

complaint

Mrs N has complained that NewDay Ltd cannot expect her to pay a debt on a store card when the card was in her husband's name.

background

In 2010 Mrs N complained to the finance company responsible for managing the store cards of a specific store that they could not pursue her for debts on that card. This card was in her husband's name. Her husband had died in 2003 and the store card account records had never been updated. The finance company told Mrs N that it was a joint account and therefore she remained liable for the outstanding money.

This year that finance company advised Mrs N that the management of her account was transferred to NewDay. She complained that they could not transfer a debt which was not hers. NewDay stated that nothing had changed and that as this had been a joint account, she remained liable for the debt.

Mrs N brought her complaint to the ombudsman service. Our adjudicator did not recommend that her complaint was upheld and felt that the redress offered by NewDay's predecessor was fair. Mrs N has asked an ombudsman to review her case.

my findings

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

There are different aspects to this complaint. I have examined all of the evidence and below confirm my view on the central points. Specifically I have considered the letters Mrs N sent to this service after asking an ombudsman to review her case.

was this a joint account or not?

Mrs N has stated that there were two different store card accounts: one was joint and the other wasn't. She has provided a copy of an agreement that her husband took out in his own name in 1993. I don't dispute this but the store card account with the current debt pre-dates 1993. Although I have not seen the original credit agreement, I have reviewed the records provided to this service. I am satisfied that Mr and Mrs N took out a store card in 1979 in joint names. There is some confusion that the account numbers have changed but this is simply explained. Following a burglary, Mrs N and her husband were issued with new store cards which had new numbers on them. I am satisfied that these relate to the account she held with her husband.

Because of the passage of time, NewDay has only been able to provide us with transaction data for the account from 2005. It's worth noting that I am satisfied that Mrs N has used the store card for purchases and made regular payments. She does not dispute this is the case.

copy of the 1979 credit agreement

Mrs N asked for a copy of the original agreement but unsurprisingly this no longer exists. She therefore disputes that NewDay can charge her for the debt on the store card. She

relies on the advice she was given when she first complained in 2010. At that time she also amended the records, as this had never been done following her husband's death.

I accept that there is a legal argument around a debt not being enforceable without an executable copy of the credit agreement. However the ombudsman service is not a court service and as well as considering the law, we review cases on whether an outcome would be fair and reasonable.

She feels that she was given the distinct impression that she could not be responsible for the debt as the account was in her husband's name. This may have been the case but at all times Mrs N was aware that she was using the card and making regular payments. I consider it fair and reasonable that Mrs N is liable for this debt.

complaint handling

NewDay, or the company managing the account before them, paid Mrs N £150 in redress. They mistakenly refused to speak to her by saying that they had no authority to do so as this was not a joint account. I am sure this error has helped Mrs N feel that she was justified in pursuing her complaint. NewDay has apologised and confirmed this was an error. I am satisfied this is the case and that I consider £150 to be a fair offer in the circumstances.

I know Mrs N will be very disappointed by this decision. However, she is not bound by my decision. If she does not accept it, her legal rights remain intact.

my final decision

For the reasons stated above, my final decision is that I do not uphold Mrs N's complaint against NewDay Ltd.

Sandra Quinn
ombudsman