Financial Ombudsman Service

complaint

Mr D complains that Lloyds Bank PLC acted under false pretences to convince him to sign an increased guarantee for the debts of two companies where he was a director. He wants the bank to agree to accept a lower figure in settlement of his liability under the guarantees.

background

Mr D was a director of two companies both of which had overdraft facilities with Lloyds. Mr D and a fellow director provided guarantees for the companies' debts which were supported by charges over their family homes. Over a period of time, the companies' overdrafts increased to the point where they were in excess of the agreed facilities and higher than the value of the directors' guarantees. Records show that a number of short term increased limits were applied to the accounts. Following discussions with the bank on the companies' borrowing requirements, Mr D and his fellow director agreed to provide increased guarantees supported by their homes. The following year both the businesses went into liquidation and are no longer trading. The bank has sought repayment from the two directors under the terms of their guarantees.

Mr D says that he only agreed to provide the increased guarantee because the bank offered to consolidate the hardcore overdraft debt for each company into two term loans. This would make the debt more affordable. He has provided a copy of a letter from the bank in which loan quotations were provided. He says that after the increased guarantees were provided, the bank failed to provide the loans and this was part of the reason why the companies failed. Mr D says that as the increased guarantee was obtained by deception, it is invalid and he should only be liable for the companies' debts up to the level of his previous guarantee.

The bank says that the possibility of new term loans was discussed but no formal offer was made. It says that the increased guarantees were required to support the companies increased overdraft facilities. It says the guarantees were correctly executed and are valid. The bank agreed to accept an amount less than the outstanding debt in settlement of Mr D's liability under his guarantee. But this is more than Mr D is willing to pay.

Mr D has also claimed that Lloyds acted irresponsibly in allowing the companies' overdrafts to increase. He says the companies' trading performance did not justify this and it was only done because of the security. He says the bank was also irresponsible in referring the company to the bank's factoring operation given the size of its overdraft.

The adjudicator did not recommend that the complaint should be upheld. She was not convinced that the increased guarantees were directly linked to the provision of new loan facilities. She concluded, in summary, that the increased guarantees were valid and that Mr D was liable for repayment of the companies' debts up to the level of his guarantee. Mr D says that he is in financial hardship and the bank is not treating him fairly.

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 both of the companies which Mr D guaranteed were put into liquidation and are no longer trading, I cannot consider any complaint brought by the directors on behalf of the companies.

I will restrict my findings to the validity of the increased guarantees which Mr D provided for the companies' debts.

As the discussions around the companies' borrowing and related security took place several years ago, there is unfortunately limited information about the detail of those discussions and what was agreed. From the information available, I consider it likely that the companies' borrowing needs were putting pressure on the agreed limits and that there was regular ongoing discussion between the bank and the directors on the best way to deal with this.
I recognise that the letter in June 2008 provided loan quotations. But it also suggests that increased guarantees will be required "whatever facilities are agreed".

I am not convinced that the increased guarantees were provided solely on the understanding that term loans would be provided. There is no suggestion that the guarantees were not executed correctly. I do not find any evidence that the bank obtained the increased guarantees by deception. On balance, I find it unlikely that the provision of loans would have caused a significant reduction in the companies' debts or Mr D's liability under his guarantee.
I understand that meeting his liability under the guarantees will have a significant impact on Mr D's financial situation. But I find that the bank is entitled to seek repayment and has acted fairly and reasonably in trying to find an agreement on the repayment required.

my final decision

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

John Thornton
ombudsman