

The complaint

Ms S has complained that Lendable Ltd allowed a loan to be taken out in her name which she says was the result of ID theft.

What happened

Both sides are most familiar with the case, so I'll summarise things in brief.

In summer 2022, a loan of £12,000 was taken out with Lendable in Ms S's name, alongside a loan with another company.

Ms S spoke to Lendable about it later that same day. She explained she'd taken the loan out herself, along with a loan at another company. She confirmed she'd received the funds, and paid the funds on herself, in order to invest in crypto. But the investment scheme had turned out to be a scam, and the scammers had taken the money.

In later correspondence, Ms S changed her testimony, and said the scammers had applied for both loans without her knowledge or consent.

Lendable held Ms S liable for the principal of the loan as they could see it had been applied for using her genuine details, she'd opened their correspondence and verified her email and phone before agreeing to the loan, and she'd previously confirmed she took it out. But they offered to write off the interest and fees in view of the fact she was scammed.

Ms S came to our service. Our investigator looked into things independently and thought it was fair that Lendable held Ms S liable for the principal of the loan but not the interest or fees. But they also proposed that Lendable remove it from Ms S's credit file.

Neither side agreed, so the complaint's been passed to me to decide.

I sent Ms S and Lendable a provisional decision on 6 July 2023, to explain why I thought Lendable had already made a fair offer to resolve things. In that decision, I said:

First of all, I understand that Ms S fell victim to a scam here, and so she has my sympathy. I appreciate that this cannot have been an easy time for her, and I'm grateful to her for being open with our service about the effect the matter had.

I will also clarify that I have read and carefully considered everything that both sides have said and provided. But we are an informal alternative to the courts, and we don't look at things in quite as formal a way as the courts do. So I won't address the case on a point by point basis. Instead, I will focus on what I have found to be the key points.

Broadly speaking, Lendable can hold Ms S liable for the account if the evidence supports that she agreed to it. Both sides appear to accept that Ms S was the victim of a scam here. The question is essentially whether the scammers took out the loan without her knowledge – as she now says – or whether Ms S took out the loan herself and then lost the money due to the scam.

There is quite a bit of evidence substantiating that Ms S took out this loan. For example:

- In her initial calls with both loan companies, Ms S confirmed repeatedly that she took out each loan herself, and forwarded the money on herself.*
- It was only later that Ms S presented the story that the scammers did this without her knowledge. And even then, her testimony was at points inconsistent or contradictory.*
- Ms S received an email from Lendable thanking her for requesting a loan, and stating that in order to process her loan request she needed to confirm her email address by clicking a link. She opened the email and clicked the link to verify her email address for the loan.*
- Ms S also received an email with her loan quotation, and subsequent emails confirming that the loan was on its way and a direct debit had been set up for the loan payments at her genuine bank account. Ms S opened these emails at the time, but did not report anything was wrong to Lendable until about six hours later – and even then, again: she confirmed she had applied for the loan herself.*
- Ms S was sent a PIN to her genuine phone number to verify her phone. The PIN was received, and given to Lendable in order to proceed with the loan application.*
- Both loans were applied for using Ms S's genuine contact details, including her phone number and email address. It is not likely or plausible that a fraudster would put down Ms S's own contact details if they were trying to apply for a loan without her knowledge or consent. All contact would go to Ms S and the fraud would be discovered and potentially stopped straight away. Generally, I would expect to see a fraudster create fake contact details of their own, which would be straightforward for them to do, especially in an already sophisticated scam such as this one.*
- As noted above, Ms S received and opened quite a bit of correspondence about the loans, but still let the loans go ahead and did not report them until after the fact.*
- The loan was applied for at residential IP addresses which matches the IP addresses Ms S used for genuine online banking activity, based in her home's location. While I do understand that the scammers asked Ms S to install a remote access app on her phone, the security checks found that this application was not made by someone using a remote or proxy connection.*
- Shortly after the loan application, and over four hours before telling Lendable about the scam, Ms S called Lendable, though she appears to have hung up before she got through to anyone. I don't see why she'd call Lendable if she was unaware of their loan at the time, had no prior dealings with them, and had never heard of them before – as she later claimed. And if she had just become aware of the loan, but it had been applied for without her knowledge or consent, then it's not very likely or plausible that she'd wait a further four hours before trying to contact them again. This is only a more minor point, but worth noting.*
- Just after this loan was applied for – and before the second one was applied for – the scammer sent Ms S a fake text claiming her Lendable loan had been annulled. It's not likely or plausible that they'd do this if they were trying to hide the existence of the loan or claim they were not applying for a loan, as Ms S later said they were. But it does fit both with her original testimony – that Ms S applied for the loans herself, and with known methods of scams – e.g. where a scammer might convince someone to apply for a loan saying they'll later get the loan written off or cancelled.*

Finally, I've not found any evidence which substantially shows that Ms S did not apply for this loan, or which makes me think it's unlikely or implausible that she could have.

So based on what I've seen so far, I find that the evidence and the balance of probabilities supports that this loan was taken out with Ms S's knowledge and consent. That means Lendable can hold her liable for it. And Lendable were not responsible for the scam – the scammers were. In the circumstances this case, I think it would be unfair for me to hold Lendable liable for things, or to tell them to fully write off a loan which they lent out in good faith to the genuine applicant based on genuine information which passed all checks.

With that said, Ms S was the victim of a scam, and sent on the money to the scammers, so she didn't actually benefit from this loan. Her doctor has also provided evidence that she was in a vulnerable state at the time. And it seems unfair for Ms S to have to pay interest or fees for a loan which she was scammed into taking out and didn't benefit from. So I'm grateful that Lendable have already agreed to write off the interest and fees – that's what I would have told them to do. Indeed, having listened to Ms S's calls with Lendable, I think they handled things well here, especially on the initial call.

I should point out that even if I had found that the scammers applied for the loan, rather than Ms S, I would have still held Ms S liable for the principal of the loan in the circumstances of this case. The correspondence Ms S received at application made her sufficiently aware that these were loans in her name, and from what Ms S told us, she didn't have a reasonable basis to believe otherwise. According to Ms S's later testimony, she gave the scammers full access to her phone and watched them use it. And I can't see that she did any reasonable due diligence to verify what she was being told. So she didn't take reasonable measures to mitigate her loss, and she ought reasonably to have known that these were loans in her name that would need to be paid back. As such, I would still not fairly be able to tell Lendable to write off the principal – only the interest and fees.

I've also considered whether Lendable should remove the loan from Ms S's credit file, as our investigator suggested. But Ms S's credit file is supposed to be an accurate record of accounts she took out. And as I explained, I've found that Ms S took out this account. So it should remain on her credit file.

Ms S's representatives said that Ms S can't afford the contractual repayments. I would expect Lendable to work with her to come to a repayment arrangement that she can afford. I can see that Lendable have also given Ms S the details of independent charities who can give her free advice about dealing with her debts. I hope she finds them helpful.

Lastly, Ms S's representatives pointed out that we've upheld other fraud cases. But we look at each case on its individual merits. I've explained above why, in the circumstances of this particular case, I've found that Lendable's offer to write off the interest and fees is fair, and why they can hold Ms S liable for the principal of the loan. This is a difficult message for me to give, and I know it's a difficult message for Ms S to receive. But given the evidence I have so far, and the balance of probabilities, I'm unable to reasonably reach any other conclusion.

I said I'd consider anything else anyone wanted to give me – so long as I received it by 20 July 2023. I'll talk about the responses 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.

Lendable accepted the provisional decision and didn't have anything further to add.

Ms S's representatives disagreed with the provisional decision. They insisted that Ms S had not taken out the loans. They said she had proactively reported the loans as fraudulent as soon as she became aware of them, and had been consistent in her testimony.

As I explored in the provisional decision, Ms S's testimony was not consistent – she changed it quite drastically. She did not report the loans as fraudulent as soon as she became aware of them, but instead waited until after the fact. And even then, in Ms S's initial reports she confirmed repeatedly that she took out each loan herself. The other key evidence also supports that she took out these loans herself.

The representatives argued that the loan companies didn't do enough due diligence, so they felt there wasn't enough evidence to say that Ms S took out these loans. As I set out in the provisional decision, the evidence includes Ms S validating her email and phone to proceed with her loan application, reading further emails clearly setting out the loans but not reporting them at the time, her own contact details being used to apply amongst other genuine details, residential IP addresses being used to apply which matched Ms S's genuine IP addresses at her home's location and which were not remote or proxy connections, Ms S's contact with the scammer indicating that she knew a loan was being taken in her name, and call recordings where Ms S repeatedly confirmed that she took out the loans herself. I find the evidence strongly supports that Ms S took out these loans. I do not think further due diligence was likely to have shown otherwise.

The representatives made arguments that Ms S's bank should've found the activity on her bank account unusual and made further security checks. But this case is about Lendable, not Ms S's bank. Ms S may be able to raise a separate complaint about her own bank if she feels that her bank didn't do enough.

Lastly, Ms S's representatives pointed out that she was the victim of a scam, and hadn't benefitted from this loan. But I already accepted this – which is why I was glad to see that Lendable had agreed to write off the interest and fees. It's right that they've acknowledged Ms S's vulnerable situation and not tried to profit from the scam. However, as I've found that Ms S took out this loan, and it would've been clear to her that this was a loan in her name which would need to be repaid, I cannot fairly tell Lendable to write off the principal.

So having reconsidered the case, I've come to the same conclusions as before, for the reasons set out above. I realise that this decision will come as a disappointment to Ms S, though it is not my intention to disappoint her. But given the evidence at hand and the balance of probabilities, I'm unable to reasonably reach any other conclusion.

My final decision

I find that Lendable Ltd have already made a fair offer to resolve Ms S's complaint. I do not make any further award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 21 August 2023.

Adam Charles
Ombudsman