

The complaint

Mrs R complains that Novitas Loans Ltd is unfairly refusing to remove her name from a loan. She's represented in her complaint by her daughter, Mrs H, though I hope she will understand that for ease of reading I'll refer to any correspondence or submissions made as being received from Mrs R.

What happened

In 2018 a loan facility was arranged with Novitas in connection with a potential 'no win, no fee' legal claim Mrs R was considering against a cavity wall insulation company "C". Although the legal action appears to have been discontinued at an early stage, legal disbursements were drawn on the facility in favour of a third party solicitor "H", who was dealing with the claim. The total amount drawn was £3,220.80, though the loan has accrued interest since then.

Novitas has told Mrs R she is not liable to repay the balance and that it will never seek repayment from her. However, it's unwilling to remove her name from the loan as it forms part of ongoing litigation against the loan insurer in which it is currently engaged.

As a consequence Mrs R continues to receive correspondence relating to the loan balance, leading to distress and the inconvenience of repeated requests to remove her name from the loan. She has previously raised the actions of H with the Legal Ombudsman, whose findings included that H ensuring she wasn't responsible for the loan and that it would be discharged.

Our investigator noted Mrs R's concerns and the frustration she was experiencing but felt that Novitas wasn't acting unfairly given the wider circumstances. She considered the assurances Novitas had given were fair, and that the account statements it was issuing were due to its regulatory obligations. Mrs R didn't accept our investigator's conclusions and asked for this review.

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.

Part of my role involves considering whether a complaint can be resolved informally, without the need for a formal determination. With this in mind and given that Novitas has already acknowledged that it will not hold Mrs R liable for the loan, I approached it to see whether it would be willing to remove Mrs R's name and cease further communication with her about the loan as a way of resolving the dispute.

Novitas remained unwilling to do so. By way of explanation it has provided me, in confidence, with additional information relating to the ongoing litigation against the insurer. Given the obvious sensitivities surrounding litigation, I can't share this information with Mrs R, though I appreciate her previous comments about the apparent lack of transparency from Novitas in this respect. I would like to reassure Mrs R and her daughter that in my discussions with Novitas we have explored other reasonable alternatives, including

assigning the loan out of Mrs R's name. Regrettably, this isn't a viable option.

I have to balance the competing positions of Novitas and Mrs R. On the one hand, I can fully understand the frustration and upset Mrs R is experiencing from having the loan in her name despite her extensive efforts to establish the accepted position that she is not responsible for paying it back. On the other, it would be unreasonable for me to require removal of Mrs R's name from the loan if doing so prejudiced Novitas's position in the litigation, as it could potentially happen here.

Novitas has provided Mrs R with assurances that it will never require repayment from her. Even if the loan documents permitted it to do so, the position Novitas has taken would be likely to prevent any attempt it did make to change that position. I've no reason to think Novitas will change its stance. There's no record of the loan on Mrs R's credit file, and it doesn't appear to have had any impact on her credit score, which she confirms as very good. Novitas continues to send annual loan statements, though as our investigator noted, this is to comply with its regulatory obligations. While I acknowledge that Mrs R finds this upsetting, that doesn't mean I can fairly put Novitas in breach of that requirement.

The current situation is, I accept, far from ideal. But I'm satisfied that the assurances Novitas has provided, along with the lack of material impact on Mrs R's credit status, represent a reasonable balance when set against the concern she has at the loan remaining under her name. In the circumstances I consider that Novitas has demonstrated that it has had due regard for Mrs R's concerns and is treating her fairly, even if it is unwilling at this time to agree to remove her name from the loan.

My final decision

I recognise that this outcome is likely to be disappointing to Mrs R and her daughter, though I hope my explanation goes some way to helping them to understand why I've reached the conclusion I have. But for the reasons I've set out here, my final decision is that I don't require Novitas Loans Ltd to take any further action to resolve Mrs R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 1 December 2023.

Niall Taylor
Ombudsman