complaint

Mrs C disputes her liability to pay a £19,000 debt arising under a personal guarantee to Lloyds Bank PLC.

background

Mrs C ran a family business though her limited company. The company had an account with Lloyds. It had an agreed overdraft limit of £10,000. In June 2008 she applied to increase this limit to £20,000.

Lloyds has provided a document which appears to have Mrs C's signature on it. It is a director's personal guarantee. It requires Mrs C to pay Lloyds what her company owes it, on demand, whether or not the bank has tried to obtain payment from the company. The maximum she can be required to pay is limited to £20,000 (not including interest and costs). But she does not recall signing the guarantee. She says she thought she had only signed an overdraft application. Her complaint is that either her signature was forged, or that she was misled when she signed it.

Lloyds agreed to increase the overdraft limit. At the time, the company was doing well. But unfortunately it soon began to struggle. In October 2009 Lloyds sent the company a letter demanding repayment of the debt. And in November Lloyds' debt recovery agency wrote to Mrs C herself, asking her to pay the debt under the guarantee. By this time the company had been liquidated and its account closed.

Lloyds says that Miss C asked to see the signed guarantee, and when she saw it in April 2010 she agreed that it was her signature. She denies this happened. But in June 2010 Mrs C agreed a repayment plan and began making repayments. She stopped paying in January 2014 and began to dispute the debt. She says that she saw the guarantee for the first time in September 2014. So she complained to the bank that she had been misled.

The bank decided that Mrs C had signed the guarantee, and knew about it. Our adjudicator agreed. So she has asked for an ombudsman to look into her case. She says that Lloyds should have offered her independent legal advice. She says that the fact that her relationship manager doesn't remember showing her the guarantee in 2010 means it didn't happen. And she says Lloyds should have realised that she couldn't afford to be a personal guarantor and shouldn't have let her sign 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.

signing the guarantee

I think it is more likely that Mrs C did sign the guarantee and has since forgotten it, than that somebody else forged it. She accepts that the signature looks like hers. The bank was doubling the size of the company's overdraft. In these circumstances, I don't think it would be unusual for it to look for additional security. And in a phone call with our adjudicator in February 2015 she accepted that it is probably her signature.

So I have to decide whether the bank made the terms of the personal guarantee clear to Mrs C, and that she knew what she was signing. The front page has the title "Directors Personal Guarantee" in large letters. She says she doesn't think she saw that page. It's not clear why she thinks that, given that she can't remember signing it at all. But I think she would have been shown the second page, to check that her personal details were correct. And on the second page, right next to her name it says "Insert name of Guarantor." Below that it says "Insert personal address and telephone number of Guarantor." And at the top of the page, just above her name, it says "THIS GUARANTEE is given on…" and the date. And on the fourth page, immediately below her signature, the word guarantee appears again.

I think it is unlikely that she would not have noticed any of this. I also think it is unlikely that the manager would not have told her what she was signing. I think that Mrs C understood what she was doing at the time, and has just forgotten it.

Lloyds did not have to *offer* independent legal advice to Mrs C – if it had, it wouldn't really be independent. But it did have to *encourage* her to seek independent legal advice from someone else. It also had to mention this in writing on the document she signed. Mrs C says she did not read the terms and conditions on page three. But if she had, she would have seen clause 12, in which she agreed that Lloyds had advised her to get legal advice. The general legal position is that a person is bound by what they've signed, whether or not they've read and understood it. So I don't accept that she can avoid the terms and conditions by not reading them. She was then a company director. So I would expect her to have understood the importance of reading terms before signing them. And they are not very long.

I don't accept the bank had to offer Mrs C advice about whether or not she should sign the personal guarantee, based on her personal financial position. It had encouraged her to take legal advice. I think that was enough.

events since the signing

Mrs C says that because the October 2009 letter does not mention the guarantee, she thought she was paying off the company's debt, not a debt of her own. But I do not accept this. She did not begin paying the debt until June 2010. By then she had received the debt recovery agency's November 2009 letter, which said:

> "I have to inform you that our customer [*company's name*] has, after a request for payment, failed to repay the amount owing to the Bank and I am, therefore, instructed to call upon you for repayment under your guarantee … of the amount due to the Bank from [*company's name*]."

I think the November letter makes the position quite clear.

Then in March 2010 Lloyds wrote to her, and enclosed a copy of the guarantee. This letter said:

> "As you may be aware, [as] a signed guarantor you are held personally liable up to the amount stipulated on your Business Guarantee and may be called upon at any time to see these monies repaid."

Lloyds says that she made an appointment to see the guarantee at her branch, but did not want to meet with her relationship manager. That would explain why he does not remember

the meeting – although as it was in 2010, I would not have expected him to remember it anyway. Lloyds says that on that visit, Mrs C accepted that the signature was hers.

I do not think that Mrs C would have agreed to the repayment plan in June 2010, and begun making payments, unless she had seen the guarantee first. So I accept Lloyds's account of events in April 2010. I am reinforced in that view by the fact that it posted the guarantee to her in March.

Mrs C says that in January 2014 her financial adviser told her that she should not be paying the debts of a liquidated limited company. She has not said whether the financial advisor knew about the guarantee. But based on what he told her, she stopped making payments. She says that she had only been making the repayments in the first place because she was vulnerable and did not understand the nature of the debt she had been paying. I accept that she may have forgotten what she was told in 2008, 2009 and 2010. But I find that the bank is entitled to ask her to repay the money owed to it under the personal guarantee.

Before I finish, I wish to express my sympathy for Mrs C. She and her husband have been through some very challenging financial difficulties. She lost a business which mattered a great deal to her. So I am sorry if she feels that this decision is adding to her troubles.

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 Mrs C to accept or reject my decision before 17 July 2015.

Richard Wood
ombudsman