

## Insights

### **Personal Guarantee Cases**

#### **Personal guarantees**

1. The Walker Review did not, itself, make any specific recommendations in relation to individuals who had provided a personal guarantee to enable bank lending to an SME.
2. The summary of possible alternative dispute mechanisms, by Professor Christopher Hodges, annexed to the Walker Review noted, however, the (then) proposal by the Financial Conduct Authority (FCA) to add a new category of “guarantor” as an eligible complainant for the Financial Services Ombudsman (FOS). The FCA consultation on this proposal estimated that additional category to involve “around 35 to 50 people a year” for the FOS. The FOS jurisdiction was, subsequently, adjusted to include complaints relating to personal guarantees given in relation to FOS-sized SMEs, where the guarantee had been signed on or after 1 April 2019.
3. The UK Finance response to the Walker Review said this:

“Eligibility. This process will be put in place for complaints from businesses meeting all the criteria below: ...

  - complaints raised by a business that was previously ineligible for the FOS but would be under the expanded scope from 1 April 2019. Guarantors that would have been eligible under post-April 2019 rules will also be eligible for this scheme (subject to other criteria).”
4. The BBRS Scheme, designed by the Implementation Steering Group, allows:
  - For a Complaint “arising from a personal guarantee by a Guarantor to a Respondent; which alleges that the ... Guarantor, has suffered (or may suffer) financial loss, material distress or material inconvenience.”
  - A Complainant to be a “Guarantor of” “a sole trader or a Business Organisation that, in either case, is or was at the time of the matters alleged in the Complaint both: carrying on a business; and a customer, or a potential customer, of the relevant Respondent” where the necessary financial characteristics for the BBRS Scheme are met.
5. The BBRS Scheme Rules define a ‘Guarantor’ as “A natural person who has given a personal guarantee to a Respondent in respect of lending to a relevant Business Organisation or sole trader.”

6. In the context of BBRS, a personal guarantee is a legally-enforceable promise made, to a bank, by an individual that they will meet the obligations of the business personally if the business defaults to the bank under the original agreement.
7. Personal guarantees are commonly used by banks, when lending to SMEs (particularly those with limited liability), to ensure that directors and business owners are personally responsible for the business's debts. This is especially so where the business does not have sufficient assets to provide security for the debt.
8. The clear advantage to the lending bank is that the personal guarantee provides the bank with security, in the event that the business defaults on its obligations to the bank. Arguably, the existence of a personal guarantee also encourages a greater degree of responsibility, should that be necessary, in the minds of the directors and owners when it comes to business-related risk taking. On the other hand, where business borrowing is supported by guarantees provided by former directors/owners, there may be little incentive for current business directors/owners to be prudent.
9. From the point-of-view of the business and its directors, there are also clear advantages. A personal guarantee enables the business to access greater funds from the bank than would otherwise be the case, supporting growth of the business. Were the bank not able to secure the lending through personal guarantee, then it would be unwilling to lend, or lend as much, to the business.

### **Specific or all monies?**

10. The guarantee might be limited to a specific loan, or other product. In this situation, if the business had, for example, three loans from the bank and the personal guarantee was restricted in application to one of those loans, then the personal guarantor would not be liable to the bank if the business defaulted on one, or both, of the other loans.
11. A personal guarantee could, instead, be an "all monies" guarantee. Such a guarantee covers all amounts which the business owes to the bank under any arrangements (including future arrangements), regardless of how or when they arise. All monies guarantees are common in the context of bank lending to SMEs. There is no legal obligation for the bank to reaffirm the all monies personal guarantee when lending to the business is varied, because the guarantee does not relate to a specific agreement<sup>1</sup>.

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<sup>1</sup> National Merchant Buying Society Ltd v Bellamy and another [2012] EWHC 2563 (Ch). In practice, all monies guarantees are often given in the context of a specific agreement. Where that specific agreement can be

12. BBRS has seen cases where the impact of an all monies guarantee has been problematic, especially in circumstances where the guarantor sold, or retired from, the business many years earlier, when the business was in good financial shape, only to find themselves liable for the business's financial troubles occurring long after their involvement in the business. Individuals can lack understanding of the lasting nature of a personal guarantee and of the process by which they might seek to be released.

### **Limited or unlimited?**

13. A personal guarantee might be limited or unlimited in value.
14. A limited personal guarantee sets a financial limit on the liability of the individual providing the guarantee. For example, if the business defaults on £100,000 borrowed from the bank and the personal guarantee is limited to £50,000, then the individual will be liable for £50,000 (not the full £100,000). A limited guarantee might be used where the business has assets sufficient to secure part of the loan granted by the bank or where there are multiple personal guarantees.
15. An unlimited personal guarantee, creates a commitment that the personal guarantor will repay the bank 100% of the debt.

### **When does a guarantor become liable?**

16. If the business fails to fulfil its obligations, e.g. failing to maintain the necessary regular repayments to the bank, it will be in breach of the original agreement and the guarantor will automatically be liable under the guarantee.

## **BBRS perspective - nature of the complaints**

### **Co-guarantors**

17. Most personal guarantees involving multiple guarantors are "joint and several" guarantees. This means that each guarantor is both: jointly liable (alongside the other guarantors) and individually liable (on their own separately), to the bank for the repayment in full of the business's debt. Where this is the case, the bank may choose to pursue a single guarantor

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identified as the occasion for the granting of the guarantee, an all monies guarantee could be treated, in law, as a specific guarantee. A court would consider both the wording of the guarantee and all of the surrounding circumstances (*Bank of Baroda v Patel* [2008] EWHC 3390 (Ch)).

for the outstanding debt, irrespective of the liabilities of other guarantors. This can be very emotive, and the BBRS has seen cases where the perceived approach of the bank has created a sense of unfairness and injustice, but the fact remains that a “joint and several” contract enables the bank to properly take this approach.

18. There is an equitable principle, however, that where the debt is guaranteed by more than one guarantor, the co-guarantors will share the liability proportionately. This can, though, be excluded through the guarantee contract. Also, if a guarantor is insolvent, this can impact on the other guarantors, causing them to pay more. Where individual guarantors have guaranteed differing maximum limits, the debt is usually shared proportionately to the limits of each of the guarantees<sup>2</sup>.

### **Other sources of security**

19. Where the business defaults on the loan agreement and a personal guarantee is in place, a bank is not obliged to wait for funds to be released from business assets before calling upon the personal guarantee. The bank can, in law, enforce a guarantee against the guarantor even if the bank holds security over assets of the business. Neither the court, nor the business, can dictate to the bank how or in what order it should recover its money. This, too, can come as a surprise to personal guarantors and can feel unjust, especially where the business is still trading and the guarantor is no longer involved in the business, which BBRS has seen.
20. If the bank has called upon the guarantor first, however, the guarantor will usually be able to benefit from any security that the business provided to the bank.
21. Where the bank does seek to rely on funds liquidated from a security (e.g. sale of a property used as security to a business debt), it has an equitable duty to obtain the best price reasonably obtainable. If that is not done, then this may increase the amount payable under the guarantee. The BBRS has seen a number of cases where the guarantor has raised concerns about the manner in which the bank has realised another security. This perception can be exacerbated in circumstances where a Law of Property Act receiver is appointed, distancing the bank from the risks and responsibilities of disposing of the asset.

### **Guarantor rights v banking confidentiality**

22. Cases where the bank is calling on a guarantee from an individual who was, but is no longer engaged, in the business can involve issues of mistrust. The

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<sup>2</sup> Dering v Earl of Winchelsea (1787) 1 Cox Eq Cas 318

BBRS has seen complaints about the lack of information provided by the bank to the guarantor to evidence the bank's right to call upon the guarantee.

23. In law, the guarantor is entitled to have a court correctly assess (and, where appropriate, reduce) the scope of the business's liability to the bank. If the guarantor succeeds, then the guarantor's liability will be reduced similarly. The guarantor is also entitled to raise defences to the underlying debt, such as: the debt has not yet fallen due; the business's obligation to the bank is illegal and therefore void. In order to do this, the guarantor needs access to relevant information from the bank.
24. Obtaining appropriate disclosure to enable alternative dispute resolution in this area can be challenging, due to banking confidentiality. This is especially so when the business has been dissolved and is, therefore, unable to provide consent to the bank to disclose confidential information, or where the relationship between the former and current business directors has broken down.
25. Sometimes, the bank considers that information that they hold relating to the business is relevant, but that banking confidentiality stops the bank from disclosing information about the business to the BBRS or the Complainant.
26. Whilst the sanctity of banking confidentiality is crucial, so are the rights of guarantors and the commitment for the BBRS resolution processes to be as open and transparent as possible. There are provisions in the Scheme Rules that allow for evidence to be treated, in confidence – being known to the BBRS only – but there has to be good reason for that. With good will and pragmatism, it has proved possible to find a fair and reasonable way to balance these various obligations on a case by case basis.

### **Termination or discharge**

27. Where there is no express termination clause in a specific-liability guarantee, the general rule is it cannot be terminated. Valid and effective payment of the specific-liability, by the business or the guarantor, will have the effect of discharging the guarantee.
28. Most all-monies guarantees allow the guarantor to terminate the guarantee by giving notice. That might not, however, be as significant as it might first appear to the guarantor. The bank would normally retain rights that had already accrued under the guarantee before the notice to terminate is given (for example, loan liabilities existing at the point of termination any interest accruing after termination). In effect, here, the guarantor would remain liable for defaults by the business relating to financial arrangements in place

before the termination. The termination would only have the effect of preventing additional, future, liability for the guarantor.

29. Discharge of a guarantee, on the other hand, releases the guarantor from all existing liabilities.
30. Commonly arising in BBRS personal guarantee Complaints are issues relating to a director who has resigned from the business after providing a personal guarantee. Lack of understanding of the process and conditions for securing release from the personal guarantee is a core factor.
31. The guarantee given by the individual is not discharged or terminated automatically (unless there are specific terms within it to enable that). Proactivity and negotiation, by the individual, is usually necessary. The bank will often require another guarantee to be provided as a replacement and there can be issues with new business directors being able to satisfy the bank's requirements. The result is, often, that the original guarantee remains in place. Misunderstandings can arise in this respect, leading to disputes when the guarantee is called upon, sometimes, many years later.
32. This is an area where the BBRS has seen flexibility from the participating banks and settlements, directly between the parties, as a result of Complaints being made to the BBRS.

### **The significance of 1 April 2019**

33. Where the alleged act or omission occurred before 1 April 2019, then the BBRS Historical Scheme requirements applied. An act or omission alleged to have occurred after that date is assessed under the Contemporary Scheme.
34. The eligibility requirements of the Historical Scheme include a floor – a minimum set of financial characteristics for the business to meet to be eligible. The Contemporary Scheme, on the other hand, does not include specific minimum financial characteristics, relying solely on the question of eligibility for the FOS (if the Complaint is eligible for the FOS, then it is not eligible for the BBRS).
35. The FOS has jurisdiction for Complaints about a personal guarantee, provided by an individual when involved in the business, only when the guarantee was signed on or after 1 April 2019. Taken together with the BBRS Scheme Rules, this has had the effect where:
  - A complaint relating to a personal guarantee signed before 1 April 2019 would be ineligible for BBRS, if the alleged act or omission occurred before 1 April 2019.

- A complaint relating to a personal guarantee signed before 1 April 2019 would be eligible for BBRS, if the alleged act or omission occurred after 1 April 2019, which has proved a point of contention with participating banks where a micro-enterprise is involved.
- An inequitable situation where some individuals, who signed a guarantee relating to a micro-enterprise before April 2019, have recourse to neither the FOS nor BBRS, whereas guarantors for larger SMEs do. This situation is of ongoing relevance as there will be a number of people, who signed open-ended all monies guarantees, before 1 April 2019, who will continue to have no access to alternative dispute resolution.

36. The BBRS has sought to ameliorate this inequity by using the concessionary case process – whereby BBRS recommends to a bank that it should be able to consider the merits of a case, even though it is ineligible.

### **BBRS perspective – numbers and outcomes**

37. At 31 March 2023, the BBRS had 158 cases registered as involving a personal guarantor.
38. 110 are Historical Scheme cases; 26 Contemporary Scheme; 14 dual Scheme and the remainder are of unestablished date<sup>3</sup>.
39. Of the 158 cases, 60 involve a business that is dissolved, 25 involve a business that is in liquidation and 3 where the business is insolvent. Further details about those are contained in [Insights - Dissolved Cases](#).

### **Historical Scheme personal guarantee cases facts & figures:**

40. Of the 110 which related to a personal guarantee, where the alleged act or omission occurred between 1 December 2001 and 31 March 2019:
- 19 were closed due to an unresponsive customer.
  - 15 were withdrawn by the customer. 1 involved a non-participating bank; 1 concerned an act/omission pre-December 2001; 2 had been subject to Relevant Litigation; 1 was not a Banking Service; 2 were being assessed through the Foskett Panel Review; and 7 did not meet BBRS financial characteristics requirements (all being too small). *In 1, the customer and bank reached a direct settlement.*

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<sup>3</sup> References within this paper to Historical Scheme, Contemporary Scheme and dual Scheme are used as shorthand for the date of the alleged act or omission and do not necessarily imply that the Complaints met all the relevant eligibility criteria of the Scheme Rules.

- 45 received an Eligibility Assessment finding the Complaint ineligible, or partly ineligible, some for several reasons:
  - (i) 26 failed to meet BBRS financial characteristics, because they were too small; of those, 8 were likely eligible for the FOS (leaving 18 ineligible for both BBRS and the FOS, see Concessionary case treatment, below). 5 failed to meet BBRS financial characteristics, because they were too big; of those, 3 had also been subject to Relevant Litigation. 3 further cases failed the financial characteristic requirements of the Scheme, but it is not possible to identify whether they were too small or too large; all of those 3 cases had time bar issues in addition.
  - (ii) 13 involved the Complaint being brought to the Bank out of time; 10 of these also failed the financial characteristic requirements too. 2 had been subject to Relevant Litigation and 1 had been eligible for an Exclude Scheme.
  - (iii) 9 had been subject to Relevant Litigation. 8 of those also fell outside BBRS financial characteristics.
  - (iv) 8 Complaints appeared likely eligible for the FOS. Half of these also had other eligibility issues (beyond financial characteristics), 3 having been subject to Relevant Litigation and 1 having been eligible for an Excluded Scheme.
  - (v) 4 cases had been eligible for an Excluded Scheme. All had other eligibility issues too, with 3 falling outside BBRS financial characteristics.
  - (vi) 3 were already subject to a Settlement Agreement.
  - (vii) 3 Complaints were brought by someone falling outside the Scheme definition of Complainant.
  - (viii) In 3 cases, a Complaint had not been raised directly with the bank. All of these had other eligibility challenges too.
  - (ix) 1 concerned an act or omission pre-December 2001. This case was also too small for the BBRS based on financial characteristics, had been eligible for the FOS and had been subject to Relevant Litigation.
  - (x) 1 Complaint concerned a non-participating bank.
  - (xi) 1 was not a Banking Service, as defined by the Scheme Rules. This case was also ineligible as the financial characteristics were too small.

- (xii) *Although ineligible, 3 reached direct settlement with the bank. 2 of those saw a complete release of the Complainant from the Personal Guarantee. The third involved the bank making a compensation payment to the Complainant.*
- (xiii) 18 recommendations for Concessionary case treatment were made to banks regarding personal guarantee cases, where an Eligibility Assessment had also been issued. Consent was given by banks in 4 cases, but that consent was partially withdrawn in 1 case. Banks refused consent in the remaining 14 cases, but directly settled 2.
- 2 further cases were recommended for Concessionary treatment, without an Eligibility Assessment being issued. Consent was given by the bank in 1, leading to conciliation, but refused in the other.
  - 13 were dismissed. 1 had been subject to Relevant Litigation and 4 additional cases had been settled. 5 were too small for BBRS. 4 did not meet the definition of a Complainant. 3 had made no prior Complaint to the bank. 1 was dismissed due to a lack of engagement by the customer.
  - 1 reached conciliated settlement, with the customer being released from the personal guarantee.
  - 10 have received a Determination. None of these Complaints have been upheld. An additional 3 Complaints are currently in the adjudication process.
  - 1 is at an early stage of the BBRS process.

### **Contemporary Scheme personal guarantee cases facts & figures:**

41. Of the 26 which related to a personal guarantee, where the alleged act or omission occurred after 31 March 2019:
- 3 were closed due to an unresponsive customer.
  - 6 were withdrawn by the customer. 4 of those were settled directly between the customer and the bank. 1 did not meet BBRS financial characteristics requirements, being too small and 1 customer did not meet the definition of Complainant.
  - 4 received an Eligibility Assessment finding the Complaint ineligible. 2 were too small for the BBRS, 1 related to a Dissolved business. 1 did not meet the definition of Complainant.

- 2 were dismissed. 1 was too small for the BBRS. The other involved a Complaint about the bank's commercial judgement.
- 3 reached conciliated settlement, with the customers being released from the personal guarantee.
- 3 have received a Determination. 2 were not upheld. 1 was partially upheld and awarded a small amount for taking so long to respond to the Complaint.
- 7 are at an early stage of the BBRS process.

### **Dual Scheme personal guarantee cases facts & figures:**

42. Of the 14 which related to a personal guarantee, where the alleged act or omission occurred both before and after 31 March 2019:

- 3 were withdrawn by the customer. 2 of those were settled directly between the customer and the bank. The other had been subject to Relevant Litigation.
- 8 received an Eligibility Assessment all finding the Complaint partly ineligible. 6 were too small for the BBRS, 6 made a Complaint to the bank too late (5 were both too small and complained too late). 1 did not meet the definition of Complainant. All 8 received a concessionary recommendation, of which: 2 received bank consent, 2 were settled directly between the parties and 1 was conciliated.
- 1 was dismissed because the nature of the Complaint was not reasonably likely to succeed.
- 2 have reached conciliated settlement, with the customers being released from the personal guarantee after paying a reduced amount to the bank.
- 2 have received a Determination: 1 being upheld, with an award made for failing to refund the customer directly (instead refunding to the Treasury Solicitor to reimburse the dissolved Company) and to deal properly with the Complaint; 1 being partially upheld and awarded a small amount for failing to tell the customer about the personal guarantees and to log call recordings.
- 1 is at an early stage of the BBRS process.

## **Outcomes**

### **Direct settlement**

- 43.15 personal guarantee-related Complaints were resolved via direct settlement. 5 Historical Scheme, 4 Contemporary Scheme and 4 Dual Scheme, the dates of the remaining Complaints of this type being unknown.
44. Known values of personal guarantees range from £1,500 to £131,000. In a number of cases, the value is unknown and case circumstances suggest the value is likely to be high.
45. 8 cases involved the customer having sold the business, having already settled the debt for which the personal guarantee was associated. Sometime later, the business was in financial difficulties and the bank sought to rely on the personal guarantees provided earlier. In 7 cases, the bank released the customer from the guarantee liability.
46. 2 Complaints disputed the validity of the guarantee. 1 customer was released from liability. The nature of the settlement in the other case is unknown.
47. 1 HBOS Reading case. The value and nature of the settlement is unknown.
48. 1 EFG Loan case, where the customer argued that they had understood the personal guarantee to be for 25% of the loan value only. The bank agreed to pursue the remaining 75% via Government process.
49. 2 cases involved difficult personal circumstances. 1 where the customer was not in a position to settle the amount owed under the personal guarantee. The bank agreed to a 6-month review. The other involved a business which failed due to the Covid pandemic and resolved with a negotiated settlement to share liability with other guarantors and with a 12-month 'maternity leave' delay for payment.
50. 1 case concerned the bank failing to release the customer from a personal guarantee associated with a loan, after the loan had been repaid. The bank removed the liability and paid the customer a small amount of compensation.

### **Conciliated**

51. 6 personal guarantee-related Complaints were resolved via conciliation. 2 Historical Scheme, 3 Contemporary Scheme and 1 Dual Scheme. Values range from £10,500 to £150,000, plus a charge on the family home.

52. All conciliated settlements are presented, by the bank, as being commercially-motivated and no fault is admitted.
53. 3 Complaints alleged that the customer should have been released from the guarantee obligations when they left the business years before the financial difficulties began. In all 3 cases, the customer was released from all liability under the personal guarantee.
54. Another customer was released from the terms of a personal guarantee where the debt to which it had directly related had been long since repaid. The business failed, years later, due to the Covid pandemic.
55. 1 further customer was released from liability under the guarantee, after claiming that they had been misled (by a third party) into signing it.
56. The remaining case settled for payment of half of its value. The Complaint alleged that the bank had overcharged the business by £100,000, contributing to its failure and resultant dissolution.

### **Adjudication**

57. 24 personal guarantee-related Complaints were, or are being, resolved via adjudication. 3 involved the bank having consented to adjudication through the concessionary process for Complaints that were otherwise ineligible for the BBRS Scheme. 17 Historical Scheme, 3 Contemporary Scheme, 4 Dual Scheme. Values range from £5,500 to £460,000.
58. Of the 16 that have reached Determination, 1 Complaint (Dual Scheme), worth £5,500, was upheld. This involved the bank having overcharged the business for interest. By the time the overcharging had been realised, the business had been dissolved and business debt settled, under the personal guarantee, by the Complainant. The bank refunded the overcharge to the Treasury Solicitor, leaving the Complainant out-of-pocket. 2 other Complaints were partially upheld (1 a Contemporary Scheme Complaint and 1 Dual Scheme): awards of £500 and £1,000 were made for communication failures. The remaining 13 Complaints were not upheld.
59. 13 Complaints alleged that the personal guarantee was invalid because, for example, it was not explained properly to the customer, the customer was vulnerable and the requirements of the Equality Act were not met, misleading advice was given by the bank, the product which led to the personal guarantee being signed was mis-sold or the personal guarantee was (it was argued) falsified by the bank. 4 of these involved alleged misunderstanding of the scope of a personal guarantee associated with an EFG loan. To date, no Complaint of this nature has been upheld.

60. In 6 Complaints, it was argued that the business debt would not have arisen, but for the bank's acts or omissions and, as a result, there would have been no need for the personal guarantee to have been called upon. To date, no Complaint of this nature has been upheld.
61. 8 Complaints suggested that the personal guarantee should have been discharged earlier because, for example, it related to a specific property, which had later been sold (2 Complaints) or the customer had sold/retired from the business and attempted to release themselves from the personal guarantee liability at that point. To date, no Complaint of this nature has been upheld.
62. 1 Complaint (Contemporary Scheme) alleged that the bank had failed to negotiate, reasonably, a payment plan with the personal guarantor. This was not upheld.
63. 1 Complaint (Historical Scheme) suggested that, had the bank contacted the personal guarantor over 4 years earlier than it did, the guarantor would have been in a position to help recover some of the debt, meaning that the personal guarantee may not have been relied upon. This Complaint was not upheld.

### **Recommended concessionary case outcomes**

64. 33 Complaints received a recommendation for concessionary processing<sup>4</sup>. 25 Historical Scheme and 8 Dual Scheme.
65. The relevant bank provided consent to concessionary processing in 7 (5 Historical Scheme) of those cases. The 2 dual Scheme Complaints were both partially eligible for the BBRS. 1 of the Complaints where the bank consented to concessionary treatment was subsequently settled via conciliation.
66. Of those where the concessionary recommendation was rejected by the bank, 3 (2 Historical Scheme and 1 Dual Scheme) went on to be settled directly between the parties (values ranging from £1,400 to £18,000).

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<sup>4</sup> PIR II recommended that, for historical cases relating to personal guarantors of dissolved companies that are too small for the BBRS but eligible in every other respect and which otherwise do not have a for a to be heard, the BBRS should consider putting them all forward as concessionary cases. In response, BBRS considered it's approach in all cases, which could be identified, involving a personal guarantee for a dissolved business, where the outcome did not include a direct settlement, conciliated/mediated settlement or adjudication. This exercise confirmed that concessionary recommendations had been made in all appropriate circumstances. Concessionary recommendations were not made in situations where, for example, there was an unauthorised Complainant; the Complaint was not about a Banking Service or about a Participating Bank; or there is/was Relevant Litigation. That is in line with expectations.

67. In 18 Complaints (all Historical Scheme), where the BBRS recommended concessionary treatment, but the bank refused consent, the BBRS was not able to provide, or facilitate, any kind of resolution for the customer.

## **Observations**

68. The proportion of Complaints made to the BBRS that relate to personal guarantees is, perhaps, not a surprise. Circumstances involving the calling-in of personal guarantees are likely to be contentious, as personal finances are on the line. The guarantee may have been signed many years previously and in the positive context of obtaining finance for business growth. Banks have a clear understanding of the gravity of a personal guarantee and of the processes by which an individual might apply to be released. From an SME's point-of-view, however, it is easy to see how the significance of the terms of the guarantee, at the time of signing, may be underestimated by the individual and how the release process might feel like an unfathomable minefield.

69. To help avoid disputes later, banks have an interest in ensuring that individuals providing personal guarantees are absolutely clear on the potential long-lasting impact of the guarantee, its breadth and release mechanisms. That is not to say that banks should be providing advice to customers about guarantees, but ensuring that customers have accurate and easy-to-comprehend information before entering into a guarantee would be of considerable benefit.

70. It is not uncommon for BBRS to see evidence, in bank correspondence with customers, of the use of complex language. In some instances, the complainant has attempted to obtain an explanation from the bank, in plainer language. In some cases, it appears that a degree of the complainant's frustration is borne out of their perceived battle to understand some of the bank's communications with them. Although not intended that way, to the customer it can feel like obfuscation. Use of straightforward language, in short sentences, generally, would aid customer understanding and help to prevent some misunderstandings, which can lead to complaints. This has particular value when the individual providing the personal guarantee is also the sole trader or director of the business receiving the banking service which is backed by the personal guarantee.

71. Banks do, typically, have documents with warnings at the top and bottom, recommending that the customer takes legal advice. The documents often include a legal disclaimer saying the customer waives their right to take legal advice. The BBRS has found that the disclaimer is very often dated the same day as the guarantee was signed. That creates a legally defensible position for the banks, but more could be done to reduce the risk of customer dissatisfaction in this area. Banks could, for example, insist on the customer seeking legal advice and offer to pay a contribution towards it,

which could be priced into the loan. This would help to protect both customers and banks, especially reducing the potential for an individual signing a guarantee under the influence of another's coercion and control.

72. Another possibility, short of insisting on legal advice, is for personal guarantee documents to have a separate section setting out the key risks and obligations, which the customer is required to sign separately. In addition, the guarantee documents could include crystal-clear details about when the guarantee will end and in what circumstances, clear processes for requesting release and what relevant technical terminology (such as an all-monies guarantee) means.
73. The importance, at the point of sale, of the distinction between the responsibilities of the business and the individual's responsibilities as personal guarantor cannot be overstated. There is a very specific need to help those individuals to be crystal clear on their financial liability as a personal guarantor as distinct from the business.
74. A system of annual reminders, by banks to personal guarantors, would also ensure that the guarantor remains, many years on, cognisant of the continuing nature of the guarantee and any increase in its financial implications; and clear on any mechanism for release.

### **Closing comments**

75. Complaints about personal guarantees form a substantive proportion of Complaints made to BBRS. It must be noted, however, that the number of Complaints made to BBRS overall are relatively low, especially in the context of the vast number of personal guarantees given in relation to SMEs.
76. This is also a category of Complaint where BBRS has seen a good proportion of positive outcomes for customers – usually through direct settlement or conciliation – with customers released from liabilities ranging from a value of £1,500 through to £150,000. These are truly life-changing outcomes for individuals.

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5<sup>th</sup> June 2023