

The complaint

A company I'll call C complains that it was misled into taking a finance agreement that didn't meet its needs.

What happened

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".

While the inclusion of a PG is relevant to this complaint – C had asked the broker to arrange unsecured lending – because C is a limited company and therefore a separate legal entity to Mr F, this decision will focus solely on matters affecting C, and I have addressed Mr F's complaint about the PG in his personal capacity in a separate decision.

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 both C and 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 nature of 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.

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.

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.

Mr F told our service that, when he approached the broker, he explained that C required an overdraft facility of £50,000, with no security, and he instructed the broker to find lending that met his criteria. While detailed records of the conversations that took place with the broker aren't available, I have no reason to doubt what Mr F says. I've listened to recordings of calls between Mr F and the broker's office and Mr F and Iwoca immediately before and immediately after the loan was paid, and Mr F explained his position consistently each time: that he was under the impression that C would be pre-approved for £47,000, which would be available for drawdown at any time. And that he wasn't expecting the full amount to be paid on day one.

When it was explained to Mr F that that was not how the loan facility would work, he immediately explained that the facility didn't meet C's needs and said he intended to repay the same, in order to seek a more traditional overdraft arrangement elsewhere. However, when Mr F sought such finance, he said C was rejected because C's credit file showed that C had just received finance from Iwoca. With that being the case, Mr F had no choice but to reinstate the Iwoca lending.

In view of the above, I'm satisfied with Mr F's explanation that the loan offered to C wasn't what Mr F had requested from the broker. And that he hadn't understood the true position until the 11th hour. In addition to a misunderstanding over the nature of the loan, I've also seen an email from the broker to Mr F in which the broker confirms that the loan would be "completely unsecured" and that Mr F's personal assets wouldn't be affected if C defaulted, despite the fact that Mr F was required to sign a PG saying that he would be liable to pay the debt personally.

However, the information given to Mr F that led him to believe the loan was something it was not, was given to him by the broker, and not Iwoca. And when I look at the documentation provided by Iwoca, and because this is a complaint about Iwoca, not the broker, I'm simply looking at Iwoca's actions to see if it did enough to discharge its duty of care to C.

Under the "Terms and Conditions" section of the loan agreement, the first two sections state that the agreement is a revolving credit facility that requires an application for each drawdown, which may be declined.

As to the security, the PG states, at the first numbered paragraph:

“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 as we demand it.”

There’s no reference in any of the documents I’ve seen that Iwoca sent to Mr F, to a traditional overdraft facility and the agreement doesn’t state that Mr F would be able to use the funds at any time, in the same way you would with an overdraft. And there’s nothing to say that the loan is unsecured or that Mr F’s assets won’t be affected if C were to default.

Further, when Mr F spoke to Iwoca to ask how the loan works, the agent’s explanation matched the terms of the loan agreement, and he said Mr F would need to sign a PG.

In light of the above, I take the view that Iwoca did do enough to discharge its duty of care to C, by setting out the effect of the loan agreement in sufficiently clear terms, and by providing a document that explained C’s director, Mr F, would need to give a PG in support of the debt. And I haven’t seen any misleading statements from Iwoca that induced C into taking the loan.

One argument Mr F has made is that Iwoca was responsible for the broker’s actions, because the broker was acting as Iwoca’s agent, and Mr F has set out a number of arguments that he says support that suggestion. 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 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). 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.

I haven't seen any evidence of a tie to Iwoca that would create an agency agreement, or any contractual obligations to Iwoca that would do so, 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.

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.

Mr F has also suggested that the broker had apparent authority to act on behalf of Iwoca, but I haven't seen any compelling evidence to persuade me that was the case. The loan agreement between C 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 loan agreement, or the personal guarantee in support, and while (as Mr F has suggested) 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 findings in Mr F's personal case, Iwoca wasn't obliged to explain the document to Mr F. With that being said, I explained in my findings on Mr F's personal case why I'm satisfied that the documentation was sufficiently clear that it was a personal guarantee. So, I don't accept that Iwoca hid any paperwork from C, or attempted to conceal the true nature of the arrangement it required.

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.

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 sufficient steps to present and explain the terms of the loan agreement to C. And I'm afraid that is what this complaint boils down to: Iwoca did enough to clearly explain the terms of the loan agreement, and it gave Mr F a reasonable opportunity to digest the agreement before entering into it. 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. 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.

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

Alex Brooke-Smith
Ombudsman