I sent my findings to both parties and asked them to provide any further comments or evidence for me to consider by 17 March 2025. I explained that unless any additional information provided changed my mind, my final decision was likely to be along the lines of my provisional decision.

White Oak didn't provide anything further for me to consider, however Mr M provided a detailed response to my provisional decision, and we discussed the matter in depth in a phone call prior to me issuing this final decision on the matter.

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.

The crux of Mr M's additional submissions to us is that White Oak didn't do enough due diligence prior to lending to Mr D, and that there was no duty of care to the guarantors by White Oak accepting numerous documents all signed by Mr D. I explained to Mr M that although I understood his arguments and frustrations, I hadn't found that White Oak had made an error in that respect, and I'd covered off this aspect of the complaint in my provisional decision.

Mr M told me he didn't think White Oak had acted as a responsible lender, however I explained that our service couldn't consider that aspect of the complaint as the lending wasn't to J, so J wasn't an eligible complainant in respect of that aspect of the complaint.

Mr M also wanted to know if White Oak were pursuing the other guarantors, but I explained that this wasn't information that I had and even if I knew I would be unable to disclose it to him.

I know that Mr M thinks it is neither fair nor reasonable for White Oak to pursue J in its capacity as a guarantor, and although I recognise the unfairness of the wider situation here, I can't reasonably say that White Oak have made an error.

I understand that my findings will be disappointing for Mr M to read, however, I've not found that White Oak have done anything wrong in the circumstances of this complaint.

I am truly sorry that our service can't provide Mr M with the resolution he would like, and I'd suggest that he pursue the matter further through legal or civil action.

My final decision

I don't uphold this complaint for the reasons outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask J to accept or reject my decision before 22 April 2025.

Tara Richardson
Ombudsman