

## **complaint**

Mrs P complains that Bank of Scotland plc (trading as Halifax) is wrongly holding her liable for a credit card debt.

## **background**

Halifax pursued Mrs P – directly, and also through collection agents – in relation to a credit card debt. Mrs P says that, in spite of several requests, Halifax will not provide her with a true copy of the original credit agreement and a statement showing how the debt is made up.

In the circumstances, Mrs P says she does not recognise any debt to Halifax and does not consider that Halifax can ask her to pay. She has also more recently told us that the debt was created in her name by identity theft.

Halifax said it had sent Mrs P a reconstituted agreement showing the current terms and conditions and a copy of the original signed application form. But it said that, as it is not currently able to provide the full original terms and conditions, it will not seek to enforce the agreement through court. Mrs P did not consider this situation to be satisfactory and brought her complaint to this service where an adjudicator investigated it.

From the evidence, the adjudicator was not persuaded that Halifax could not ask Mrs P to repay the debt. The adjudicator concluded that Halifax was not obliged to write off the debt or to remove adverse credit reference information about it.

Mrs P did not agree with the adjudicator and said, in summary:

- It's not possible for the adjudicator to make a proper assessment of whether the signature on the application form is genuine without seeing the original. Anyone could have copied, traced or photocopied her signature onto the application form. She did not sign it.
- She went through an acrimonious divorce and this is one of the financial problems that came to light then. The way the card was used, and the repayments made, are consistent with the circumstances of her 20-year marriage during which her former husband ran the household. She never saw any statements for the account, and it was probably taken out in her name by her former husband.
- If Halifax wants to pursue this debt, it must comply with all the relevant law and rules. Halifax alleges that the debt exists and it is for Halifax to prove that. It is unfair to place the burden of proof on her.
- Halifax has only recently registered adverse information about this debt, after it said that it would not enforce the agreement in court. This is a final attempt by Halifax to harass and intimidate her into paying the debt, and could result in difficult financial consequences for her.
- She is entering a notice of correction with the credit reference agency, and would like the ombudsman service to exercise its power to make Halifax remove the adverse information and pay her compensation.

- She is also unhappy at the way the collections agents have dealt with things and expects the ombudsman service to direct those companies to apologise to her and pay her compensation.

### **my findings**

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

This is not a court, and we do not apply a burden of proof in the way a court would. Instead, we consider all the evidence that is collected during our investigation and decide what the fair and reasonable outcome is. When deciding the merits of a case, I am required to have regard to all the circumstances including (though not limited to) any relevant law, rules and codes.

The credit card account was opened in December 2001 and Halifax has provided a copy of the original consolidated fast track application form and agreement, which bears a signature. That signature appears to me to match the signatures Mrs P has given on her complaint form and on other pieces of correspondence. I appreciate the points that Mrs P has made about signature comparison but, even looking at copies, the signature appears fluent and unforced.

The account continued to be used until June 2012. Halifax has provided copy monthly statements which I am satisfied were sent out to Mrs P during the period at addresses which tie up with those she has given us. Those statements show that the monthly repayments for the card account were made by direct debit.

Mrs P says that, at the time, she was the main breadwinner and her husband dealt with all household matters including their bank accounts. Mrs P has explained that she did not look at bank statements, so would not have seen the (often substantial) monthly repayments being made to the credit card. More recently, she has said that her former husband must have fraudulently taken out the credit card account in her name.

I have considered Mrs P's evidence on this point. From what I have seen, she did not previously tell Halifax that the application and agreement had been forged by her former husband without her knowledge – she disputed it on the basis that Halifax could not produce the original signed agreement and other documentation she had asked for.

When she first brought her complaint to this service, Mrs P was not specific about the identity theft point and made a more general reference to the account being one of several problems that came to light after her divorce. Only recently has she been specific about whom she alleges to have taken the account out in her name.

After careful consideration I find on a balance of probabilities that Mrs P either made or agreed to the application for the credit card. I am not persuaded that Halifax is obliged to write off the debt or to remove credit reference information about it.

I appreciate Mrs P remains of the view that the debt is unenforceable at law. But that is a separate matter, which only a court (and not I) can determine. In any event, Halifax has already said it will not try to enforce the debt in court.

Halifax instructed four different collections agents in relation to this debt, and Mrs P has also complained about aspects of their conduct. But this complaint (and, therefore, my final decision) relates only to acts and omissions of Halifax.

**my final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 29 December 2015.

Jane Hingston  
**ombudsman**