DRN-5822046

Financial Ombudsman Service

The complaint

A company, which I will refer to as G, complains that Bank of Scotland Plc is wrongly holding it liable for the debts of another company. I will refer to that other company as B.

What happened

The background of this dispute is complex. I set out below what I believe to be the key points, but I would like to assure both parties that I have read and considered everything they have sent to us.

Bank of Scotland told us:

- In 2017, G and B entered into a corporate guarantee. The effect of that guarantee was that each company became liable for all of the debts the other company owed to Bank of Scotland. The guarantee applied to both current and future debt.

- In 2020, B took out a Coronavirus Business Interruption Loan (CBIL) with the bank.

- In 2022, B entered liquidation. B could not meet the payments due under the CBIL, so it looked to G for repayment of that debt.

- In 2024, G complained that the bank was unfairly pursuing it for B's debt. It did not uphold that complaint, and it considers that G is liable for the amounts due under B's CBIL.

This complaint was initially referred to us on behalf of B. However, B's representative (who also represents G) later clarified that he would like the Financial Ombudsman Service to direct Bank of Scotland not to pursue G for B's debt. That means this complaint has been brought to us on behalf of G.

I note that G and B have a director in common, Mr M. Bank of Scotland appears to have treated this matter as a joint complaint from B and G throughout.

G's representative told us:

- The 2017 guarantee was only to accommodate a BACS Settlement Limit to allow G to process creditor payments and salaries. At the time, B had no borrowings with the bank.

- He does not question the enforceability of the 2017 guarantee in respect of its specific purpose – as a third-part guarantee for G's BACS Settlement Limit – but it is not fair for the bank to attempt to use the guarantee to attempt to make G liable for B's CBIL.

- By granting a CBIL to B in 2020, the bank changed the nature of its relationship with G. The bank did not notify G of the change in the nature of that relationship, and therefore it is arguable that the bank misrepresented that relationship. At the time,

the bank's internal policy required that G be notified.

- There was no commercial benefit to G's shareholders in guaranteeing B's indebtedness. If a guarantee had been requested from G in 2020, that request would have been declined on a commercial basis.

- Bank of Scotland did not attach an "Additional Terms & Conditions" document at the time it offered the CBIL to B. By that time, Mr M had forgotten the existence of the guarantee. If the AT&C document had been attached, Mr M would have known that the bank intended to rely on the guarantee in respect of the CBIL – and in that case he would never have accepted the CBIL for B, because by that time he knew that B's viability was in doubt and he did not wish to burden G with any additional debt or third party recourse.

- Similarly, Bank of Scotland did not write to G at the time it offered the CBIL to B to explain that G would be liable if B did not meet its own obligations under that loan. If the bank had done so, Mr M would have been reminded of the existence of the guarantee.

- B did not submit any business plans or projections to Bank of Scotland in respect of the CBIL. The bank's actions were in clear breach of the CBIL loan scheme, because it was obligated to undertake normal credit and due diligence assessments and has not shown that it did so.

One of our investigators looked at this complaint, but she did not uphold it. The matter was therefore passed to me.

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 see nothing unfair about Bank of Scotland's decision to hold G responsible for B's borrowing. I will explain further below.

Bank of Scotland has provided me with a copy of the corporate guarantee that was entered into by both G and B. I am satisfied that the guarantee is not limited to debts arising from G's BACS Settlement Limit. On the contrary, it covers "all or any money or liabilities which shall from time to time … be due, owing or incurred in whatsoever manner to BoS by [G or B]". It also says "Each Guarantor acknowledges and agrees that its obligations under this Guarantee shall be continuing obligations and shall extend to cover the ultimate balance due at any time to BoS from [G or B]". In the circumstances, I see no reason why B's CBIL would not be covered by the guarantee.

When Mr M signed the CBIL agreement on B's behalf, he confirmed that he had received (amongst other things) the "Security Schedule". Bank of Scotland says that this was the document headed "Additional Terms and Conditions to the Business loan agreement CBIL Scheme Security Schedule – [B's full name]".

Mr M has been clear and consistent in his recollection that the "Additional Terms and Conditions" document was not attached to the CBIL agreement when it was first provided to him. But I have not seen anything else that I think could reasonably have been the "Security Schedule" that he signed to confirm he had received.

On the contrary, Bank of Scotland has not been clear and consistent in its comments about the "Additional Terms and Conditions" document. At one stage it apologised to Mr M for failing to provide that document with the CBIL paperwork, only to later retract its comments and say that in fact it was satisfied that it had provided the "Additional Terms and Conditions" along with the loan documentation for the CBIL.

The bank has clearly made at least one mistake here. It is not possible for everything the bank has said about the documents to be true. But looking at the documents themselves, rather than at what the parties have later said about the documents, I am satisfied that Bank of Scotland did provide Mr M with the "Additional Terms and Conditions" in August 2020, and I am further satisfied that he confirmed receipt of that document at the time.

That "Additional Terms and Conditions" document said that the bank's security for the B's CBIL included:

- A bond and floating charge from B over the whole of its property and undertaking.
- A corporate guarantee by each group company as guarantor on account of the obligations of each group company to the bank as principal.
- A bond and floating charge from G over the whole of its property and undertaking.
- Legal charges over various properties owned by G.

I acknowledge that there has been significant correspondence between Mr M's representative and the bank as to whether various bonds and/or floating charges mentioned in the "Additional Terms and Conditions" document were or should have been executed. But whatever happened in respect of bonds and floating charges, and regardless of whether Mr M was acting on behalf of B or G when he confirmed receipt of the Security Schedule, I am satisfied that Bank of Scotland did make Mr M aware that it intended to rely on a corporate guarantee from G. In other words, I consider that the bank told Mr M that if B did not meet the payments due under the CBIL, it intended to recover the outstanding funds from G.

I accept that Mr M may have forgotten about the existing corporate guarantee by the time he signed the CBIL documents in 2020. But I don't think it matters whether Mr M thought Bank of Scotland intended to rely on an existing guarantee or a new one. In light of the evidence, I cannot conclude that Mr M would not have gone ahead with B's CBIL if Bank of Scotland had reminded him of the existence of the previous guarantee.

I don't know whether Bank of Scotland's policy required it to notify G of the existence of the CBIL, but I don't think that matters either. Mr M was a director of G as well as B, and Mr B was the person who had applied for the CBIL on B's behalf. I am therefore satisfied that G knew that B had taken out the CBIL.

Mr M has told us that at the time B took out the CBIL he was already concerned about B's ongoing viability. But it is clear that he was hoping B would be able to trade out of its difficulties. I haven't seen anything to suggest that hope was unreasonable at the time. The fact that B later entered liquidation does not it itself mean that either Mr M or Bank of Scotland ought to have realised in 2020 that B would not be able to repay its borrowing.

I have noted G's representative's comments about misrepresentation, but I have not seen anything to persuade me that Bank of Scotland made any misrepresentations to G (or indeed to B). It is clear that Mr M would have preferred the bank to have given him more

information, but in these circumstances I don’t think failure to provide information amounts to a misrepresentation.

G’s representative has suggested that the guarantee may not be legally enforceable. As an ombudsman, it is not my role to make a finding on the enforceability of the guarantee – that would be a matter for a Court. My role is to consider whether the bank acted fairly and reasonably in holding G responsible for B’s debt. And for the reasons given above, I think it did.

My final decision

My final decision is that I do not uphold this complaint against Bank of Scotland plc.

Under the rules of the Financial Ombudsman Service, I’m required to ask G to accept or reject my decision before 20 February 2026.

Laura Colman
Ombudsman