

The complaint

Ms E is unhappy that Bank of Scotland plc trading as Halifax removed the other person from a joint account she was party to and is now asking her to repay the overdraft on it.

Ms E has been occasionally represented in bringing parts of this complaint to us – but for ease of reading I'll refer to all submissions as being made by her directly.

What happened

In June 2022, Halifax was made aware that the other party on Ms E's joint account was insolvent. Because of this, Halifax closed the account, which had an outstanding balance due on the overdraft. It recorded the account as being in default with credit reference agencies. In October 2023, Halifax sent Ms E a letter apologising that it hadn't contacted her prior to taking this action and gave her an opportunity to repay what was owed, agreeing to remove the information it had recorded about the account if Ms E could do this.

Ms E was unhappy that she was being expected to repay the debt at all though. She said that Halifax was acting fraudulently in pursuing this. She complained to Halifax but it maintained it had acted correctly. It said that the debt on the account was accrued from general spending prior to closure and that it was entitled to hold Ms E liable for the debt where the other party had declared insolvency.

Ms E wasn't happy with this and brought her complaint to our service where one of our investigators looked into it. They felt that Halifax had acted fairly because the account was held jointly and severally – which meant that Ms E could be held liable either with the other party, or individually. They didn't feel it was fair that Halifax had taken the actions it had on the account without contacting Ms E first. But they felt that in contacting her in October 2023 and giving her an opportunity to repay what was owed – Halifax put her in the position she would have been in had it acted fairly.

Another party on behalf of Ms E disagreed and said that the investigator had ignored the legal position and acts of parliament which this service is governed by. Ms E later spoke to our investigator herself and said that she disagreed too. She said that the other party is likely to take legal action in relation to Halifax's actions here and should never have been made insolvent – so should never have been removed from the account in the first place. Our investigator maintained their position though and so the complaint was passed to an ombudsman to decide.

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'll start by addressing some of the comments that have been made about Halifax acting fraudulently and suggestions of legal action. This service is a free and informal alternative to a court and we don't have the same power. So we can't say whether any laws may have been broken, or comment on any legal action that may be taken. Our role is to independently

and impartially decide what's fair and reasonable in all the circumstances of a complaint.

In doing so here, the starting position is that the joint account was held jointly and severally between Ms E and the other party. This means that either Ms E, or the other party could be pursued together, or individually, for any debt that accrued on it. Ms E agreed to those terms when the account was set up and so I think it's fair that Halifax is seeking repayment of the debt under them – as it's entitled to. I haven't seen anything to support that Halifax is acting in any way fraudulently as Ms E has suggested.

I realise that Ms E is unhappy that she is being pursued for what's owed and has concerns about the other party's insolvency position. But I've seen that Halifax was put on notice that the other party was insolvent. As that meant that they couldn't pay what was owed – Halifax pursued Ms E for this. I can see why that feels unfair to Ms E – but she nonetheless agreed to the account being held on a joint and several basis and that the overdraft was repayable on demand. So when Halifax were made aware that the other party couldn't pay – it was entitled to seek repayment of the overdraft balance from her individually.

Halifax has admitted that it could have gone about this situation differently though. It didn't tell Ms E about the actions it was taking – and I think it would have been fair to, where she was jointly and severally liable for it. So I was glad to see that Halifax proactively recognised this when it contacted her about the situation in October 2023. It gave her an opportunity to pay what was owed in a way that meant it would amend Ms E's credit file if she was able to.

But Ms E wasn't able to and so Halifax is continuing to record information to reflect that with credit reference agencies. That's reasonable in the circumstances though – where the information is an accurate reflection of what's happened, which is that Ms E is liable for a debt that she hasn't been able to repay to Halifax in the way it wanted. While I realise this will have an impact on Ms E – I can't see that Halifax is acting unfairly here.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms E to accept or reject my decision before 9 July 2024.

James Staples
Ombudsman