

The complaint

Mr P complains that in reliance on a personal guarantee, Barclays Bank UK PLC ("Barclays") are attempting unfairly to claim payment of a £10,000 overdraft that was extended to his company.

What happened

- Mr P is the director of a company which I'll refer to as L.
- On 20 February 2020 Mr P attended a meeting at one of the bank's branches to discuss possible lending to L. In the course of the meeting various lending options were discussed, including an overdraft which it seems was Mr P's preferred option.
- Immediately after the meeting the relationship manager with whom Mr P had the meeting sent him an email summarising what had been discussed - including information about an overdraft.
- The following day, on 21 February 2020, Barclays sent Mr P the Facility Agreement (the Agreement) confirming a £10,000 overdraft facility had been extended to L. A personal guarantee document (the Guarantee) naming Mr P as guarantor for the overdraft was incorporated within the Agreement. The document was sent to L's registered address.
- According to Barclays, a week later, on 28 February 2020 the overdraft facility began to be used.
- In January 2021 the overdraft facility was renewed. In the renewal letter to L's directors dated 21 January 2021 Barclays set out the terms and conditions as follows:

"Terms and conditions

Your overdraft remains repayable on demand and any security or guarantees provided to secure your overdraft will continue to apply.

For full terms and conditions that apply to your overdraft please refer to your business overdraft facility letter (as amended and/or replaced from time to time)".

- A year later in January 2022 the facility was renewed again, and a further renewal letter was sent to L's directors along the same lines as before albeit, the January 2022 renewal letter added the following:

"What do I need to do next?

If you continue to use the overdraft we'll take it that:

(a) you accept this renewal; and

(b) you have made any guarantor(s) and/or any provider(s) of security in respect of your overdraft aware of the terms contained in this letter and that they have agreed that the guarantee or, as applicable, security provided extends and applies to your overdraft as renewed by this letter.”

- In July 2022 L went into liquidation.
- On 29 July 2022, in reliance on the Guarantee Barclays issued a formal demand to Mr P requiring him to repay L's overdraft.
- But Mr P told Barclays he knew nothing about the Guarantee and denied giving it. He complained to the bank saying that at no time historically had he ever given a personal guarantee in support of a financial facility. And besides, he said the bank has been unable to provide him with a wet signature copy of the Guarantee or to demonstrate he'd signed the document electronically. That being the case he said he didn't think the bank could legitimately rely on the Guarantee and its attempt to do so was unfair. In the circumstances he believed that Barclays should contact the insolvency practitioner to recover the outstanding overdraft from L rather than look to him for repayment.

Barclays didn't agree. They maintained that Mr P gave the bank the Guarantee in February 2020 and that the type of lending they were advancing to L didn't require a wet signature on the relevant document.

Furthermore, according to Barclays the application for the overdraft was completed on their fully automated Business Instant Lending System. They said this system required applicants to digitally sign/tick the relevant boxes to accept the terms and conditions of the overdraft, including the associated short form guarantee. The bank also said the overdraft wouldn't have been authorised without a supporting guarantee. Moreover, it pointed to the fact that a copy of the Guarantee which formed part of the Agreement was sent to L's registered address on 21 February 2020.

Mr P's complaint remained unresolved, however, and so, he referred it to this service to look into.

Our investigator didn't uphold the complaint. He said in summary that:

- It is standard banking practice for banks to require personal guarantees when lending to small businesses.
- Although Barclays haven't been able to produce a wet signature guarantee, nonetheless, based on the evidence they have provided regarding their online application process for an overdraft, he believed Mr P did give the Guarantee.
- In doing so, Mr P had the opportunity to understand and review what he was signing up to. And in any case, without Mr P's willingness to give the Guarantee, L wouldn't have been able to obtain the overdraft from the bank.

Mr P didn't accept the investigator's conclusion and has asked for an ombudsman to review his case – saying in summary:

- Contrary to the investigator's conclusion, he made no on-line application. Rather there was a meeting in branch in February 2020 with L's business manager. She asked him what the overdraft was for. Based on the history of L's account, and the

historic good relationship with the bank, she said £10,000 could be offered. He was told the overdraft would be available within 5 working days. There was no mention of the Guarantee in the course of the meeting.

- Even if he'd made an online application for the overdraft, there would have been an electronic signature. Barclays should therefore be able to show this, and they cannot provide evidence of either a wet or electronic signature, so the Guarantee is unenforceable.

What I've decided – and why

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

Where the evidence is incomplete or inconclusive (as indeed some of it is here) I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

This case essentially turns on whether Mr P gave Barclays the Guarantee. And I accept this would be more conclusive if there was a physical document bearing Mr P's signature. There isn't however. That being said I wouldn't, however, conclude the absence of a guarantee document in that form means Mr P did not give one. In other words, as noted above I also need to take the wider circumstances into account.

I am satisfied there were discussions on 20 February 2020 about lending to L and that an overdraft arrangement was determined to be the best option.

I've read the email that the relationship manager sent to Mr P summarising that meeting which said:

"Below is a summary of the products that we agreed to apply for and why, with some information about them. Please do take some time to review the Information and if you have any queries or wish to discuss possible alternatives, please do get in touch using the contact details below.

Business overdrafts are subject to application and status. Security may be required.

Key Facts:

Term: No fixed term - typically reviewed annually

Amount: Subject to application

Interest Type: Variable (tracks Bank Of England Base Rate)

Annual fee will be charged

Repayment frequency: Flexible

Security required: Subject to application

All products highlighted are subject to eligibility and application"

Mr P's position is that he made no application at all on-line or otherwise. His submission is that he was told at the 20 February 2020 meeting the overdraft would be available within one or two days – and the overdraft was indeed made available to L.

But bearing in mind the e-mail from which I've just quoted is a contemporaneous record of the meeting, I'm not persuaded that the overdraft had been agreed and that Mr P need take no further action. In other words, I'm not persuaded the bank put in place an overdraft for L

on the strength of the meeting alone and without any formal application being necessary. On the contrary, the email summary makes clear in my opinion that an application for the overdraft was necessary, that it was subject to eligibility and application and furthermore that security may be required.

Barclays don't believe there would have been an in-branch application because they say that would have involved physically completing the relevant documents and branch staff printing them for Mr P physically to sign. In any case it is no part of Mr P's case that this is what happened. Therefore, since I'm persuaded by the e-mail that Barclays sent to Mr P after their meeting that a application from L for the overdraft would have been necessary, it doesn't seem unreasonable to conclude it had to be done on line and in all likelihood by Mr P.

According to Barclays, any lending that they provide to a limited company is done on a secured basis. And in particular for lending of less than £50,000 they would usually only take a short form guarantee such as the Guarantee.

Barclays have shared with me evidence of the relevant on-line application process for their overdraft. I've noted the various steps that had to be completed. Having done so, I'm persuaded that, application for an overdraft of the amount Mr P wanted included as part of that process an agreement to provide a guarantee to the bank as security. In other words, giving the guarantee was part of the same application process.

I have no reason to doubt the bank's assertion it wouldn't have given the overdraft if it were not supported by the Guarantee. Indeed, the renewal letters I referred to above do in my opinion support the position that security is assumed to have been given.

In any case, as Barclays pointed out, copy documents – the Agreement and Guarantee were sent to L's registered address. I'm not persuaded the bank acted wrongly in doing so. This was the address of L's accountants. Therefore, Mr P had the opportunity to review them and take issue with the bank if contrary to what the documents stated, he hadn't provided the Guarantee.

In summary, in light of the evidence and wider circumstances I am persuaded on balance that Mr P gave Barclays the Guarantee for L's £10,000 overdraft. Barclays are therefore, entitled to rely on it in seeking repayment of the overdraft.

My final decision

For the reasons given above my final decision is I do not uphold this complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 12 February 2024.

Asher Gordon
Ombudsman