complaint

Mr R complains that The Royal Bank of Scotland plc (RBS) is holding him liable under a personal guarantee for the debts of a limited company.

background

Mr R was one of three directors of a limited company which banked with RBS. In 2007, he gave RBS a guarantee in respect of the company's borrowings. The guarantee was limited to £50,000, and his co-directors also gave guarantees. The guarantee said the guarantors were jointly and severally liable for any debt.

In October 2010, Mr R resigned as director of the company. He wrote to RBS the following month to let it know, and asking it to tell him what the position was in terms of the personal guarantee. RBS says it wrote to Mr R in December 2010, saying that, unless it received written notice from Mr R that he wanted to discontinue his guarantee, it would allow the company to continue to trade.

Mr R says he didn't get that letter. He says he spoke to RBS in January 2011, when it told him that it would only pursue the directors currently registered as such at Companies House if it called in the overdraft. He says it also told him the overdraft facility was due to be renegotiated, and that this would be on the basis of guarantees from the remaining directors only.

Mr R says he heard nothing further from RBS until direct debits and standing orders on his joint personal account with it were stopped, without notice, some months later. Charges were later refunded and RBS paid Mr R some compensation for inconvenience.

In March 2012, Mr R received a letter from a debt recovery agent seeking payment of the company's debts under the personal guarantee. He complained to RBS. RBS said Mr R hadn't given it written notice that he wanted to discontinue the guarantee, so it still considered him liable for the company's debts.

Mr R complained to this service, and the matter was considered by one of our adjudicators. She concluded that RBS was entitled to rely on the guarantee. But she considered RBS should have treated Mr R's letter to it of 25 November 2010 as notice that he wanted to discontinue the guarantee, so his liability should be limited to the extent of the company's debts to RBS a month later.

RBS accepted that conclusion, but Mr R did not. He pointed out that RBS hadn't followed its own procedures, and it couldn't provide a copy of the letter it said it had sent in December 2010. Had things not happened as he said in late 2010, there would have been nothing for him to gain from discontinuing the guarantee later, in June 2011. If he'd received the letter, he would have asked to be released from the guarantee then – before the other directors sold all the company's assets. He also said RBS still won't tell him whether it's pursuing the other directors for payment, and he hasn't received anything to show the account balance.

my findings

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

The personal guarantee Mr R gave wasn't set up in such a way that it was conditional on his continuing to serve as director of the limited company whose debts he guaranteed. Under the terms of the guarantee, Mr R was required to give RBS one month's written notice if he wanted to discontinue the guarantee. If he did so, he would be liable for the company's debts as they stood at the end of the month-long notice period.

Mr R says he relied on what RBS told him when he discussed the position with it in late 2010. Had it told him he needed to give written notice, he says he would have done so. I can certainly see his point. However, I share the adjudicator's view that there would have been no reason for RBS to release Mr R from his liability unless it could make alternative arrangements with the remaining directors to secure the borrowing. Given the dispute between Mr R and the other directors, it seems most unlikely that the other directors would have been prepared to renegotiate their guarantees on the basis that Mr R would have no liability.

In any case, RBS has agreed to limit Mr R's liability to the overdrawn balance of the account at 25 December 2010 – a month after Mr R wrote to it confirming his resignation as director and asking about the position of the guarantee. The balance at that time was £33,075.20. I find no basis on which to conclude that Mr R's liability could have been limited any sooner, even if RBS hadn't misled Mr R in the way he describes.

It's unfortunate that RBS can't provide a copy of the letter it says it sent to Mr R in December 2010 setting out the position. But I don't find that that materially affects the outcome of this complaint. And, while Mr R says the company had assets which could have been sold to repay its debts, I can't fairly require RBS to set aside the guarantee he gave on that basis.

RBS has said it chose not to seize the company's assets when it was still trading. That's a decision it was entitled to make.

Mr R wants to know what action RBS is taking against the other guarantors. All three guarantors are jointly and severally liable for the company's debts under the guarantee. This means RBS can seek payment from any or all of them, and I wouldn't expect it to tell each of them what action it's taking against the others. I also wouldn't expect it to provide Mr R with statements for the company's account for the period after his resignation as director.

I find that RBS didn't handle aspects of this whole matter as well as it should have done. RBS has accepted that, paid Mr R some compensation, and apologised. In all the circumstances, while I recognise that Mr R is now in a difficult position and that my decision will come as a disappointment to him, I don't consider I can fairly require RBS to do more than it has offered.

my final decision

My final decision is that the bank has made a fair offer. I direct The Royal Bank of Scotland plc to limit Mr R's liability under the personal guarantee he gave it to £33,075.20, as it has offered to do.

Janet Millington
ombudsman