

The complaint

Mr D complains in his capacity as a guarantor that BCRS Business Loans Limited unfairly misled him into entering into a guarantee that was for a higher amount than he thought and was unaffordable to him.

What happened

Mr D was the director of a limited company, which he set up in 2022 in order to acquire a business. He used a credit broker to find a lender to lend his company £85,000 to buy the business.

BCRS offered Mr D's company two loans each for £42,500, a Recovery Loan under the Government's Recovery Loan Scheme ("RLS") and a commercial loan backed by a personal guarantee ("PG") from Mr D.

Mr D electronically signed the loan documentation, including a PG for £42,500, on 1 August 2022.

Unfortunately, the business Mr D's company acquired was not successful. In late 2022, BCRS issued a formal demand for repayment both to the company and to Mr D as the guarantor.

Mr D complained to BCRS. Some of his complaint was made on behalf of the company, but he also said that BCRS hadn't explained the guarantee to him properly and had changed the amount of the guarantee without fully discussing it. He said that BCRS hadn't checked that the guarantee was affordable to him.

BCRS didn't uphold Mr D's complaint. They said they had a thorough loan approval process, which they had followed in Mr D's case. This included sending him a link to a video explaining guarantees, which he had signed to say he had watched. They had also recommended he seek independent legal advice and he had signed a waiver to say he didn't require this. BCRS also said that they had carried out affordability checks.

In early 2023, Mr D referred his complaint to the Financial Ombudsman. Shortly afterwards, his company went into liquidation.

One of our investigators looked into what had happened, but didn't recommend upholding Mr D's complaint. She thought that BCRS had made the amount of the guarantee clear in their documentation and their checks were adequate.

Mr D disagreed and asked for an ombudsman to look at the matter again. He provided a copy of some legal advice he had been given and said, in summary:

- Although BCRS' agent had briefly verbally explained the guarantee (although not the amount), they should have explained it more simply in writing.
- BCRS' agent had repeatedly verbally assured him that the guarantee was only for

£25,000.

- BCRS knew that if they'd highlighted the increase from £25,000 to £42,500, they would have lost the deal.
- He had missed the video link that explained the guarantee. But even so, it was only a generic video, it wasn't specific to his circumstances.
- He couldn't see where the documentation said the guarantee was £42,500.
- BCRS had put him under pressure to sign quickly or lose the deal.
- He had trusted BCRS and hence agreed to waive legal advice.

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.

Having done so, I'm sorry to disappoint Mr D, but I don't think BCRS have done anything wrong in this case.

Did BCRS explain the guarantee clearly and make the amount guaranteed clear?

I understand that BCRS was first approached by Mr D's broker in March 2022. Mr D then met with BCRS in April 2022, accompanied by his accountant, at which point he filled in an application form to borrow £85,000.

When BCRS first gave an in principle agreement to lend in May 2022, it mentioned a "£60,000 RLS and a £25,000 PG backed loan". But I think it's clear that this was only an indicative offer, before any detailed assessment of Mr D's proposal had taken place.

I'm not sure at what exact point the terms offered changed into a £42,500 RLS and £42,500 PG-backed loan, but I think it's likely that it was after June 2022, at which point BCRS say they had the information they required to carry out a credit assessment. Mr D says the change to the guarantee was never mentioned and I haven't seen it mentioned in writing.

On 27 July 2022, BCRS emailed a formal loan offer confirming the application had been approved. This confirmed a loan amount for the non-RLS loan of £42,500 and that security would take the form of a "guarantee, debenture and indemnity". Whilst it doesn't explicitly mention an amount for the guarantee, there is no suggestion that it wouldn't be for the whole amount. Indeed, I would only expect an amount for the guarantee to be quoted if it was for a different amount from the loan. I note that the original proposal was for a £25,000 fully-guaranteed loan for the non-RLS part. So I don't think there had even been any suggestion that the PG wouldn't cover the full amount of the non-RLS loan.

Mr D electronically signed most of the documentation, including the loan agreement and guarantee, on 1 August 2022. The loan agreement showed that the loan was for £42,500 and security was "a guarantee and indemnity from [Mr D]...". There is no mention of £25,000. The guarantee and indemnity said clearly that the capital limit was £42,500. I know that Mr D says that he was misled by verbal assurances. But I consider that if Mr D was still expecting only to give a guarantee for £25,000, then he ought reasonably to have queried the documentation before signing it at this point.

I know Mr D feels very strongly that BCRS should have done more to make things clear to

him. But this is an unregulated commercial loan to a limited company. I'm afraid the expectation is that company directors will read and understand the agreements they sign and they therefore don't get the same high level of legal protection that individual consumers receive.

Mr D has said that he initialled to say he'd watched the video explaining guarantees without having watched it. That was his choice – as was his decision to waive independent legal advice on the guarantee. I don't think BCRS' documentation was unclear. Not only was there a video to watch, there was also a document called "BCRS Guide to our Documentation", which explained a guarantee in clear and simple terms.

As I've already mentioned, the type of loan Mr D's business took out is unregulated. So there are no Financial Conduct Authority rules that must be followed. However, there is an organisation called the Lending Standards Board, which aims to set benchmarks for good lending practice in the UK, including for business loans. It publishes something it calls Standards of Lending Practice for Business Customers. I have therefore considered whether BCRS have complied with these good practice standards in Mr D's case.

The relevant sections concerning guarantees are:

"If an individual or a business agrees to be a guarantor or to provide an indemnity, the Firm should make the individual/business aware of their obligations under the agreement and that they have the option to seek legal advice, should they wish to do so".

"Firms should not accept unlimited guarantees from an individual/business unless it is to support a customer's liabilities under a merchant agreement; however other forms of unlimited third party security may be taken, if available".

"Firms should inform the customer if any security, for example, a guarantee/debenture/indemnity, is required to support the borrowing or other liabilities and the reason why. The level of security required by the Firm should be appropriate to the amount borrowed".

I think BCRS has followed these principles. I consider they took enough steps to make Mr D aware of his obligations and the option of seeking legal advice (which he waived). The guarantee wasn't unlimited and it was at an appropriate level for the amount borrowed.

I've considered Mr D's argument that he was pressurised into signing in a hurry and therefore didn't give the documentation as much consideration as he would have done. I am mindful that BCRS are a not-for-profit lender and not a sales-driven organisation. So I don't think there was any incentive for BCRS to put Mr D under pressure. But I also don't think the evidence Mr D has provided shows undue pressure being exerted. It seems to me that BCRS were simply working to the deadline Mr D himself had provided (based on his desire to complete on the acquisition of the business).

Did BCRS consider if the guarantee was affordable to Mr D?

My starting point here is that there are no rules requiring lenders to check that the guarantors of business lending can afford the potential liabilities they are committing themselves to repay. Neither is there anything in the Standards of Lending Practice recommending such a check. It is also very common industry practice to take a guarantee in a situation such as this.

My remit is to decide what's fair and reasonable in all the circumstances of the case. But in

the absence of any regulations or industry standards, I take the view that it would have to be abundantly clear that the guarantee was unaffordable at the outset for me to conclude that BCRS should not reasonably have taken it. I think it's relevant here that a guarantee is a backstop, only to be used in the event of the failure of the borrower to repay.

Notwithstanding the absence of regulations, I can see that BCRS did in fact carry out some checks before taking the guarantee. They asked for Mr D's CV and carried out a credit reference check, which showed him to have an excellent credit rating. They also asked Mr D for copies of his bank statements, which showed an account operating satisfactorily. I don't think there were any warning signs in this information that should have led BCRS question whether it was fair to require the guarantee.

My role is not to make BCRS' lending decisions for them. I am satisfied that BCRS gathered enough information to enable them to assess the viability of the lending proposal, including the ability of the borrower to repay. I don't think they acted unreasonably in deciding to require a personal guarantee for half of the total borrowing. The amount of the guarantee was clear at the point of signing and they followed industry best practice in how they took that guarantee. My conclusion is that BCRS haven't acted unfairly.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 7 November 2023.

Louise Bardell
Ombudsman