

## The complaint

Ms H complains that HSBC UK Bank Plc allowed a withdrawal of £1,200 from a joint account she held with her ex-husband even though there weren't funds available and she'd already advised HSBC that they had separated.

## What happened

Ms H contacted HSBC on 17 October 2023 to notify the bank that she had separated from her husband in July 2023 and that she wanted her name to be removed from the joint account. Ms H said her ex-husband had agreed to be solely responsible for the account. The agent confirmed that the joint account had an overdrawn balance of £3,351.13 and advised Mrs H of the process, which involved Ms H completing some paperwork and Ms H's ex-husband attending a branch.

On 31 October 2023 Ms H's ex husband withdrew £1,200 cash from the joint account at an HSBC branch. This left the balance £4,699.89 overdrawn with an agreed overdraft facility of £3,500.

HSBC wrote to Ms H about the balance at her new address on 6 December 2023.

Ms H contacted HSBC and raised a complaint. HSBC applied a payment break on the account until 4 March 2024.

In its final response to Ms H's complaint, HSBC acknowledged that the joint account should've been inhibited to prevent further use after Ms H's phone call on 17 October 2023. HSBC said it had incorrectly authorised the cash withdrawal. It apologised and offered Ms H £350 compensation. Ms H asked for this sum to be paid into the joint account to reduce the balance.

Following this, Ms H received letters from HSBC asking her to repay the debt, which now stood at around £4,350. Ms H contacted HSBC on 21 April 2024 and said she didn't think she should be held liable for any of the debt because all the spending on the account related to her ex-husband. Ms H told HSBC that her ex-husband had been financially abusive during their marriage and said she felt that HSBC had enabled him to continue to abuse her further by withdrawing the £1,200. Ms H said she'd had to resign from her new job during the probation period because of the overdraft because she knew she would fail mandatory credit checks due to the negative information being reported on her credit file by HSBC.

Ms H contacted HSBC again on 22 April 2024. She had to repeat a lot of the information she'd provided the previous day as there weren't any notes on the file. Ms H became upset during the call and the agent re-opened her complaint.

HSBC looked at the complaint again and awarded a further £850 compensation which was paid into the joint account on 1 May 2024. The total compensation paid (£1,200) brought the joint account back within the overdraft facility of £3,500. HSBC accepted that it had made further errors during the phone calls on 21 April and 22 April 2024 insofar as Ms H was incorrectly told that there was no proof that the withdrawal had been made by her ex-

husband, that it had failed to make notes of the content of the calls and that Ms H hadn't received a call back as promised. Because of the poor service on the calls, HSBC offered a further £150 compensation, but it didn't agree to remove Ms H from the joint account, or to remove the negative information recorded at the credit reference agencies.

Ms H remained unhappy and brought her complaint to this service.

Our investigator partially upheld the complaint. She said she thought HSBC had done the right thing by accepting responsibility for not applying a marker to inhibit further use of the joint account from 17 October 2023, by accepting responsibility for the incorrectly authorised cash withdrawal and by acknowledging the poor service received by Ms H on the phone calls dated 21 and 22 April 2024. But the investigator said that Ms H's credit file had been impacted because HSBC was reporting the months where the joint account was overdrawn more than the £3,500 limit as missed payments (between December 2023 – May 2024). The investigator said it wasn't fair for Ms H to be impacted in this way because she didn't make the cash withdrawal herself and HSBC had acted irresponsibly in allowing the cash withdrawal to take place. The investigator said that HSBC should remove the negative information it was reporting on Ms H's credit file and pay the £150 compensation that was offered to Ms H previously (if not already paid).

HSBC accepted the investigators view. But Ms H didn't agree. She said she wanted all of the compensation (total £1350) to be paid directly to her and for the £1200 withdrawn from the joint account to be treated as a separate debt of her ex-husband in his name only. Ms H said that she would then agree to pay 50% of the joint account debt.

Because Ms H didn't agree with the investigators opinion, I've been asked to review the complaint.

### **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.

The background to this complaint is well known to both parties and I've set it out in detail above. For the purposes of this decision, I'll focus on the same three areas as the investigator – is the compensation fair, should HSBC remove Ms H from the joint account and should HSBC continue to report negative information on Ms H's credit file. I'll also address Ms H's response to the investigators view.

#### Compensation

I've thought about whether the overall compensation is fair. I've listened to the calls dated 21 and 22 April 2024 and I've taken account of all the available information about what's happened.

I agree with the investigator that the impact on Ms H has been significant. She's been caused distress and upset and has told this service that she resigned from her new job due to concerns about failing the credit check and the humiliation this might cause. I also acknowledge how frustrating it must be for Ms H that she feels that her ex-husband hasn't been held accountable for a cash withdrawal which was solely down to him and for his benefit.

In terms of the compensation itself, I understand that £1200 has already been paid into the joint account to reduce the balance. The remaining £150 has either been paid – or will be paid – to Ms H directly.

In terms of the amount of compensation, I think the amount is fair and reasonable. But I understand why Ms H has responded to the investigators view in the way that she has, because from her perspective she will only receive £150, and she will remain jointly liable for the balance on the joint account, albeit that this balance has been reduced by the compensation of £1200.

I've thought about whether Ms H should receive more of the compensation directly. However, on balance, I don't think it would be fair or reasonable to ask HSBC to do this. HSBC has acknowledged that it shouldn't have allowed the cash withdrawal to be made. It has taken steps to rectify this error by refunding the £1200 (in the form of compensation) to bring the joint account back to the position it would've been in had the funds not been withdrawn. I think its important to bear in mind that the £1200 withdrawn wasn't money which belonged to Ms H or her ex-husband. The joint account wasn't in credit, so the money was the banks money. If HSBC hadn't refunded the £1200 then arguably Ms H would still be jointly and severally liable for it, so in this way she has benefitted from the compensation.

I agree however that the balance of the compensation of £150 should be paid to Ms H directly.

#### Should HSBC remove Ms H from the joint account?

The terms and conditions of the joint account make it clear where – as in this case – there's an overdraft, each account holder is jointly and severally responsible for paying it. And where there's a dispute between joint account holders, both must agree to what is done with the account.

So where a joint account has an overdrawn balance – as is the case here – both parties are liable. I don't think it would be fair to ask HSBC to remove Ms H from the account (unless Ms H's ex husband agrees, and the bank agree).

I appreciate that Ms H has said that it is her ex-husband who is responsible for running up the overdraft. That may be the case, but from a legal perspective both joint account holders remain jointly and severally liable. It may be that adjustments can be made in any financial remedy proceedings if Ms H's ex-husband is found to be responsible for the HSBC debt, but this is outside of the remit of this service.

#### Credit reporting

HSBC has been reporting negative information on Ms H's credit file for the period when the joint account was in unauthorised overdraft. This covers the period from December 2023 to May 2024. I've thought about whether this is fair.

HSBC has acknowledged that it made an error when it allowed the cash withdrawal. It was the cash withdrawal that took the overdraft from being within its limit to being unauthorised. There's no suggestion that Ms H was involved in the withdrawal, or that she's benefitted from it in any way. But she has suffered a direct impact in terms of negative reporting on her credit file.

In the circumstances, I agree with the investigator that the negative information should be removed for the entire period that it has been reported.

#### **Putting things right**

To put things right, HSBC must:

Remove any negative information relating to the joint account from Ms H's credit file

Pay £150 compensation to Ms H (if not already paid)

**My final decision**

My final decision is that I partially uphold the complaint. HSBC UK Bank Plc must take the steps I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 29 October 2024.

Emma Davy  
**Ombudsman**