

complaint

Mr and Mrs D complain that The Royal Bank of Scotland plc is seeking to enforce a personal guarantee against them.

background

Mr and Mrs D signed a personal guarantee in April 2007, relating to the debts of a company.

The guarantee was secured by a charge on their home. The charge was removed when the company's debt was cleared in August 2010 and Mr and Mrs D understood that the guarantee would also be removed. The company then agreed a smaller overdraft facility with Royal Bank of Scotland. It stopped trading and Royal Bank of Scotland asked Mr and Mrs D to repay the company's debts in accordance with the guarantee. They complained to Royal Bank of Scotland that the guarantee had been cleared, but were not satisfied with its response so complained to this service.

The adjudicator recommended that this complaint should be upheld. She concluded that Royal Bank of Scotland was not entitled to rely upon the original guarantee after the debt was cleared. She also concluded that the smaller overdraft facility had been provided without a new guarantee being agreed, so it was unsecured and that Royal Bank of Scotland had acted incorrectly in pursuing Mr and Mrs D for repayment of the company's debts. She recommended that it should write off the debt and pay £300 compensation to Mr and Mrs D.

Royal Bank of Scotland has responded in detail and says, in summary, that:

- there is evidence on its account notes that Mr and Mrs D were aware of the overdraft facility and the fact that the personal guarantee had not been released;
- it has not breached clause 74 of the Lending Code as there was and is an outstanding balance for this customer;
- there is evidence on file that it tried to contact Mr and Mrs D, once it knew that the company had ceased trading, but that its messages were not returned; and
- it monitored the account in 2011, making a decision after the renewal date not to extend the facility and asked for repayment options, but none were received.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Royal Bank of Scotland's internal notes show that the company's reduced overdraft was agreed on the basis of Mr and Mrs D's existing guarantee, but I am not persuaded that Mr and Mrs D were told this, or that it was properly explained to them. It was clearly the intention of both Royal Bank of Scotland and Mr and Mrs D, that the guarantee would be removed at the same time as the legal charge was released. I, therefore, consider that it was fair and reasonable for Mr and Mrs D to assume that the guarantee had been released when the debt was repaid and the charge had been released.

I also consider that it is consistent with the Lending Code that the guarantee should have ended at that time. It was also clearly the original intention of the parties that the company's reduced overdraft facility would be secured by a new guarantee, but no new guarantee was agreed. I do not consider it to be likely that Mr and Mrs D would have had concerns about agreeing to the new guarantee, if they had known that the original guarantee was still in place.

I therefore do not consider it to be fair and reasonable for Royal Bank of Scotland to enforce the guarantee against Mr and Mrs D and I consider that it should pay them £300 compensation, for the distress and inconvenience that they have been caused.

my final decision

For these reasons, my decision is that I uphold Mr and Mrs D's complaint. In full and final settlement of it, I order The Royal Bank of Scotland plc to:

1. Cancel the guarantee with immediate effect and not to take any further action to recover the debt from Mr and Mrs D.
2. Pay £300 compensation to Mr and Mrs D.
- 3.
- 4.

Jarrold Hastings
ombudsman