

complaint

Ms M complains that HSBC Bank Plc is holding her liable for a debt on a joint current account following her ex-husband's bankruptcy.

background

Ms M held a joint bank account with her ex-husband. When they separated, Ms M says that her ex-husband told her that she had been removed from the account.

HSBC wrote to Ms M on 9 June 2010 in response to a call it had received querying why Ms M had not been removed from the account. HSBC apologised that she had been misinformed previously about how to remove herself from the account and advised her how to do so. Ms M says she did not make this complaint, nor did she receive that response from HSBC.

Ms M's ex-husband was declared bankrupt in May 2012 and HSBC sent a final demand to Ms M in May 2012 for immediate repayment of the outstanding debt of £2,560.26. Ms M complained to HSBC, saying did not know about and was not responsible for the debt.

In response, HSBC referred to the letter it had sent Ms M in June 2010 and advised that the correspondence address for the account had been set to her ex-husband's address at his request. It said that, because she had remained a party to the account, Ms M had always been liable for any debit balance, regardless of whether or not she had run up the debt herself.

Our adjudicator did not uphold the complaint. She concluded that HSBC had told Ms M how to go about removing herself from the account but that she had not done so and that therefore she was rightly liable to repay the outstanding debt.

Ms M did not accept this outcome. In summary, she said she had no recollection of making a complaint in 2010 and that she had not received HSBC's response. She maintained that she should not be held liable for the debt.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Generally, joint account holders are jointly and severally liable for any debts, regardless of which account holder incurs them. This is a fundamental legal principle and is also contained in HSBC's terms and conditions. If, as in this case, one account holder is declared bankrupt, the liability passes to the remaining account holder(s). As such, if HSBC did not receive an instruction from Ms M and her ex-husband for her to be removed from the account, it follows that she is liable for the debt.

Ms M wrote in her letter of complaint to HSBC that her ex-husband had told her that her name had been removed from the account. However, this appears not to have been the case and indeed could not have happened as HSBC would have required the authority of both Ms M and her ex-husband. I cannot hold HSBC responsible for what Ms M's ex-husband told her had happened.

Ms M has said she did not receive HSBC's letter in June 2010 advising her how to remove herself from the account and, in any event, she did not make this complaint.

HSBC has provided evidence that this letter was sent to Ms M, together with a previous letter acknowledging the complaint. Its records indicate that the complaint was received by telephone and that it was Ms M calling. The call notes mention that Ms M was aware that she was still a party to the account and that she had been advised incorrectly in October 2009 how to remove herself from it.

I find this to be persuasive evidence that Ms M did make the complaint in 2010 and that she was aware that she was still registered as a joint account holder. If, as she says, she did not receive HSBC's response, I would find it reasonable for her to have pursued the matter further at that time.

Until the final demand letter in May 2012, no correspondence appears to have been sent to Ms M's address other than the acknowledgements of and responses to her complaint in 2010. It appears that Ms M's ex-husband asked for all correspondence to be sent to him alone.

HSBC's terms and conditions allow for either joint account holder to provide instructions, including correspondence preferences, without the authority of the other account holder(s). The mechanism to prevent this is for the account to be registered formally as being in dispute. Had Ms M or her ex-husband told HSBC there was a dispute, any account activity would have had to have been authorised by both. However, as HSBC was not notified of a dispute, I cannot find that it acted incorrectly in accepting Ms M's ex-husband's instruction to send correspondence to him alone or by allowing him to continue using the account.

my final decision

My final decision is that I do not uphold this complaint.

Garry Hunter
ombudsman