

complaint

Mr T complains that HSBC Bank Plc is wrongly pursuing him for payment under a personal guarantee. Mr T is represented by a solicitor, which I will call "K".

background

Mr T was a director of a company. In 2012 the company applied for a £60,000 loan, which was to be secured by a debenture, a personal guarantee from Mr T and a charge on Mr T's property. As the company had cash flow problems, HSBC agreed in early 2013 to increase its overdraft facility while the loan was put in place.

Mr T says HSBC told him the overdraft would remain unsecured and he was misled into signing a personal guarantee in January 2013. HSBC told him the guarantee (which I will call the "£30,000 guarantee") was put in place in readiness for the loan. He was not told the £30,000 guarantee was for the general debts of the company or advised to take legal advice.

The company decided not to take out the loan. Mr T says HSBC said it would cancel the £30,000 guarantee. However, when the company ceased trading in early 2014 HSBC asked for payment under the £30,000 guarantee. Mr T says HSBC cannot pursue him for payment under the £30,000 guarantee as this should have been cancelled and the company's overdraft and credit card debts are disputed. He complains that HSBC harassed him. It wrote to him direct instead of to K, as he had requested, and spoke to family members about the debt, causing him embarrassment.

The adjudicator did not recommend that the complaint should be upheld. She said:

- HSBC required a personal guarantee limited to £60,000 as security for the loan. This was different to the £30,000 guarantee. Mr T's liability under the two personal guarantees was limited to different amounts. Mr T signed the £30,000 guarantee in January 2013 and correspondence afterwards referred to the £60,000 guarantee as the "new guarantee". Mr T ought reasonably to have known there were two guarantees.
- The correspondence did not suggest HSBC said both guarantees would be cancelled.
- The guarantee recommended Mr T take legal advice. It was reasonable to expect Mr T to read the guarantee before signing it.
- HSBC was entitled to call on the guarantee despite the debt being disputed. The evidence did not suggest HSBC had acted unreasonably in contacting Mr T.

Mr T did not agree. On his behalf, K said (in summary) HSBC had told Mr T the £30,000 guarantee was to support the new loan, not the company's overdraft and credit card debts which had always been unsecured. This was recorded in the company's minutes at the time. Mr T signed the £30,000 guarantee at the branch counter without reading it, relying on HSBC's assurance about the purpose of the guarantee.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of

probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Mr T signed the £30,000 guarantee in January 2013. The guarantee says it is for all monies and liabilities due from the company to HSBC, subject to a £30,000 limit. There is a recommendation that legal advice is taken on the front of the guarantee and immediately above Mr T's signature.

HSBC says the £30,000 guarantee was needed to support an increase in the company's overdraft to £20,000. The company had a £10,000 borrowing limit on its commercial card account. HSBC says Mr T visited the branch and signed the £30,000 guarantee so that the increased overdraft would be available to the company.

The letter confirming the overdraft increase was sent just after the £30,000 guarantee was signed. It said the overdraft could not be used until "certain new security" had been completed. Liability under the guarantee was limited to £30,000 – the amount the company could borrow using the increased overdraft and its commercial card account. While Mr T says HSBC had not required a guarantee in the past, I am not persuaded this means it did not ask for the guarantee to support the increase in the overdraft facility.

HSBC required a personal guarantee limited to £60,000 to support the loan of £60,000 to the company. While Mr T says the £30,000 guarantee was also to support the loan, I find it more likely it was provided to support the increase in the company's overdraft limit. I am not persuaded from the evidence HSBC misled Mr T about the purpose of the £30,000 guarantee.

I am not persuaded from the evidence HSBC said it would cancel the £30,000 guarantee when the company decided not to take out the loan. In March 2013 it confirmed the *"instructions to take a second charge supporting a new guarantee has therefore been cancelled"*. It did not mention the £30,000 guarantee. I find it more likely HSBC was referring to the charge and the personal guarantee limited to £60,000 it would have required to support the loan.

While I understand the company disputes the debt owed to HSBC, I am not persuaded HSBC is prevented from calling on the guarantee. I find that HSBC is entitled to ask Mr T for payment under the guarantee. While I appreciate that being contacted about the debt is upsetting, I am not persuaded from the evidence that HSBC has acted unreasonably in contacting Mr T.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr T to accept or reject my decision before 17 April 2015.

Ruth Stevenson
ombudsman