

The complaint

Ms L complains that TSB Bank plc is holding her liable for a debt which is not hers.

What happened

Ms L and her ex-husband used to have a business together as a partnership, and they had a business account with TSB for which they were both responsible. They divorced several years ago, and Ms L left the business, dissolving the partnership. Her ex-husband continued to run the business account. During the divorce proceedings they obtained a court order which settled all of their financial affairs. In particular, it contained a clause in which he indemnified her against all liabilities “which may arise as a result of the partnership” (clause 6(e), and see also 6(d)).

In 2020 TSB asked Ms L to pay a debt of over £7,000 on the business account, having earlier failed to obtain that amount from her ex-husband. She showed TSB the court order and insisted that she was not liable for the debt. But TSB’s lawyers did not agree. They said that TSB had not been a party to the order, which was only between Ms L and her ex-husband, and so TSB was still entitled to pursue her for the debt.

Ms L brought this complaint to our Service, but our investigator did not uphold it. She said that under the account’s terms and conditions, Ms L and her ex-husband were jointly and severally liable for the debt. However, she recommended that TSB put the account on hold while Ms L took steps to enforce the court order against her ex-husband.

Ms L asked for an ombudsman to review her case.

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.

I regret that my decision will come as a disappointment to Ms L, but I’m afraid I agree that TSB is not bound by the court order. That was a consent order agreed by the parties to the divorce proceedings, but it has no effect in relation to third parties. Ms L’s only remedy here is to seek to enforce the order against her ex-husband. She should take independent legal advice about that.

As far as TSB is concerned, the terms and conditions of the account allow it to pursue either of the account holders for the account balance. Unfortunately, Ms L does not appear to have ever been removed from the account, so even though she hasn’t used the account since the divorce, she remains liable for the debt. It follows that TSB has done nothing wrong. However, I agree with our investigator’s recommendation that TSB take no action while Ms L pursues her legal action against her ex-husband (if indeed she does that).

My final decision

My decision is that I do not uphold this complaint.

Nevertheless, I recommend that TSB Bank plc considers putting its debt recovery process on hold while Ms L litigates this matter with her ex-husband.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L to accept or reject my decision before 26 March 2021.

Richard Wood
Ombudsman