## complaint

Mrs M complains that Bank of Scotland plc (trading as Halifax) failed to remove her name from a joint account she held with her husband and unfairly holds her liable for the overdraft debt.

## background

Mrs M opened a joint Halifax account with her then husband, Mr S, in 2008. She says that Mr S arranged an overdraft facility on the account without her knowledge or permission. She says she first became aware of the overdraft facility in 2010, when she happened to see an account statement.

Mrs M says that she went in 2010 to the Halifax branch and asked for her name to be removed form the account on the basis that she did not use it and had not agreed to the overdraft facility. She says that the person she spoke to promised that would be done.

Having gone abroad for a period, Mrs M says that, when she did not hear further from Halifax after her return, she assumed things had been sorted out. She found out that was not the case when the debit card on her sole account was declined in November 2010 – because Halifax had taken money out of her sole account and paid it into the joint account.

Mrs M says that she and Mr S went to the branch, where they completed further paperwork and were again assured that her name would be removed from the joint account. Mrs M separated from Mr S in July 2012.

In August 2014 Mrs M received a letter from a collections agent, seeking repayment of the joint account debt. She says that, until then, she had been certain that she was no longer associated with the account and had only later discovered it showing on her credit file.

Mrs M says that she does not consider Halifax is entitled to ask her to repay the debt in the circumstances, and also says that the separation agreement she later entered into with her husband makes clear what debts she is responsible for – and that does not include the debt on the joint account.

She considers that Halifax's failure to remove her from the joint account has damaged her financial and professional standing, affected her ability to get credit and added to the costs of her matrimonial proceedings.

Halifax says that it could only remove Mrs M's name form the account if it was brought into credit – which it was not. It says that it sent notifications about the account to the address it held for her, and considers that the separation agreement between Mrs M and Mr S does not bind it to release her from the account. It sent Mrs M a cheque for £150 in consideration of the complaint.

As things were not settled, Mrs M brought her complaint to this service, where an adjudicator investigated it. From the evidence, the adjudicator was satisfied that Mrs M was liable for the overdraft on the joint account even though she had not applied for it.

However, the adjudicator felt that some additional compensation should be paid to Mrs M to reflect that communication with her about the account had at times been poor. The adjudicator assessed a further £200 as being a fair amount.

Halifax agreed to the proposed settlement. Mrs M did not agree and said, in summary:

- She did not accept the initial £150 cheque and, if the ombudsman agrees with the adjudicator, then she will want the old cheque stopped and a new one issued for the full amount.

- She does not remember signing anything to agree that she would accept the terms of the account. She denies that she and Mr S asked for the type of joint account where either could operate the account independently, and wants to see something in which she agreed to that, and which bears her signature.

- In any event, at that time her English was not good enough to enable her to understand something like that. If she had realised that this was a term of the account, she would have objected immediately. She had no notice from Halifax that she had agreed to take out credit.

- Halifax promised her in 2010 that her name would be removed from the account. There is no doubt about that, and this is what should have happened.

- Halifax told her that if a legally binding agreement was produced requiring it to release her from the account, it would do so. She has produced a legal document, and Halifax should do what it promised – it has kept changing its mind on that point.

- Halifax should have frozen the account when she first asked to come off it. It was very unfair for Halifax to allow the debt to increase, and this is now showing on her credit report.

- Mr S wants to take sole responsibility for the debt, but Halifax refuses. She is caught between the two and it is unfair. She has no reason to look to her husband to repay the debt – he has already agreed it is his debt.

- Her financial and work standing has been badly affected by this, and the worry has affected her health.

From my review of the complaint, I considered that Halifax should have taken more positive steps when it first because aware (in July 2010) that Mrs M was not in agreement with the overdraft on the joint account.

Applying standard good banking practice, I concluded that Halifax should have crystallised Mrs M's liability for the joint account debt at that time, rather than allowing Mr S to continue to increase the debt and holding Mrs M liable for the higher amount.

The debt outstanding in July 2010 was £2999.65, and that was the amount which I considered Halifax was entitled to regard Mrs M as having joint liability for. It also seemed fair to me that Halifax should change the information registered on Mrs M's credit file to reflect the lower liability.

Halifax agreed to do that, in addition to paying the extra £200 compensation. Mrs M considered the new offer but did not feel able to accept it. She said she had never admitted this debt and still believed it had arisen because Halifax put in place the wrong mandate by mistake. She also said she had been misled by Halifax staff and considered that the total compensation of £350 was not enough, given what she had been through.

**my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Halifax can't provide the original account-opening form – but I accept that this is because of passage of time and I am not persuaded that it should be regarded as suspicious in this case. Ordinarily, a joint personal current account can be operated by either of the account holders independently, and both account holders will be jointly and severally liable for any debt on the account. This is set out in the standard terms and conditions of the account.

But it is also possible for the account holders to elect to have the account set up so that they cannot operate it independently, and both signatures are required. That would also have the effect that neither account holder could arrange an overdraft facility on their own. Mrs M says that this is the type of account she and Mr S intended to take, and that she believed Halifax had set up.

But that cannot be right, because Mrs M says she remembers that she and Mr S each got their debit cards for the account when it was first opened and she assumed that all was well. If Mrs M had asked for an account which required both signatures to operate it, she and Mr S would not have expected – and would not have been sent – cards that allowed either of them to draw on the account independently.

Mrs M does not seem to have questioned why she was never asked to authorise any drawing on the account from when it was opened in 2008 to 2010 (when she says she first became aware of how the account had been set up). Given that she knew the account was open and in use, that should have seemed strange to her if – as she says – she had asked for an account that required both signatures.

Mrs M has recently said that the standard of her English in 2008 was such that she would not have been able to understand the account terms and conditions. But there is no suggestion that she told Halifax, at the time, that she could not understand the terms.

Taking everything together, I find it more likely than not that Mrs M is mistaken in her recollection that she told Halifax that she wanted the joint account set up so that both signatures were required. I find on a balance of probabilities that Mrs M opted for the more usual 'either to sign' arrangement on the account.

So I am not persuaded that Halifax made a mistake in the way it set up the account. But I consider that it failed to apply good banking practice when it let things slide after Mrs M had made clear in July 2010 and she was no longer prepared to take joint liability for the overdraft.

Halifax was not obliged to release Mrs M from all liability for the debt, but it should have crystallised her joint and several liability at that point. Mrs M has told us that she was not in a position in 2010 to pay the debt, and I accept that she could not have done anything differently to avoid the debt affecting her credit file, but her liability would at least have been limited.

Halifax has now accepted that this would have been appropriate, and has offered to limit Mrs M's liability to the July 2010 balance of £2,999.65. That reduction will also be reflected in Mrs M's credit file.

I consider that is fair in all the circumstances. I appreciate that Mrs M and Mr S have agreed (as between them) that she will not have to pay the overdraft debt. But there has been no court order requiring Halifax to release Mrs M from her liability on the account, and Halifax is not a party to the matrimonial proceedings between Mrs M and Mr S. Mrs M is mistaken in her understanding that the separation order also binds Halifax.

Halifax has also agreed to pay Mrs M a total of £350 in respect of trouble and upset. I consider that to be a fair and proportionate amount, given that I have found Halifax did not make a mistake when opening the account. I note Mrs M's preference for a fresh cheque for the total amount, which I have incorporated into my award.

Finally, I have also included provision in my award for the fair apportionment of any money that Halifax may have taken from Mrs M's sole account, after July 2010, and paid into the joint account.

**my final decision**

My final decision is that I uphold this complaint in part and I direct Bank of Scotland plc (trading as Halifax) to:

- limit Mrs M's joint and several liability for the debt to £2,999.65;
- reduce that liability further by any amounts that Halifax took from Mrs M's sole account after July 2010 and paid into the joint account;
- amend the information on Mrs M's credit file about the debt to reflect the reduced liability; and
- stop the original compensation cheque and issue a fresh cheque to Mrs M for £350.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 4 April 2016.

Jane Hingston
**ombudsman**