complaint

Ms C complains that Lloyds Bank plc failed to provide her solicitor with full and correct information about the limited company she had agreed to guarantee. This meant he could not advise her properly.

background

In 2008 Ms C signed a personal guarantee for £60,000 after receiving independent legal advice from her solicitor. She says that Lloyds told her solicitor the company was not overdrawn and had no liabilities but she has found out that on the day she signed the guarantee it was £12,000 in debt. The company went into liquidation just over 12 months later.

The adjudicator didn't recommend that this complaint should be upheld. Ms C had received legal advice and her solicitor had told her that she could be liable for the company's borrowings if it failed. The adjudicator said that the information Lloyds had given the solicitor was correct at the time it sent it.

Ms C disagreed. She said that Lloyds had a duty to tell her about the company's financial history and it did not do this.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I have considered carefully the detailed arguments Ms C has made – in particular those relating to alleged breaches of the Banking Code and the legal principles set out in the case of *The Royal Bank of Scotland v Etridge*. Whilst I am required to take these matters into account, I must also reach my decision on the basis of what I consider to be fair and reasonable, taking into account all the circumstances.

Although Ms C wasn't an officer of the company, I am satisfied that she was a shareholder. Whilst she says that she didn't know that she held shares, she didn't have a share certificate, and I have no reason to doubt her, I don't think I can fairly assume that the bank was aware of this. Despite this, Lloyds was still required to ensure that Ms C received independent legal advice before she signed a guarantee to secure the company's lending.

Ms C says that Lloyds didn't give essential information about the company she was guaranteeing to her solicitors. That meant that they couldn't possibly advise her of the potential dangers in signing the guarantee. She considers that this was because the bank's sole intention was to convert an existing unsecured business overdraft into a personally secured one. But I don't agree. The information provided to her solicitors was factually correct at the time it was sent. The business account was not overdrawn and the bank had agreed to provide a £50,000 overdraft facility. There were no other liabilities to the bank at that time. Lloyds was not required to provide information on what other debts the company may or may not have had with other lenders or what other creditors it had. It didn't have any duty to tell Ms C about how or when the overdraft was used. If Ms C, or her solicitor, had any concerns or felt that they needed further information before Ms C signed the guarantee then they could have asked for it.

Ms C says she signed for the guarantee because she trusted her husband and the bank and she wouldn't have done so had she known the true position. But Lloyds doesn't agree that it misled Ms C into signing the guarantee. Whilst the company had previously had overdraft facilities the account had been closed some months previously. The company had recently opened a new account, for which the security was required. For the reasons I have already given, Lloyds provided correct information based on the liabilities and facilities held with it. Ms C decided to sign the guarantee.

Ms C's solicitors signed to say that they had fully explained the nature and implications of the document so that the Bank could be certain that Ms C had understood the nature of the transaction and was freely entering into it, so that there could be no dispute in the future as to whether undue influence was placed on her to sign. The solicitors also confirmed that they had pointed out the risks, explained that Ms C had a choice whether to proceed or not, explained the nature of the guarantee and the practical implications of it. This meant that the solicitors had pointed out that if the company failed to repay its borrowing, for any reason, Ms C may have to pay instead. The amount she would be liable for was £50,000 plus interest from the date the bank makes demand for payment on the guarantee.

I fully understand that Ms C regrets giving a guarantee for the company's debts in 2008, but her solicitor witnessed her signature and I am satisfied that Lloyds could assume that Ms C understood the advice she had been given. I consider it is entitled rely on the guarantee.

my final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 6 November 2015.

Karen Wharton
ombudsman