

complaint

Ms H complains that, after her ex-husband took out a joint loan without her knowledge, National Westminster Bank Plc ("the bank") is asking her to repay the debt. She wants the bank to take her name off the loan and compensate her for distress and inconvenience.

background

In 2005 Ms H and her ex-husband took out a joint loan for £14,000. In May 2006 a second joint loan was taken out for £20,000. Ms H says her ex-husband did this without her knowledge – and he has confirmed this to the police. The bank says that, as Ms H benefited from the money at the time, it will continue to ask her to repay the debt. Ms H's ex-husband has entered into an IVA. Ms H's name was taken off their joint current account in 2007.

The adjudicator did not recommend that this complaint should be upheld. He concluded that the money from the second loan had been used to benefit both parties, and so the bank was entitled to seek repayment from both. He also concluded that £200 was sufficient compensation for the fact that the bank took some time to provide Ms H with a copy of the loan agreement.

Ms H has responded to say that she has been the victim of fraud and is not responsible for the debt. She has asked for an ombudsman's review.

my findings

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

I can see that Ms H's ex-husband has admitted that he took out the £20,000 loan in his and Ms H's name without her knowledge. That might mean that the bank could not enforce the debt in a court of law, but this service is not able to make that decision as we operate an informal resolution service which does not take the place of court proceedings.

Having said that, were we to decide that Ms H did not take out the second loan – and I accept that she most probably did not – our remedy would be to return her to the position she would have been in prior to the loan being taken out.

When the loan was paid out, just over half of it was used to repay the joint loan that Ms H had taken out with her ex-husband in 2005. Ms H has not said that she disputes this first loan and I am satisfied that she was jointly and severally liable for this. The rest of the money cleared most of an overdraft on the joint account that Ms H held with her ex-husband.

The overdraft that was cleared appears to have accrued from normal living expenses – for example, mortgage payments. I am satisfied that the debt that was cleared was one for which Ms H, as one of the account holders, was jointly and severally liable. So, without the disputed loan in 2006, Ms H was already jointly and severally liable for more debt than the second loan replaced with the same bank.

That means that if the loan was deemed not to exist, the bank would be entitled to pursue both Ms H and her ex-husband for repayment of the debt – so I am satisfied that it is reasonable for the bank to pursue Ms H for it now. Whether the bank would receive judgement in its favour in a court of law is not for this service to decide.

As the bank is entitled to ask Ms H to repay the debt, I do not conclude that it should pay Ms H compensation for doing so. The bank has offered to pay Ms H £200 for the delay in sending the loan agreement, and I am satisfied that this is fair and reasonable.

my final decision

National Westminster Plc has offered to pay Ms H £200. My decision is that the bank should pay Ms H £200 in full and final settlement of this complaint.

Susan Peters
ombudsman