complaint

Mrs L has complained that Waterside Credit Union Limited (the credit union) failed to adequately explain the implications for her before she agreed to act as guarantor of a loan which the credit union granted to her adult child.

background

Mrs L is elderly and she says she is in poor health. She regrets having given the guarantee, being particularly unhappy that her savings with the credit union are tied up and will continue to be so even if she passes away before the loan is repaid.

Our adjudicator did not uphold the complaint. She did not think there were any indications that Mrs L did not know what she was doing or that she was acting under duress.

Mrs L asked for this review of her complaint by an ombudsman.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I am sorry to disappoint Mrs L but I too have concluded her guarantee should not be set aside.

There is no presumption that elderly people are no longer intellectually capable of reading and understanding documents or explanations of them, or that they are not entitled to personal autonomy and the freedom to dispose of their property and assets exactly as they wish.

In addition, the usual rule is that people are bound by the legal documents which they sign, even if they do not take the trouble to fully read and understand them first.

So on the face of it, the guarantee is binding. But are there any considerations which should cancel this out?

The first is if it was or ought to have been obvious to the credit union that Mrs L did not know what she was doing, in the sense of being intellectually incapable of grasping it. I do not think even Mrs L is claiming this, and I do not think it was so. (She has claimed the credit union did not explain the guarantee properly, but that is a different point which I shall consider separately.)

The second is if it was or should have been obvious to the credit union that Mrs L was subject to duress – or ‘undue influence’ as lawyers sometimes call it – so that she was not really exercising her free will when she gave the guarantee. Again, I do not think that even Mrs L is saying this. There is no presumption of undue influence when a parent is generous to a child. And I do not sense there was any obvious *actual* undue influence in this case.

Thirdly, I must ask if the credit union adequately explained the guarantee to Mrs L, as its documented procedures required it to do. I think it probably did. That was the whole point of requiring the guarantor to come to the credit union in person, to sign the document. When I say ‘adequately’, I do not mean that the credit union was required to cover every eventuality. But I am satisfied Mrs L understood the main point, which was that she was pledging her savings to facilitate the loan which her child required for business purposes.

It is of course commonplace for parents to help their children financially and I do not think the credit union had reason to think there was anything untoward or unreasonable about what was happening in this case. I can see no reason why the guarantee should be cancelled.

Mrs L also complained about customer service and how her complaint was addressed by the credit union. In my view the latter responded reasonably and within the required timescales. I cannot criticise the credit union for failing to deal with Mrs L's representative initially, as it lacked its customer's consent. I note too that the credit union and the adjudicator have disagreed over whether a particular letter of the credit union's should have been treated as its 'final response'. But ultimately this caused Mrs L no harm as she came to us in any case.

my final decision

I do not uphold this complaint.

Roger Yeomans
ombudsman