

The complaint

Mr T complains that HSBC UK Bank Plc (“HSBC”) acted negligently in allowing his ex-partner to withdraw funds from a joint account.

What happened

Mr T told us he’d been the sole account holder on a bank account with HSBC for many years. He added his partner to it, making it a joint account. Later, Mr T wanted to remove the joint accountholder but says he was told this wasn’t possible. He said he was told by HSBC that he could, instead, block her from accessing the account. And he told us that he thought this block was applied in 2012.

Mr T told us that, contrary to his belief that there was a block in place, his ex-partner had managed to remove funds of £5,900 in July 2019. He thinks HSBC had unblocked his ex-partner’s access to the account without his knowledge or permission.

Mr T thinks he should be compensated for the funds that were removed from his account, as well as compensation for the grief and suffering the situation has caused him.

Our investigator considered this complaint. She didn’t think at first it was one that we could consider as it had been brought to us out of time. This was because the original submissions to our service appeared to be about the account being blocked, rather than just the access of one joint accountholder. Mr T disagreed that it had been brought to us out of time and clarified the nature of his complaint. So it was passed to me.

I’ve been in contact with both parties and established that this complaint is one that we can look at. But I let Mr T know that I wasn’t minded to uphold his complaint because there wasn’t sufficient evidence to prove on balance that a block on his ex-partner was ever applied, and it seemed inherently unlikely that HSBC would’ve allowed (for reasons explained below). But as Mr T hasn’t agreed with my informal provisional findings, I’m now proceeding to a formal decision.

As well as the main issue of the funds allegedly being withdrawn from the account without his authorisation, Mr T has raised several matters which he believes to be failings on HSBC’s part, including the following:

- When adding his partner onto the account, he wasn’t told he wouldn’t later be able to remove her;
- Given the amount of money that was withdrawn, HSBC should’ve checked with him before allowing the transaction to go through;
- HSBC didn’t dispute that there had been a block on the account, only that he should’ve known earlier that the block had been removed;
- The block was removed without informing him;

- He was given information about renewing the block. He doesn't think he should have to ask for it to be *renewed* as it should never have been *removed*. So this implies that there *was* a block in place previously and that a block can be added;
- He should've been told that it wasn't possible to block one person's access to the account;
- HSBC has wrongly deleted its records from 2012.

HSBC told us it doesn't have any records of Mr T's ex-partner being blocked from using the account, or any notes to reflect a conversation of this nature. It said it isn't possible to block one party from the account because both parties on a joint account have equal rights and responsibilities and would be 'jointly and severally' liable for the account. So, it doesn't think it would've told Mr T this was possible. It also said that if it had been notified of a dispute between parties, it would simply have blocked all named parties from accessing the account rather than restricting access to the other joint accountholder.

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.

While I know this will come as a disappointment to Mr T, I don't uphold this complaint – and I'll explain why.

Before determining whether his ex-partner's access to the joint account was in fact wrongfully unblocked, I must first establish whether a block was actually applied for, and in place. Mr T thinks one was applied in 2012. But HSBC says that it has system 'memos' going back to 2012, and there's no suggestion of a dispute between the joint accountholders. It says that the full contents of the memos aren't available because of the time passed, but that any dispute would be noted in the memo titles, which are available.

Ideally, I'd like to see the full content of the system notes but, given that it was such a long time ago, it's not unreasonable or unlawful that HSBC no longer has this data available, as it isn't required to hold this information indefinitely — and, indeed, has a statutory duty not to retain personal data for too long (usually six years). I know Mr T feels strongly that HSBC should provide information about the conversations it had with him in relation to the block being placed on the account; but it can't provide what it no longer has as a result of data-protection principles. On balance, therefore, Mr T hasn't proven that he applied for a user block and/or was misled about the matter.

Circumstantial evidence can be useful in resolving factual disputes where there is a dearth of contemporaneous documentary evidence, so I've also thought about whether it's likely that HSBC would've allowed a user block to be applied to a joint account. And I don't think it is likely. When an account becomes joint, both accountholders have equal status become jointly and severally liable for the account. In other words, both own and control all the funds equally irrespective of their original source. This means that both accountholders can deposit and withdraw money without seeking permission from the other – and can act for and on behalf of each other in relation to the account. If this were otherwise and just one accountholder were able to block the other from accessing the account – e.g. in the event of a domestic dispute or split – this could lead to the accountholder with full access emptying the account, or even causing it to go overdrawn, to the detriment of the other legal owner. In that situation, the blocked accountholder would then become equally liable for a debt they had no way of preventing. It follows that joint account holders can *generally* act for and on behalf of each other in relation to the account *unless* it involves removing the other from the account completely, or removing their access.

These common law principles are supported by the relevant terms and conditions of the account. Section 22.1 explains that HSBC can carry out banking activities on joint accounts which are authorised by either accountholder. Section 22.3 goes on to say *"If any one of you tells us of a dispute between any of you, we may treat this as notice of cancellation of the authority set out at clause 22.1... We will need the authority of all of you to pay out any credit balance on the joint account or to close the joint account."* So, in short, if HSBC were notified of a dispute, it would no longer allow the accountholders to act on behalf of each other, and it wouldn't allow any funds to leave the account without authority from *both* accountholders.

In the circumstances, if Mr T had asked to remove his ex-partner from the account, and then settled for her access being blocked, it would've been apparent to HSBC that there was probably some form of dispute. And, once aware of this, the above terms state that it wouldn't have allowed any credit balance to be withdrawn without permission from Mr T *and* his ex-partner.

Based on all of this, I'm not persuaded that HSBC agreed to block or did in fact block Mr T's ex-partner's access to the account. I've not seen anything concrete to support Mr T's belief that HSBC did the wrongful acts or omissions that he alleges. So there's insufficient proof that HSBC has been negligent. I haven't seen anything that leads me to conclude it was aware of a dispute between accountholders – so I don't think it would be fair or reasonable to ask it to do anything further here. HSBC has said that it will now work with both parties to make arrangements for the funds to be paid away and the account closed.

I think the above addresses the crux of this complaint. But I'll also provide responses to some of the perceived failings Mr T has mentioned, though I might not comment on every concern raised.

Mr T said that he wasn't told, when adding his partner onto the account, that he wouldn't be able to remove her. This particular complaint point doesn't seem to have been raised with HSBC and relates to a different event when Mr T's ex-partner was added to the account, not when the alleged block was applied. But again, once an account becomes joint, both accountholders become equal in the total assets and liabilities. This is regardless of whether the account was initially set up as a joint account, or whether one held it originally as a sole account. Neither accountholder has more or less rights over the account than the other. So it wouldn't make sense for either accountholder to have the power to remove the other; so there was nothing for HSBC to advise on here and/or no detriment in the absence of such advice.

Mr T thinks HSBC should've checked with him before allowing such a substantial amount to be withdrawn. But, as there's no indication that HSBC was aware of a dispute, there's no reason it would have gone against Section 22.1, i.e. allowing one accountholder to act on behalf of both or to withdraw funds to which she had full legal rights of access.

Given that I'm not persuaded a block was ever placed on the account, I can't safely say that it was removed without informing Mr T. While Mr T was given some information about renewing a block on the account, this doesn't necessarily mean that HSBC is admitting a block was previously in place. I think the communication from HSBC about renewing a block was more of an acknowledgement that HSBC recognised Mr T strongly (but erroneously) believed there was a block in place. I think it was intended to make it clear that there isn't currently a block on the account and that it wasn't being added to the account as a result of a complaint being made. There will be *some* blocks that can be placed on accounts; perhaps maximum withdrawal amounts, or blocks on certain transactions as hypothetical examples. But giving the number to call to apply a block doesn't mean that HSBC would apply, or would previously have applied, a user block on the account.

I'm sorry that Mr T has been through this situation, and I appreciate how distressing it must have been for him to lose such a huge sum of money. But, based on everything I've seen, I don't think it would be fair to hold HSBC responsible as I'm not persuaded it has done anything wrong.

I have considered and answered the merits of this complaint because, despite the initial misunderstanding and error over our jurisdictional time limits, Mr T is an eligible complainant and did refer the matter within three years of becoming aware of potential cause for complaint (whether that complaint was justified or not). However, whilst this error is regrettable, that is precisely why we have a two-stage process as a check and balance. Further, I am not persuaded it caused Mr T any detriment because, strictly speaking, this was a case that we could have declined to consider irrespective of its being within our jurisdiction. This is because there is a potential co-complainant: Mr T's ex-partner and joint accountholder. As a general rule, we decline to consider complaints about joint products without the consent of the joint customer. This is to ensure that (i) we get both sides of the story if there is a factual dispute about what actually happened and (ii) the potential co-complainant isn't prejudiced or won't end up being pursued for restitution by the bank if the case is upheld and compensation awarded without her having been heard.

Accordingly, it is arguable that the case could and should have been dismissed until Mr T's ex-partner had been located and joined as co-complainant. Our rules expressly provide for this in the DISP section of the *Financial Conduct Authority Handbook*:

DISP Rule 3.3.4A

The Ombudsman may dismiss a complaint referred to the Financial Ombudsman Service on or after 9 July 2015 without considering its merits if the Ombudsman considers that...dealing with such a type of complaint would otherwise seriously impair the effective operation of the Financial Ombudsman Service.

DISP Guidance 3.3.4B

Examples of a type of complaint that would otherwise seriously impair the effective operation of the Financial Ombudsman Service may include:

[...]

(4) it is a complaint which:

(a) involves (or might involve) more than one eligible complainant; and

(b) has been referred without the consent of the other eligible complainant or complainants,

and the Ombudsman considers that it would be inappropriate to deal with the complaint without that consent.

Though finely-balanced, I decided not to exercise my discretion to dismiss the complaint despite the absence of the joint accountholder because (a) it clearly had no reasonable prospects of success given the evidence and arguments before me, so there was little or no risk of prejudice to a third party, and (b) our initial confusion over the essence of the complaint – and therefore our jurisdiction – resulted in Mr T not receiving the level of service to which we aspire. So, I felt it was only fair and reasonable to try to give him a fully-reasoned explanation as to why, on the basis of the available evidence, the complaint could not succeed. I am sorry that this confusion arose – but I am satisfied that we have now

reached the right outcome in all the circumstances; and that Mr T has not lost out as a result of any mistake by HSBC or the Financial Ombudsman Service.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 31 July 2020.

Melanie Roberts
Ombudsman