complaint

Mr J complains about how Bank of Scotland Plc ("the bank") has behaved in relation to a personal guarantee that he gave it for the debts of D – a company which he owned, and in which he was employed as managing director.

background

Mr J personally guaranteed borrowings by D up to a limit of £30,000 (plus interest). He also gave the bank a second charge over his home. In January 2009, D stopped trading. It owed over £30,000, and could not pay this. In April 2009, the bank called up Mr J's personal guarantee.

Mr J initially brought a complaint on behalf of D. However, after an adjudicator issued his conclusions on that complaint, D was dissolved. Mr J is bringing this complaint in his own name, in his capacity as guarantor. The main points of Mr J's complaint about his personal guarantee were that the bank:

- Unreasonably delayed responding to his many letters about the liability, each of which included his suggestions for dealing with the debt, questions for the bank to answer, and a deadline by which it should respond to him.

- Breached administrative justice legislation, regulations and relevant industry codes in the way that it dealt with him.

- Did not give proper consideration to his own suggestions about how the debt should be dealt with – in contrast to some of the lenders to which he owed money on personal credit cards and loans, who agreed to write off debts.

- Delayed providing any suggestions of its own about how the debt might be repaid, and then suggested unreasonable time scales for repayment – which arguably breach consumer credit law.

- Took an unnecessarily aggressive stance about the guarantee liability, including while his complaint was with the ombudsman service, causing him additional distress and putting his family under a lot of pressure.

- Made him wait an unreasonable length of time before it provided him with copies of the documents, correspondence and data that he asked for.

- Lent D too much money in relation to the value of the security, creating an unfair relationship and a debt which he is now being asked to repay.

On this complaint, an adjudicator wrote to Mr J with her initial conclusions. Briefly, the adjudicator did not recommend that the complaint be substantially upheld. That was because she found that:

- The bank did not have to agree Mr J's repayment proposals. It could have communicated better, and done more to try to reach a mutually agreeable solution – but, after we were involved, it made a reasonable proposal.

- We did not direct the bank to stop adding interest and charges. In any event, it has frozen interest on the guarantee liability from June 2009.

- The bank exercised its commercial judgement legitimately, when deciding how much it would lend to the company. The guarantee was not illegal or unenforceable.

Mr J did not agree with the adjudicator's conclusions. In addition to reiterating some of his original arguments, Mr J responded to say, in summary:

- The adjudicator should not have taken findings of her predecessor about his repayment proposals into account. The previous complaint was closed down, null and void. It was a complaint by a business rather than by a guarantor. He was an employee of a limited company, and his complaint should be treated as a complaint by an individual.

- The summary of his 43-page complaint letter missed out some crucial points of his case. Major issues appear to have been skimmed over, such as:

    - The bank does not have paperwork for valuation of the guarantor property;

    - It lent more than the property value without getting a valuation;

    - It cannot evidence lending criteria.

- He wrote to the bank more than 60 times but found this to be mostly a waste of time. The bank bullied and harassed him with solicitors' correspondence. It threatened re-possession while the ombudsman service was considering the complaint.

- The bank has not frozen interest on the debt – it is still applying interest on D's account. The bank's internal records state that the ombudsman service asked them to suspend interest and try to agree a repayment plan but it has failed to do that. It has been underhanded and untrustworthy.

- The wording used by the adjudicator in her letter suggests that some of the bank's communications might be bullying in some circumstances. In his opinion, communications that include threats to repossess his house – including while the ombudsman service was dealing with his complaint – are bullying.

- The only realistic way he can release funds to clear any debt is if the bank will help by re-mortgaging his property to cover the guarantee debt. This is in its best interests. Otherwise, it will have to evict him and his family and sell the property to recoup the costs. It has been completely unreasonable in its approach, and has lacked common sense.

my findings

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

That includes the representations made by Mr J in the complaint which he previously sought to bring to us on behalf of D, as he specifically asked me to do so that I could fully understand his case about the guarantee liability. But this complaint is brought by Mr J in his own name, in relation to a personal liability to the bank for the debt of the company that he previously owned and in which he was employed as managing director. I have, therefore, considered the complaint on that basis.

When D stopped trading, Mr J made a set of six repayment proposals to the bank. This was relevant in terms of Mr J's complaint about his personal guarantee, because he had liability (up to the limit of his personal guarantee) for the money that D owed the bank. They were, in essence:

- Freeze the debt and agree a repayment term of ten (or possibly more) years, depending on his future employment.

- Take possession of his home and accept whatever equity there was, which Mr J said would have the effect of leaving him and his family homeless and would be unlikely to yield more than £10,000 towards the guarantee debt.

- Provide a re-mortgage loan, on a lower rate than his existing mortgage loan and fixed for five to ten years, to include the amount of the guarantee liability. This was Mr J's preferred option and would also remove the worry of his existing mortgage lender taking possession proceedings.

- Agree an affordable interest-free monthly repayment under a Scottish Trust Deed or similar arrangement, with any remaining debt being written of at the end of the three year term. This was not an option that Mr J favoured, since he considered that his home might still be at risk at the end of the term.

- Take voluntary possession of his home, followed by his "walking away" and placing himself into bankruptcy. Mr J noted that whilst this option would resolve the problem for him of all his existing debts, it would have long-term financial consequences for him.

- In the light of the money provided by the Government for bank bailouts and small business lending, offer him a suitable package to address the problem.

I appreciate that Mr J believes these proposals were reasonable and that the bank should, sensibly, have opted to provide a re-mortgage loan which would have enabled him to re-finance his existing high-interest mortgage loan taken from another lender and fold in the guarantee liability, all at a lower rate and over a longer period. However, the bank was not under any duty (either in law or under any relevant code) to provide additional lending of this type to Mr J. That was a matter for its commercial judgement. I have seen nothing to cause me to conclude that it did not exercise that judgement legitimately in this case.

In reality, Mr J had not made any short or medium-term offer of repayment that did not involve the bank either providing additional lending facilities to him or agreeing at the outset to accept a substantial shortfall in repayment of the debt. I appreciate that Mr J's position was difficult. Initially, the bank's communication with Mr J fell some way short of what he was entitled to expect and I can understand why that caused him significant extra stress about his guarantee liability. However, given the gulf between what Mr J was offering and what the bank wanted, I do not see that better communication at that time would have resulted in a satisfactory repayment arrangement for Mr J.

Since then, the bank has agreed to freeze interest – and has backdated that to June 2009. As the adjudicator has explained, that offer relates to Mr J's personal guarantee liability, rather than to D's account. As this complaint concerns only Mr J's personal guarantee

liability, that appears a reasonable outcome at this point and I do not consider that the bank should pay an additional amount in respect of poor communication.

The bank was entitled to take lawful steps to recover the debt – which could include proceedings to take possession of Mr J's home, as he had given it as security. Communications must be properly considered in the context in which they took place (hence the adjudicator's use of the phrase "*in all the circumstances*"). Considering the communications objectively and in context, I do not find the bank's (or its solicitors') correspondence to have constituted bullying or harassment of Mr J.

Where possible, we see whether the lender will suspend recovery action while we deal with a complaint. Here, the adjudicator asked the bank whether it would do so – and the record Mr J has cited reflects that – but that did not mean the bank was bound to agree.

When deciding whether (and to what extent) it was willing to lend to D, the bank was entitled to exercise commercial judgement. That would primarily mean assessment of D's position, and not simply any third party security offered to it. By Mr J's own account, D had a solid financial history with the bank, and had conducted its accounts well until it was badly affected by the recession. In the circumstances, I cannot see that the bank's decision to lend as it did to D – or the fact that it could not produce documentary evidence of a prior professional valuation of Mr J's property – prevents it from seeking repayment from Mr J under his personal guarantee.

I have considered Mr J's complaint that the bank breached various legal provisions in the way that it dealt with him, but I am not persuaded that this would affect his liability under the personal guarantee. I would mention that the unfair terms legislation that Mr J refers to relates to standard terms in consumer contracts – and so is not relevant to his discussions with the bank about how he intends to repay the guarantee liability. Mr J has also mentioned the concept of *unfair relationships*, a consumer credit matter which only a court can determine. Finally, Mr J believes that the bank breached data law in terms of delay in providing copy documents and details of other information held. As the adjudicator has explained, this service does not act as a regulator in this field – and I note that Mr J has said he intends to raise the matter with the Information Commissioner.

I have focussed mainly on the matters Mr J has challenged in his response to the adjudicator's conclusions. However, to avoid doubt, I find that I have also come to the same conclusions as the adjudicator did on any issues Mr J has not specifically challenged – and for much the same reasons as she cited.

my final decision

My final decision is that Bank of Scotland Plc has already taken reasonable steps in freezing interest on Mr J's guarantee liability, and I do not make any additional award.

Jane Hingston
ombudsman