



Summary of the determination dated 6 March 2020 in respect of a complaint made to the Scheme regarding a Guarantee signed by the Complainant in favour of the Supplier and outcome of a review by the Senior Adjudicator on 9 September 2020

The Complaint

The Complainant signed a personal guarantee in favour of the Supplier to assist a third party to purchase the leasehold of a property. The guarantee was limited to an amount up to £90,000. The borrower defaulted on the loan and, without prior notice of the situation, the Complainant received a letter from the Supplier advising that they were calling upon the guarantee and requested full and immediate payment of £90,000.

With assistance from a professional adviser, about the manner in which they had pursued the debt a complaint was made to the Supplier. The Complainant also argued the validity of the guarantee and after a considerable exchange of correspondence the Supplier released the complainant from the guarantee 13 months later.

The Complainant stated that during this time the Supplier had caused them intense stress and distress in their pursuit of the debt and made a claim to the Supplier for reimbursement of the fees charged by the professional adviser which was dismissed by the Supplier.

A complaint was made to the Financial Services Ombudsman Scheme in which the complainant requested that the Supplier pay the professional fees they had incurred which totalled £94,000.

Summary of the Supplier's response

During correspondence with the Complainant, the Supplier declined to pay the level of compensation demanded stating that as they had released the Complainant from the guarantee they had not suffered a financial loss. However, the Supplier did state that, if evidence was provided of actual costs, they would consider a payment. As the Complainant did not provide such details to the Provider no offer of settlement was made by the Supplier.

Investigation and Findings

The complaint to the Scheme was very wide but fundamentally it referred to the actions of the Supplier when calling upon the guarantee. The Adjudicator found that the guarantee was a binding contract and therefore was enforceable by the Supplier and concluded that the complaint should be dismissed.

The Complainant was not satisfied with the final determination issued by the Adjudicator and sought a review of the decision by the Senior Adjudicator.

Review by the Senior Adjudicator

The Senior Adjudicator found that the Supplier had not dealt fairly with its client in pursuit of the guarantee and created a new determination which upheld the complaint. As the Complainant had not provided full details of how the claim for £94,000 was calculated, the Senior Adjudicator assessed the hours that would have been spent in pursuit of the complaint up to the point at which the Supplier had offered to meet those costs. An award of £1,500 was made for professional fees plus an additional award of £500 for distress and inconvenience.

Award

The Supplier was instructed to pay to the Complainant a total award of £2,000.