DRN-5941756

The complaint

Mr L complains that Iwoca Ltd did not properly assess whether he could afford to meet his guarantee liabilities if the lender were to default.

What happened

In July 2019 Mr L was appointed a director of a company which I'll call "U".

In November 2020 Iwoca Ltd agreed to provide U with a £15,000 revolving credit facility, to provide working capital. It was a condition of that agreement that the facility would be secured by a personal guarantee. Mr L signed the credit facility on behalf of U. On the same day, he signed a personal guarantee, under which he guaranteed to meet all of U's liabilities to Iwoca Ltd.

U took out a further one-year facility in November 2023. U fell into financial difficulties and was dissolved in May 2024.

Mr L said that U should not look to him to meet U's outstanding liabilities. He said it had not carried out necessary affordability checks when taking the guarantee from him. Had it done so, it would have realised that he was linked to the company and that, therefore, if it failed, his income would be affected and he would not be able to afford to repay any sums which fell due under the guarantee.

Iwoca Ltd did not accept that it had done anything wrong. It said, in summary, that the loan to U was unregulated and that its obligations to any guarantor were limited to ensuring that its documents were clear and that the guarantor understand the nature and extent of the guarantee. Mr L did not accept that response and referred the matter to this service. One of our investigators considered what had happened but did not recommend that the complaint be upheld. Mr L did not accept the investigator's assessment and asked that an ombudsman review the case.

I did that and issued a provisional decision in which I said:

In his submissions, Mr L referred to a published decision of the Financial Ombudsman Service which in turn cited parts of that section of the Financial Conduct Authority's Handbook which deals with consumer credit – known as CONC. The decision he referred to was one in which an ombudsman had determined a complaint in favour of a personal guarantor. On the face of it, therefore, it had many similarities with Mr L's complaint, and I can understand why he might think that the same principles and rules should apply.

The key difference however is that, in this case, the underlying credit facility was made to U, a limited company, not to an "individual", as defined in the Consumer Credit Act 1974. That means that the loan was unregulated and that CONC does not apply, either to the loan or to Mr L's personal guarantee.

Iwoca Ltd's duties here were quite limited. It needed to ensure that Mr L understood the nature and extent of the guarantee he was providing. I am satisfied that it did that. The guarantee was fairly short and was written in clear language. Mr L signed it because he was,

as a director, closely involved in U's business and understood the underlying obligations which he was guaranteeing. He had, after all, signed the credit facility.

Mr L says that his involvement with the company was a reason for Iwoca Ltd not to take a personal guarantee from him. Any failure of the company would be likely to lead to a call on the guarantee, but would also have the effect of making it unaffordable for him. I accept that is probably the case, but most guarantees for the debts of small companies are provided by their directors. It is in the directors' interest to ensure that their company receives the funding it needs and that it is able to meet its financial obligations. Indeed, it is relatively unusual for a personal guarantee to be provided by someone who did not have a financial interest in the borrower business.

I understand that Mr L may find it difficult to meet his obligations under the guarantee. If that is so, I would simply remind Iwoca Ltd of any obligations it may have under the Standards of Lending Practice, published by the Lending Standards Board, in respect of customers in financial difficulties.

I concluded that I was unlikely to uphold Mr L's complaint.

Mr L responded to say that he did not accept my provisional decision. He repeated his argument that Iwoca should have assessed whether, if U were to default on its borrowing, he would be able to meet his obligations under the personal guarantee. He said that it had not done so. In support of his argument, he referred me to his tax returns for the past two years, which showed an income equivalent to the zero rate income tax threshold.

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 am afraid however that Mr L's arguments are based on a key misunderstanding, namely that the underlying lending to U (and, therefore, the personal guarantee) are regulated by the Consumer Credit Act. But the Act only covers lending to an "*individual*", meaning a natural person, sole trader or small partnership. It does not regulate lending to a limited company, such as U.

That means in turn that CONC does not apply to the lending or to the personal guarantee. There was therefore – and contrary to what Mr L asserts – no obligation on the part of Iwoca to carry out an affordability check with a guarantor.

Mr L has sought to show through his tax returns for 2023/2024 and 2024/2025 that he cannot afford to cover U's outstanding liability to Iwoca. I have no reason to question that, although of course a tax return provides only some information about a person's overall financial situation. I would however comment that, if Iwoca had carried out an affordability assessment, it would most likely have done so when it took the guarantee from Mr L in November 2020, not when U fell into difficulties.

My final decision

For these reasons, as well as those set out in my provisional decision, my final decision is that I do not uphold Mr L's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 9 December 2025.

Mike Ingram
Ombudsman