

complaint

Mr U, and his representative, complain about a personal guarantee he gave The Royal Bank of Scotland Plc and that its actions have resulted in the guarantee being relied upon.

background

Mr U, as a director, provided the bank with a personal guarantee to support borrowing the bank provided to a limited company. The company encountered financial difficulty and had ongoing issues with the bank. The debt was not repaid on time. After some time the bank passed the company's account to recoveries and issued a formal demand for repayment. Receivers have been appointed and the bank has sought to recover the company's debt from Mr U by relying on and enforcing the personal guarantee Mr U gave.

Our adjudicator did not recommend that the complaint should be upheld. In summary he considered that:

- He could not look at the relationship between the company and the bank. He was only able to consider the personal guarantee and whether the bank's actions made a call on it more likely.
- The terms of the personal guarantee are not disputed. It allows the bank to call upon the personal guarantee to cover the debts of the company up to the limit set out in the guarantee.
- The company's debt had become payable on demand and as it could not repay the debt the bank could make a call on the personal guarantee.
- Any delays occasioned by the bank answering queries occurred after the loan was in default and it does not appear that the actions of the bank caused a call to be made on the personal guarantee. The bank also allowed the company time to resolve matters and pay off the loan or find alternate finance.
- The bank had not acted incorrectly.

Mr U does not agree and has asked for an ombudsman review. In summary he accepts the limitations on what we can consider but considers there are many "grey areas" in the case. He says the actions and delays of the bank had a negative impact on the company. He also says the bank's actions have caused him and his wife stress not least as they face losing their home.

my findings

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

As the adjudicator has explained as the company is now dissolved and this complaint is brought in Mr U's personal capacity, I am unable to consider Lloyds' handling and administration of the company's account (including matters raised by Mr U about confidentiality and the bank's dealings with a third party). My decision therefore only deals with The Royal Bank of Scotland's handling of Mr U's personal guarantee and the bank's actions in dealing with him personally.

Having considered the relevant matters, I agree with the conclusions reached by our adjudicator for broadly the reasons given.

The simple fact remains that once the company's loan was in default the bank was entitled to seek to recover the debt owing by the company from Mr U pursuant to the terms of the personal guarantee he had signed. Nevertheless the bank gave the company more time to repay the loan and resolve its financial affairs. As such I am not persuaded that the bank acted wrongly or unreasonably in subsequently seeking to rely on the personal guarantee provided by Mr U, as it was entitled to do.

Overall, although I sympathise with the position Mr U finds himself in, I see no compelling reason to change the proposed outcome in this case.

My role as an ombudsman is to consider the individual complaint and decide whether something has gone wrong. But a court may take a different view of the situation. Should Mr U not accept my final decision then any rights he may have to take action in the courts against The Royal Bank of Scotland are unaffected and he will be free to pursue his arguments in any court action that may arise, if he so wishes.

my final decision

My final decision is that I do not uphold this complaint.

Stephen Cooper
ombudsman