

Account mandates

2 May 2016

An account mandate, also known as an account signing authority, sets out who can use an account, including who can access information about the account.

A mandate is very straightforward if you are the only one operating an account. A little care is needed if there are two or more account holders, or if you let someone else operate the account.

A mandate sets out who owns the account. These individuals are often called ‘account holders’ or ‘account owners’.

The mandate also sets out who can operate the account and what access they have.

Authorised signatories

Account holders can let someone else operate the account. These people are often called ‘authorised signatories’. Most banks require account holders also be authorised signatories. For organisations like companies, trusts and partnerships, banks will often require a certain number of directors, trustees, partners or officers be authorised signatories, and have rules about how such people access the account.

Individual authorised signatories can use an account separately if the mandate says “several”, “any” or “either” authorised signatory can sign (that is, operate the account).

A mandate that requires “joint”, “both” or “all” (or in some cases “any two”) authorised signatories to sign or access the account together means one authorised signatory alone cannot use the account. Other authorised signatories must also authorise the transactions. A bank cannot allow transactions or other activity without the consent of the other holders.

Be clear about the type of access

You must be clear about what type of access you want authorised signatories to have. Do you want them to be able to access the account alone, or do you want them to act together? Consider this carefully before you set up an account – and before you sign the mandate check it carefully to ensure it accurately records how you want the account to be operated.

If you change your mind later on, and want to switch from one type to another (or want to add a new account holder) you may need the agreement of all account holders. If you have concerns about the operation of a joint account, contact the bank. It may freeze the account until you have resolved your differences. (See our Quick Guide: [Joint accounts and relationship breakdowns.](#))

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A bank must act in accordance with the arrangement you have specified. In general, transactions not in accordance with the mandate are unauthorised, and a bank is responsible for any resulting loss. If it can be established that a transaction in breach of mandate benefited the account holder, there is no loss. Sometimes, a bank will not be responsible for all of a loss if a customer has contributed in some way to the breach or failed to mitigate the loss.

Case note 1

Change to mandate did not apply to all accounts

Mr J complained to us that an instruction to add him as an account owner on all his wife's accounts had not been carried out by the bank.

The complaint stemmed from when Mrs J was terminally ill and in hospital. The couple's bank noticed Mr J had attempted to access one of his wife's bank accounts which he wasn't authorised to operate. It arranged for Mr J to be added as an account holder to that account. Because of her health, the bank arranged for the forms to be signed by Mrs J and witnessed in hospital.

A couple of months later, Mrs J passed away. Mr J discovered he had only been added as an account holder for her transactional account but not her term deposits. This meant the term deposit funds formed part of Mrs J's estate and Mr J would probably have to go to court to determine which family members were entitled to the money. If he had been added as an account holder to the term deposits as well, he would automatically have become the funds' owner upon his wife's death.

Mr J complained he had asked the bank to add him to all accounts but it had not done so. The bank maintained that it was only instructed to add Mr J to the transactional account, and it was only Mrs J who could authorise him being added to her accounts.

We reviewed the account mandate Mrs J signed and noted that only the transactional account was listed to be changed to a joint account. We told Mr J it was unlikely we could consider the bank had failed to follow Mrs J's instructions. Mr J accepted that we could not assist further and the case was closed.

Case note 2

Limitations on mandates

Ms H and her husband had a joint account with a mandate for "either to sign". When Ms H emailed the bank to change the mandate so that amounts of more than \$1,000 required "both to sign", the bank did not respond.

Several weeks later, Ms H's husband issued a cheque for \$10,000 from the joint account on his signature only. Ms H was aware of the cheque, had agreed to it, and understood it was to repay her husband's credit card debt with another bank.

Ms H found out several years later her husband had used the cheque for something else. A year later, she complained to the bank saying it had acted incorrectly in failing to contact her given her instruction to change the mandate for cheques for more than \$1,000. She believed the bank had

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changed the mandate as requested. Ms H also explained the reason for the change was because she suspected her husband of fraud. Ms H sought reimbursement of half the cheque's value.

The bank declined her claim, saying it was not possible to have different mandates for different amounts so it did not action Ms H's request. It also said it was not reasonable Ms H believed the mandate was changed as it had not confirmed this. Ms H was not satisfied with the bank's response and asked us to investigate.

We accepted the bank's view it was not possible to have different mandates for different amounts. However, we considered the bank was obliged to advise Ms H it could not change the mandate as she requested and it had breached a duty owed to her by not doing so.

Ms H was adamant she believed the mandate was changed after she emailed the bank, despite not receiving confirmation. We could not verify this because:

- she agreed her husband could issue the cheque
- she also knew she had not seen or signed the cheque
- at the time she did not appear surprised or concerned the cheque had been paid
- she did not raise concerns about the cheque payment with only her husband's signature
- she did not query whether in fact the mandate had been changed.
- the cardholder cancelled a recurring payment set up on the card account, but the merchant continued to process payments.

If Ms H believed her husband was defrauding her, it followed that she would have queried the cheque payment on his signature alone if she believed the mandate had been changed. However, she did not.

We also noted Mrs H suffered no loss because she had agreed the funds could be withdrawn. The bank had no responsibility for the fact cheque funds were not used for what she had agreed with her husband, even though she was concerned about that.

Ms H did not accept our findings and provided new information. She said she had written out a cheque for \$10,000 payable to her husband, and she and her husband had signed it. She believed her husband then wrote out another cheque with just his signature on it. The second cheque was paid by the bank.

We appreciated Ms H would have been doing her best to accurately recall what had occurred three years earlier. We also appreciated that the significance of particular events may not become obvious until later in an investigation. However, given the passage of time, we did not have sufficient confidence in Ms H's recollections about how the cheque came to be issued and were unable to uphold her complaint.

Case note 3

Breach of mandate

Mrs J complained about her bank allowing her ex-husband to take out a loan in joint names and open an account in her company's name without her permission when they were still together.

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They had a home loan secured by a jointly owned property. Mrs J was also the sole director of a company, XYZ Ltd. Unknown to Mrs J, her husband had applied for and was granted a further \$30,000 joint loan, and may have forged her signature to get it.

Mrs J had become unwell and Mr J took over XYZ Ltd's finances, at which point it appeared Mr J had been allowed to open and operate a company account with Mrs J listed as a sole signatory without her knowledge or consent.

Mr and Mrs J sold their property and repaid their home loan, including the \$30,000 loan. They later separated and their relationship property was divided. It was after the separation that Mrs J complained.

The bank investigated Mrs J's complaint and agreed her ex shouldn't have been able to take out the new joint loan or open another business account without her knowledge. But it did not consider she had suffered a direct financial loss because the funds had benefited her and XYZ Ltd.

When Mrs J brought the complaint to us, we looked at whether she had suffered loss and inconvenience because of the bank's actions. We found Mrs J knew about the loan by the time the property was sold and it appeared most of the surplus sale proceeds were invested into XYZ Ltd. It also appeared the additional loan was taken into consideration when dividing the couple's property. Therefore, we didn't think Mrs J had suffered a direct financial loss from Mr J taking out the loan.

However, we did think she may have suffered a loss from the unauthorised opening and operation of the company account. The bank demonstrated that some of the payments made from it were legitimate business expenses, but approximately \$9,000 was unaccounted for. The bank agreed to compensate Mrs J \$16,500 for direct financial loss, inconvenience and costs incurred, and the case was closed.

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