

The complaint

Mr F complains that Iwoca Limited (Iwoca) is pursuing him for a debt owed by his limited company, under the terms of a personal guarantee (PG) he says isn't binding upon him.

To put things right, he wants Iwoca to cancel the PG and pay him compensation.

What happened

Mr F is a director and shareholder of a company I'll call C. In 2023, C approached a broker to obtain finance by way of an unsecured overdraft. When the finance offer came through, the terms were completely different to what C had expected. The entire loan amount was paid to C up front, whereas C had requested an overdraft, which it would have been able to draw from as and when it needed. The broker told C it was possible to draw down the funds in a similar way to a traditional overdraft, subject to what he described as simple applications, but Mr F wanted a facility that C could draw from whenever it wanted.

Further, the lender required Mr F to sign a personal guarantee to secure the debt. When the PG document was sent to Mr F to sign, Mr F contacted the broker to query it as he had specifically stated that he didn't want to be personally liable for C's debt. Mr F says the broker told him on the phone that he wouldn't be personally liable for the debt, and the broker followed up in writing confirming the same. In response to an email from Mr F, in which he asked the broker to confirm his understanding that "Although we will be signing a personal guarantee the loan will be completely unsecured so in the unlikely event my company fails none of my personal assets can be effected", the broker replied saying "Yes your understanding is correct".

Mr F told our service he signed the PG on the back of the broker's confirmation of his understanding. However, it later transpired that the broker's explanation was not correct and the PG meant that Mr F would be personally liable for C's debt.

Because the loan facility didn't meet C's requirements, C cancelled the agreement and repaid the debt. However, Mr F said that when he sought to obtain finance elsewhere, he was rejected because of the recent loan that was showing as granted on C's credit file. Because C needed finance, Mr F returned to the original loan proposed by the broker and agreed to take the borrowing.

C later defaulted on the loan and Iwoca sought to recover the debt from Mr F personally. Mr F asked Iwoca to confirm what commission it had paid the broker, but Iwoca wouldn't say. Mr F suspected Iwoca had paid a commission to the broker and felt that meant Iwoca was liable for the broker's actions, so he complained, saying the broker was acting as Iwoca's agent. However, Iwoca rejected Mr F's complaint, so he brought it to our service.

Our Investigator looked at Mr F's complaint, but he didn't uphold it. He was satisfied Iwoca had explained the facility to Mr F and that it had told Mr F he would need to read the loan agreement and PG in order to drawdown funds. And he was satisfied that the loan agreement explained how the arrangement worked, that Iwoca would receive a commission from the broker, and that the PG document clearly explained that Mr F would be personally

liable for the debt.

Mr F didn't accept our Investigator's findings, so he asked for an Ombudsman to review matters afresh.

Because the underlying finance agreement was entered into between Iwoca and C, I will address the complaint about the underlying loan agreement in a separate decision. This decision will focus solely on Mr F's relationship with Iwoca, i.e. the PG.

On 25 July 2025, I issued my provisional decision. In it, I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Firstly, I should say that I'm aware I've summarised the events of this complaint in far less detail than the parties, and that I've done so using my own words. The reason for this is that I've focussed on what I think are the key issues here, which our rules allow me to do.

This approach simply reflects the informal nature of our service as a free alternative to the courts. And I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome in this case. So, if there's something I've not mentioned, it isn't because I've ignored it, and I must stress that I've considered everything both Mr F and Iwoca have said, before reaching my decision.

Iwoca has sought to argue that the broker hadn't misled Mr F and that Mr F had misinterpreted what the broker said. But I simply don't accept that. Mr F asked the broker to confirm the debt would be 'completely unsecured' and that his personal assets wouldn't be affected if C defaulted, and the broker confirmed that was correct. And I'm satisfied Mr F's question and the broker's response were both clear and unambiguous.

However, Mr F's contractual relationship (the PG) is with Iwoca, and not the broker and so I am only looking at Iwoca's actions, not the broker's actions. Although I will of course address whether or not I think Iwoca is responsible for the broker's actions and whether, as Mr F suggests, the broker was acting as Iwoca's agent.

Because the loan was sold to C through a broker, there was no responsibility on Iwoca to explain the nature of the loan, or the conditions of the loan to C: that was the responsibility of the broker. So, it follows that Iwoca wasn't obliged to explain the nature and effect of the PG to Mr F. And instead, I've looked at Iwoca's actions in presenting the PG to Mr F, to ensure it acted reasonably.

It's not in dispute that the PG was sent to Mr F before the loan was inception, and given that Mr F sought advice from the broker about the nature of the document, I'm satisfied that he had a reasonable opportunity to peruse the agreement and understand its contents.

And, having reviewed the PG, I'm also satisfied that it was sufficiently clear that it was a personal guarantee. The document is entitled "guarantee and indemnity" and the first numbered paragraph states:

"You hereby guarantee, as a continuing obligation, the payment by the Customer of all sums due under the Credit Agreement and due performance of all the Customer's obligations under it. You will pay Us as soon we demand it."

Finally, the header of the PG also contains the following message:

“IMPORTANT - You should seek independent legal advice before signing this guarantee and indemnity. You may have to pay amounts due under this Agreement instead of or as well as the Customer [i.e. Mr F’s limited company, C].”

I can see that Mr F identified that the PG wasn’t what he expected to receive and I can see that he did take advice on the subject, albeit from the broker and not a lawyer. I understand why he did that, and given the broker’s unequivocal response, I can see why he decided to proceed despite the flags he had identified. And by the time the finance agreement was put to C, C was in a position whereby it needed to move quickly, so I want to make it clear that I am not seeking to suggest that Mr F did something he shouldn’t have done, nor am I seeking to suggest what Mr F should have done instead.

I’m simply looking at Iwoca’s actions to see if it did enough to discharge its duty of care to Mr F. And, based on the above, I take the view that Iwoca did do enough to discharge its duty of care to Mr F, by giving him a reasonable opportunity to understand the PG before signing it, by recommending Mr F seek independent legal advice before signing it, and by setting out the effect of the document in sufficiently clear terms. Ultimately, I’m satisfied that the PG clearly explained that Mr F would be liable for C’s debts, and the reality here is that Iwoca’s work in setting out Mr F’s obligations was undone only by the broker’s advice, and nothing Iwoca itself did.

That brings me onto the point of whether or not Iwoca was responsible for the broker’s actions. Mr F has set out a number of arguments that he says support his suggestion that Iwoca is responsible for the broker’s actions. These include regulations and case law, as well as what Mr F says he has been advised by solicitors. However, I think it’s important that I explain our service’s remit. While we do consider best practice, regulations and even court decisions in reaching a conclusion, ultimately our remit is to decide what’s fair and reasonable in all of the circumstances of any particular case. So, any legal advice as to whether or not Mr F would succeed in a claim through the courts doesn’t necessarily reflect the position I can adopt.

Mr F also referred to two previous decisions of the Financial Ombudsman Service that he says are examples of where a regulated firm was held liable for misrepresentations by introducers acting with their authority. However, the first case he referred to relates to a home insurance claim and centres on whether or not an oven can be considered to be a permanent part of a building, and the other reference number doesn’t exist on our database.

Much of what Mr F has said relates to the principle that a firm can be held responsible for the actions of a party acting on its behalf. I accept that principle, but that is not the issue that is in dispute here: what is in dispute is whether or not Iwoca should be held responsible for the broker’s actions.

With regard to the specific point of whether the broker was acting as Iwoca’s agent, Mr F has suggested that the following matters created an agency relationship:

- 1. That Iwoca paid a commission fee to the broker;*
- 2. That the facility was sold to C as an Iwoca product and that the broker acted as the person introducing and arranging that loan; and*
- 3. That the broker was, from a customer’s point of view, representing Iwoca and that Mr F wasn’t informed that he was acting without Iwoca’s authority.*

I’ve considered all of Mr F’s points on the subject of agency, and I’ve investigated whether or not there is any merit in that suggestion. But I’m sorry to say that I don’t agree there is. Mr F

instructed the broker to act on behalf of C in order to obtain lending. C paid the broker a fee for its services, and the broker went to the open market to locate funding that would suit C's needs (for the purposes of this decision, it's not important whether or not the broker achieved that aim).

I haven't seen any evidence of a tie to Iwoca, or any contractual obligations to Iwoca, and there's nothing to suggest the broker was able to act on behalf of Iwoca, or make decisions on behalf of Iwoca. The evidence I've seen simply suggests that the broker acted for C, approached Iwoca to invite it to make an offer of funding, then presented the offer from Iwoca to C. It's true that the loan was sold as an Iwoca product, but that's because it was an Iwoca product. And I've seen nothing to say that Mr F was led to believe it was an Iwoca product unique to the broker, or that the broker had any say in the nature or terms of the product.

Lastly, Mr F has said he wasn't told that the broker was acting independently. But I don't see how that creates an agency relationship between the broker and Iwoca. It's possible that that would be the case if the broker had told Mr F that he wasn't acting independently and that he had Iwoca's authority, but that is not the case here.

I've looked at everything both parties have said and I've given lengthy consideration as to whether or not the broker was Iwoca's agent. But, for the reasons I've set out above, I don't consider that it was. And I'm satisfied that Iwoca took reasonable steps to present and explain the PG to Mr F. And I'm afraid that is what this complaint boils down to: Iwoca did enough to clearly explain the nature and effect of the PG, it gave Mr F a reasonable opportunity to digest the agreement, and it recommended he seek legal advice. And in my determination, that, in the circumstances of this particular complaint, is all it needed to do.

I don't underestimate the impact this situation had on Mr F, particularly given his personal circumstances at the time of these events, and I understand why he feels so strongly about his complaint, particularly given the questionable advice he was given by the broker. However, ultimately, I can't reasonably hold Iwoca liable for the broker's actions in the circumstances of this particular case. And the matters he complains of are matters he will need to direct to the broker, and not Iwoca."

Iwoca didn't have anything further to add, but Mr F did make a number of further submissions. Among other things, he said the following:

1. He didn't pay a fee to the broker;
2. That he had no involvement with the preparation work for the application, and that the broker deliberately concealed Iwoca's identity, because he was acting as their agent;
3. That the broker acted with Iwoca's apparent authority, promoted their product, set out the terms and managed a facility (the personal guarantee) than involved a risk to Mr F, and handled binding documentation on Iwoca's behalf;
4. There was a clear misrepresentation; and
5. The guarantee was buried in "boilerplate paperwork" and wasn't explained to him.

Mr F asked me to reverse my decision and uphold his complaint.

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've reviewed all of Mr F's submissions, and considered them in light of all of the circumstances of this complaint. But, having done so, I haven't changed my mind.

I should start by repeating that I'm aware I've summarised the events of this complaint in far less detail than the parties, and that I've done so using my own words. And again, I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome in this case. So, if there's something I've not mentioned, it isn't because I've ignored it, and I must stress that I've considered everything both Mr F and Iwoca have said, before reaching my decision.

I acknowledge that Mr F didn't pay the broker a fee, but that alone doesn't change the nature of the broker's relationship with either Mr F or Iwoca, for the purposes of Mr F's agency argument. The actions Mr F has described are exactly what I would expect from a broker – the broker had discussions with Iwoca about the finance options that could be presented to Mr F, he gathered all of the necessary information and documents, then presented them to Mr F.

And, while Mr F has said the broker had apparent authority to act on behalf of Iwoca, I haven't seen any compelling evidence to persuade me that was the case. The loan agreement between Mr F's limited company and Iwoca was in the name of Iwoca and was signed by one of Iwoca's directors on behalf of Iwoca. The broker wasn't a party to either the personal guarantee or the underlying loan agreement and while the broker may have acted as a go between when arranging the "binding documents", that again is the role I would expect to see from a broker. And I've seen nothing to persuade me that the broker had any authority (whether apparent or actual) to bind Iwoca.

Ultimately, based on Mr F's description of the events and the evidence both parties have submitted, I'm satisfied that the lender acted as a lender, and the broker acted as a broker.

Mr F has also said the guarantee was buried in "boilerplate paperwork" and wasn't explained to him. I don't agree that the guarantee was "buried" in the paperwork and indeed Mr F specifically queried the nature of the document with the broker when he received it. And, as I set out in my provisional findings, Iwoca wasn't obliged to explain the document to Mr F. With that being said, I explained in my provisional findings why I'm satisfied that the documentation was sufficiently clear that it was a personal guarantee.

The broker did attempt to explain the guarantee to Mr F, and I accept his explanation was unclear and misleading. And while I'm not looking at a complaint about the broker, Mr F may well be right that the broker misrepresented the true position. But the broker wasn't acting on Iwoca's behalf, so Mr F will need to speak to the broker about the misleading explanation and advice he was given.

Finally, Mr F has suggested that the fee/fees paid by Iwoca to the broker created an agency relationship. And I've considered whether or not that is the case. I can see that Iwoca did pay a commission to the broker and indeed, the loan agreement between C and Iwoca confirms as much:

"IT IS IMPORTANT YOU UNDERSTAND THAT IF YOU HAVE BEEN INTRODUCED TO US BY A BROKER OR ANOTHER THIRD PARTY FOR THE PURPOSES OF ENTERING INTO THIS AGREEMENT, THERE WILL BE A PAYMENT OF COMMISSION BY US TO

THAT BROKER OR THIRD PARTY. FOR MORE INFORMATION REGARDING THIS COMMISSION PAYMENT, PLEASE CONTACT YOUR BROKER OR THAT THIRD PARTY DIRECTLY”.

However, having reviewed the evidence from both parties on this point, I’m not persuaded that any payment from Iwoca to the broker gave rise to an agency arrangement.

Commission payments are common between brokers and lenders and don’t, on their own, create an agency relationship. The agreement between C and Iwoca openly discloses that a commission is paid, and the agreement says that Mr F should contact the broker for more information about the commission payment. Mr F is free to ask the broker for details of the commission. But based on the evidence I’ve seen, I’m satisfied there was nothing unusual about Iwoca’s commission arrangement or anything that created a wider relationship. And I’m not persuaded Iwoca should disclose the amount of commission paid to Mr F, given that it does not wish to do so.

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 F to accept or reject my decision before 22 October 2025.

Alex Brooke-Smith
Ombudsman