

The complaint

Mr F complains that Lendable Ltd are holding him to the terms of a loan agreement that he says he didn't enter into.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some key events here.

Mr F says that on the evening of 4 June 2022 he was out with friends. Late in the evening he realised his phone was lost or stolen. In the early hours of 5 June 2022, there were multiple unsuccessful attempts to log in to Mr F's mobile banking app (with his bank 'H'), resulting in the app being locked.

Mr F's app for an account he held with another business 'R' was accessed. And from there debit card 'top-ups' were made to credit the account with R, using the credentials from Mr F's debit card with H. There were also unsuccessful attempts to move money in this way. Ultimately a total of £4,510 was moved from the account with H to the account with R via this method.

Also overnight a £10,000 loan was paid into Mr F's account with H by Lendable, following an online application being made. And some of the funds moved to R came from this loan. Once the funds were in the account with R, card spending took place for approximately £4,500 which involved goods being ordered online before being collected in a store. In summary Mr F says he knows nothing about any of this activity with either H, R or Lendable. He says he's been a victim and didn't apply for the lending or authorise any of the payments. He says when he saw the transactions he reported it to each business. He also paid over £5,000 of the loan funds that had remained in his account with H back to Lendable. Mr F complained to all three businesses.

Lendable said they couldn't do more at the time as they were awaiting a copy of H's fraud investigation. H essentially said that Mr F should take this matter up with R, as the funds were all transferred into his own account with them and they deemed R to be the point of loss. R similarly didn't uphold Mr F's complaint.

All three complaints were referred to our service. The complaint about R has already been decided by one of my Ombudsman colleagues. A final decision was issued in December 2022 which didn't uphold the complaint. The Ombudsman said *"I consider it reasonable that [R] held Mr F responsible for the payments as being authorised."*

One of our Investigators considered the complaints about Lendable and H. They didn't uphold these either. For the complaint about H the Investigator thought it was more likely than not that Mr F had consented to the transactions from his account. And for the complaint about Lendable he didn't think them holding Mr F to the terms of the loan and pursuing him for the outstanding debt was unfair. Mr F strongly disagreed and asked for an Ombudsman to review his complaint.

In November 2023 I issued a provisional decision in which I said:

"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'm intending to reach the same overall outcome as our Investigator. But as there are some minor differences in my reasoning, I'm issuing this provisional decision to give everyone a further opportunity to comment before finalising my decision.

I'm aware of Mr F's linked complaint about H. But this decision only relates to whether Lendable have treated Mr F fairly and reasonably in all the circumstances.

Mr F's strength of feeling about this complaint is clear. And accordingly he's made some detailed submissions. I've read and considered all Mr F has sent in, but I won't be responding in similar detail. This isn't intended as a discourtesy and is just a reflection of the informal nature of our service.

Obviously I wasn't present when the online loan application took place. The evidence from Lendable shows that Mr F's genuine details were used in the course of the application. And Lendable say this was sufficient for them to process and agree the application. Particularly as the funds were paid into an account in Mr F's name. Mr F says he had no involvement in this and only discovered it later. In these situations, I have to make my findings on balance as to what I think is most likely to have happened.

An important factor in this is what happened to the loan funds once they'd been credited to Mr F's account with H. On this basis I think Lendable's initial response that they were awaiting the outcome of the fraud investigation by H was fair. Some of the funds were moved (via debit card top-ups) to Mr F's account with R. And from there, goods were ordered online for in person collection. My Ombudsman colleague has already decided that R considering those purchases to be 'authorised' payments was fair and reasonable. Similarly, as well as this complaint about Lendable, I've also considered Mr F's complaint about H. And I'm currently intending to likewise find H treating the payments to Mr F's account with R as authorised is fair.

Mr F's testimony is that he doesn't know exactly how his phone was lost / stolen. He has suggested that he must have been pick-pocketed on the night out in question and that this could have been done soon after he'd put his unlocked phone in his pocket, prior to the phone locking itself again. He has also said that his emails within his phone weren't password protected and that they would have included a great deal of personal information about him, as he'd relatively recently moved house and documents relating to this would have been present. Mr F also said that the PIN for R's app was something that could be guessed as it was based upon some of his personal information.

Again I wasn't present when these payments took place. So I have to make my findings on the balance of probability. That being, what I think is most likely to have happened, considering all the available evidence. The version of events Mr F has suggested to account for the compromise of his phone isn't impossible. I appreciate that fraudsters can be sophisticated and opportunistic as Mr F has said. I also appreciate the lengths Mr F has gone to in pursuing his complaint, which includes reporting matters to Action Fraud, writing to his MP and attempting to obtain CCTV from at least one of the bars he attended that evening.

Whilst I can't be sure why this happened, it does seem strange that a third party would have the loan paid into the HSBC account rather than the account with R (which they had access

to) knowing it would be more difficult to disperse these funds.

Taking everything into account, I don't think the most likely explanation for what went on is that Mr F's security to his phone and app with R was compromised. This isn't a case where Mr F's phone was snatched from him whilst unlocked. If a device has biometric security and this is used (as Mr F says it was) then I think most people commonly use that functionality rather than regularly entering their passcode, negating the likelihood of it having been observed and used by a third party to access Mr F's phone. And I think most people habitually lock their phones when putting them away or into a pocket. But even if that wasn't the case, I think the chances of someone pick-pocketing Mr F at that exact moment, and then managing to keep the phone active long enough to change any auto-lock settings or otherwise bypassing the security, as well as correctly guessing the PIN for his app with R (even taking account of information that he says would have been available in his emails), whilst not impossible, on balance is unlikely.

So against this backdrop, I'm not persuaded that the most likely explanation for the loan is that Mr F had no knowledge of it as he claims. I think it's most likely that he had involvement in the taking out of the loan such that Lendable holding him to its terms isn't unfair nor unreasonable.

Mr F has made a number of further points, these include the time at which his loan application was processed (that being the early hours of the morning). He's questioned how many applications are received at that time and why it didn't involve a greater level of scrutiny by Lendable. He's also referenced that there were a number of attempts to access a third-party website through which loan applications can be processed. As well as the fact that a different lender received a further application which he's evidenced he cancelled prior to it being paid to him. He's also mentioned that he doesn't think Lendable's identity checks were sufficient, and he's questioned whether confirmation of payee was used when crediting the funds to his account with H. I've taken account of all that Mr F has said. But none of these points impact my overall intended decision, given I think it's more likely than not that Mr F had involvement in the loan application.

Mr F has also questioned whether Lendable could be liable for the purchases made (from his account with R) on the basis of Section 75 of the Consumer Credit Act 1974 (s.75). In limited circumstances s.75 allows someone buying goods and / or services on credit to claim against their credit provider over the actions of a third-party supplier. But here, the goods in question weren't purchased on credit. The purchases were debit card spending from an available balance in the account with R. Whether that cash balance came from borrowed funds, doesn't change the fact that the purchases weren't made on credit. And as such, there is no valid s.75 claim against Lendable in relation to purchases made with the loan funds they provided.

My provisional decision

For the reasons outlined above, but subject to any further information I receive from either Mr F or Lendable Ltd, I'm not intending to uphold this complaint."

Lendable responded and said they accepted my provisional decision. Mr F responded with some further comments that I'll address below.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and

reasonable in the circumstances of this complaint.

Mr F says that Lendable's only response was to confirm that they were awaiting the outcome from H. He says what happened to the funds should be separate and distinct from whether he made the application or signed an agreement. I don't agree. I think what happened to the money is an important consideration when making a judgement about whether the loan was applied for. So I maintain that I don't think Lendable acted unfairly when wanting to see evidence from H. And by default, in the meantime they'd held Mr F to the terms of the agreement, which formed the basis of his complaint.

Much of Mr F's further submissions involve the affordability of the loan. He says the creditworthiness assessment was inadequate and explained his reasons for this. However, the crux of Mr F's complaint was about Lendable's decision to hold him liable for the loan, not that they had acted irresponsibly by lending to him. So whilst Mr F also highlighted that I said my decision was about whether Lendable had treated him fairly and reasonably in all the circumstances, that was in the context of the complaint he'd made, that being about being held to the terms of an agreement he says he didn't enter into. As such, I won't be commenting on whether or not the lending was irresponsible and will be keeping my findings to the liability decision. If Mr F believes the lending is unaffordable for him, there is nothing to prevent him taking this up with Lendable and if that doesn't resolve matters for him, it may be something our service could later assist with (subject to our jurisdiction rules).

Mr F made a further point about why he thinks the lending was paid into the account with H rather than R. He's also pointed out that there were multiple applications for lending throughout the night. He says it wouldn't make sense if he'd made the initial application, for him to follow on with further ones and he thinks this is indicative of someone else trying to obtain multiple loans. I've considered all of these points, but as I'm supportive of Lendable's decision, I don't think any of these make a material difference. As I think Lendable's conclusion that Mr F was involved in the loan applications was reasonable, any further checks at the time wouldn't have resulted in him being in a different position. And whilst the account into which the funds were paid is part of the overall picture, it isn't a key determining factor in my decision.

Mr F's further submissions include that his phone was only passcode protected. He says there was no biometric security and he doesn't remember advising there was. My provisional decision referred to there being biometric security on the phone at the time. This was based on a call between Mr F and H on 6 June 2022. The context of the call was that Mr F was reporting that he didn't recognise the activity on his account. During that call the following exchange took place:

HSBC: *"May I know what type of phone did you lose sir? Was it an android or an iPhone?"*

Mr F: *"Android."*

HSBC: *"Was there a fingerprint scanner on that phone?"*

Mr F: *"There was yes and a passcode, so I'm not too sure how this has happened to be honest with you."*

I've shared this exchange with Mr F and he says his answer meant that his phone had the functionality to use a fingerprint scanner but it wasn't in use. He also clarified that it is not a two-stage process and either a fingerprint (if in use) or a passcode can be used. I accept that it's common, where a fingerprint scanner is in use, that the option usually exists to also use a passcode.

But in the context of the conversation Mr F was having with H, I think it's more likely than not that Mr F meant that he did use biometric security on his phone. Had it been an option that wasn't in use, I think he would have stated this more clearly at the time. Particularly as the

clear purpose of the question was to ask about the security features in use to help establish how someone might have accessed his phone. Ultimately, given my interpretation that I've explained above, I'm more persuaded by this phone call which took place around the time rather than what Mr F has said more recently. And given this finding, for the reasons previously explained, I'm still not persuaded there is a plausible explanation for how a third party could have accessed Mr F's phone which enabled all the further activity to take place.

Mr F has also speculated that rather than perhaps being pickpocketed, his phone could have been taken or lost whilst in a taxi returning him to his hotel at the end of the night. He also explained that he had been drinking on the day in question and thinks it's a possibility that the taxi driver could have taken advantage of the situation. However, Mr F's previous submissions to our service include an email in June 2023. In that email he said he'd been in the bar from which he later sought CCTV evidence and that he left *"around midnight where my stay at the bar was short, due to the realisation I didn't have my device."* But Mr F is now seeming to suggest that he did have his device when leaving the bar to get a taxi back to his hotel. So whilst I acknowledge Mr F has said he was drinking that day, the impact of him saying different things at different times makes it difficult for me to treat his testimony evidence as persuasive or reliable.

I accept that this is a balanced case and that I can't know with absolute certainty what happened. And also that the version of events that Mr F has described isn't impossible. But taking account of all the information and evidence provided, I don't think the most likely explanation is that the Lendable loan was taken without Mr F's knowledge or involvement. And as such I'm not going to direct that Lendable need to do more to resolve this complaint.

My final decision

For the reasons outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 18 January 2024.

Richard Annandale
Ombudsman