

complaint

Ms B has written to us about a joint account she and her ex-husband set up with HSBC Bank Plc. The court order from their divorce says that Ms B and her ex-husband agree to be liable for half of the debt each and the account should then be closed. Ms B is unhappy because HSBC refuses to remove her name from the account, even though she has offered to pay half off.

background

Ms B and her ex-husband have a joint account with HSBC which is about £3500 in debt. During divorce proceedings it was agreed between them that they would each be responsible for half the amount in the joint account, which should then be paid off and closed. This agreement between them was confirmed by a court order.

Ms B says that she has tried twice (once in branch and once by writing to head office) to pay off half of the debt and remove her name from the account. However, HSBC are unwilling to remove her name from the account without her ex-husband's consent. Nor are HSBC willing to reassure Ms B that they will not pursue her for the remaining debt if her ex-husband does not pay it off. HSBC have written to Ms B's ex-husband but have so far not received a response.

HSBC say that the terms and conditions on the account make clear that both Ms B and her ex-husband are liable (both jointly and separately) for the full amount. In line with these terms and conditions, HSBC say that they cannot remove Ms B's name from the account without her ex-husband's signature. HSBC has also confirmed that they cannot close the account until the balance is nil or both parties sign the mandate.

Ms B feels it is unfair that she may be pursued by HSBC for (what she considers to be) her ex-husband's half of the debt even if she pays "her half" in line with the court order.

Ms B also wanted to complain that, in spite of their current position, HSBC did not require her signature when they accepted her ex-husband's request to freeze the account last year. Mr B was then able to erroneously withdraw money from the account, but HSBC have since acknowledged this error and repaid the money to Ms B.

Our investigator did not think he could tell HSBC that they had to remove Ms B's name from the joint account upon payment of her half of the debt. He also did not feel he could tell HSBC that they should promise Ms B that they would not pursue her, as this was not in line with their policy. The investigator also confirmed to Ms B that the Financial Ombudsman Service is unable to look at her previous complaint as the decision was made over six months ago.

Ms B did not agree that there was nothing more HSBC should do. She understood that the Financial Ombudsman Service could not look at her earlier complaint, however she still felt it was relevant to her concern that HSBC may not follow sensible procedures in their attempt to reclaim this debt. Ms B does not feel it is fair that HSBC can ignore the court order and leave open the option of pursuing her if they fail to recover the remaining portion of the debt from her ex-husband.

So I have to come to a final decision.

my findings

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

I really sympathise with Ms B's concern that upholding her part of a court approved agreement may leave her open to being pursued by the bank through no fault of her own. I understand why Ms B is frustrated that she cannot follow the plan laid out in the agreement without her ex-husband giving his consent again to HSBC. She clearly wants to move on from the divorce. However, I am also clear that HSBC are not bound by a court approved agreement to which they were not a party and to which they did not agree.

HSBC's terms and conditions clearly state that both parties must provide consent to close a joint account or transfer the account to one of the parties. HSBC's refusal to remove Ms B's name from the account without her ex-husband's signature is therefore in line with their procedures which I think are reasonable and in line with normal banking practise with regard to joint accounts.

It would be highly unusual for HSBC to transfer a joint account to a single mandate without the signature of both parties. I also see that it is not possible for HSBC to close the account without the consent of both parties and while there is still outstanding debt. It is therefore reasonable for HSBC to refuse to do so.

Having said that, if Ms B does pay "her half" of the debt, and her ex-husband does not co-operate with regard to the remainder, I would expect HSBC to think very carefully and compassionately before actively pursuing Ms B, rather than her former husband, for the remainder in circumstances such as these. If they were to pursue Ms B, then Ms B would have to potentially recover that sum from her ex-husband through further litigation, which I accept would be very stressful and perhaps costly for her.

This is a decision I have made with some reluctance because of my sympathy with Ms B's situation but is I feel fair and reasonable to both Ms B and HSBC.

my final decision

For the reasons I have given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 8 September 2018.

Yours sincerely

Satnam Viridi
ombudsman