

complaint

Mrs H and Mr H complain that Lloyds Bank PLC is pursuing Mrs H for a debt taken out on behalf of Mr H's business account. Mrs H says she isn't a partner of the business or the bank account and therefore shouldn't be liable. Mrs H in particular thinks Lloyds Bank PLC has amended their records.

background

Mr H set up a business in 1998. Around 2001, he opened up a business account with Lloyds. Lloyds said this was set up as a partnership account with both Mr H and Mrs H as joint account holders. But Mrs H says she has never been a partner of Mr H's business – only an administrator. So she doesn't think she is a joint account holder as Mr H is a sole trader.

The account had an overdraft facility of around £70,000. This facility was set up and agreed to by both Mr H and Mrs H. And in 2004, a legal charge was secured on the debt, by both parties, for an investment property.

Throughout 2016 and 2017, the business account entered into a lot of borrowing. Lloyds extended the overdraft facilities a number of times and asked for extra information relating to the finances of the business in 2017. Due to a lack of information, Lloyds decided to withdraw the overdraft facility in 2017. And a few months later, the account was transferred to Lloyds' Recovery team.

Lloyds are pursuing both Mr H and Mrs H for the debt – because they say they are jointly responsible. But Mrs H doesn't agree.

When the complaint was first brought to our service, there were issues around the jurisdiction. However, Lloyds agreed to let us consider all of the events surrounding the circumstances of this complaint.

The adjudicator who looked at things didn't think Lloyds had acted unreasonably by pursuing Mrs H for the debt. She said that while the account application form and initial overdraft agreement wasn't available due to the amount of time that had passed, Lloyds had provided overdraft facility letters from 2011-2017 and some of these letters were jointly signed. The adjudicator was also satisfied the facility letters confirm both Mr H and Mrs H would be jointly liable for the debt. And she hadn't seen any evidence that Lloyds amended their records. So she was satisfied Mrs H was a joint account holder.

Mrs H didn't agree. In particular, she didn't think the adjudicator had considered how Mr H's business was known with HMRC – or their accountants.

As an agreement couldn't be reached, the complaint has been passed to me to review.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I agree with the adjudicator for broadly the same reasons. I've explained further below.

I appreciate Mrs H says she has never been a partner of Mr H's business – she's only ever worked for him as an employee, and more recently an administrator. She thinks the adjudicator should have considered how the business was known with HMRC or the accountants. But I don't think that's relevant. This complaint relates to the business account – and whether or not Mrs H was a joint account holder, and whether she can be pursued for the debt taken out by the business account. So while I appreciate her comments about her position in the company itself, I haven't commented on this in my findings.

What I have considered is whether I think Mrs H should be pursued for the debt of the overdraft on the business account. And, like the adjudicator, I think she should. I say that because while I haven't seen evidence of how the business account was initially set up, I've seen documentation from the last number of years which shows Mrs H's involvement in the account. In particular, I've considered the overdraft facility letters. I find them to hold the most relevance as the overdraft debt is what Mrs H is being pursued for.

The facility overdraft letters which Lloyds have provided range from 2011 to 2017. I've taken an example of one letter and the points in it which I find to be most relevant;

'We, Lloyds, are pleased to provide you Mrs H and Mr H with an overdraft facility...'

...

'Both of you are jointly and individually liable. We may take action against any or all of you to recover any sums owing to us under or in connection with this letter.'

...

'If you are unhappy with any of the conditions relating to your requested lending, please do not sign the document...'

The letter makes it clear that the overdraft for the business account has been provided to both Mrs H and Mr H. And it confirms that both parties will be held liable for the debt. I also consider if Mrs H wasn't happy to be held liable for the debt, she shouldn't have signed the document – as the letter suggests. But she did. And therefore, I can't say she didn't reasonably know she was liable. It may be that Mrs H didn't understand the liability – but again, I would expect her to ask questions around this rather than signing the document. I haven't seen any evidence to suggest she did and therefore I find Lloyds have been reasonable in holding her jointly responsible for the debt.

Lloyds have also provided evidence to show the account was set up as a 'partnership account'. I'm aware Mrs H disputes this. When we have two conflicting versions of events, I have to make my decision on the balance of probabilities, that is, what I think most likely to have happened. The evidence Lloyds has provided shows Mrs H is listed as a business partner for the business account. I appreciate she's not an actual partner for the company itself, but as I've explained above, I'm only considering how the bank account was set up.

The evidence goes on to show that Mrs H is a signatory on the account, and has 50% of ownership. That doesn't mean Mrs H is only liable for any debt, but also that she would be entitled to half of the account balance if it was in credit. Based on the evidence, I think it's more likely than not, the account was set up jointly with Mrs H and Mr H.

I recognise the impact Lloyds' actions have had on Mrs H – and I'm really sorry to hear of her anxiety. But in order to hold Lloyds responsible, I need to be satisfied that they've done something wrong. And based on the all of the circumstances, and the evidence I've received, I don't think they have. I consider the account was set up jointly with both Mrs H and Mr H as account holders for the business account. And I'm satisfied the overdraft was

lent to the business on the basis of both Mrs H and Mr H being liable. Therefore, I consider it reasonable that Lloyds are pursuing Mrs H for the debt.

I also haven't seen any evidence to show Lloyds have amended their records.

I appreciate Mrs H's strength of feeling about this, but I can't fairly say Lloyds have acted unreasonably. So I won't be asking them to do anything. If the debt is still an issue, I would urge Mrs H and Mr H to contact the relevant team within Lloyds to discuss repayment options.

my final decision

For the reasons I've explained above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr H to accept or reject my decision before 15 April 2019.

Hayley West
ombudsman