

The complaint

Mr C complains that Lendable Ltd (Lendable) is seeking to recover money from him in relation to a loan which he says was taken out by a scammer without his knowledge or consent.

What happened

In late May 2022, Lendable received an application, from Mr C's email address, for a £14,000 loan. After completing identity and affordability checks using Mr C's credit file, and ensuring the account the funds were to be sent to was in his name, it granted the loan.

Mr C has explained that the loan was taken out as part of a cryptocurrency scam. He says it was done by the scammers and he only found out about it when he spoke to his account provider (N). Another loan had also been taken out with a different lender, and all the funds had been moved on from Mr C's N account. While they appear to have gone on to another account in Mr C's name, the funds were ultimately lost to the scammers.

Lendable has agreed to waive interest and fees on the loan but has held Mr C liable for repaying the capital amount. It says it had no cause for concern when considering the application. And it doesn't think the loan was taken out, and the funds passed on, without Mr C's involvement.

As he was unhappy about what he was being asked to repay, Mr C referred his complaint to our service. Our investigator didn't uphold it. They found the application had been made using Mr C's own phone. Although Mr C said the scammers had taken control of it using remote access software, the investigator didn't think that was likely based on what we know about how the software works. They also noted Mr C's genuine email address, phone number and his ID had been provided on the application.

Mr C appealed the investigator's outcome. He said he didn't know about the loan, and the money was transferred on by the scammers. He pointed to a recording he had provided of a call he had with the scammer which he said proved this. He also said the scammers had access to both his phone and laptop, and he had no reason to take out a loan given the savings he held. The case was then passed to me.

I've since been in touch with both parties directly. I asked Mr C if he had got his phone professionally cleaned, given N had advised him to do so when he reported the scam, and if so whether he had any records of what they found. Mr C explained he didn't as he'd opted to replace his phone instead.

I also spoke to Lendable about whether it would be willing to offer any further concessions, given that Mr C fell victim to a scam. It explained it would need further information about his income and expenditure to consider this. I asked Mr C for this information, but he hasn't been able to provide it by the extended deadline I set. With his agreement, I'm therefore proceeding to issue my final decision.

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.

Having done so, I've decided not to uphold it. I'll explain why.

Lendable has already agreed to waive the interest and product fees that would normally be chargeable under the loan agreement. But it is seeking to recoup the £14,000 it paid into Mr C's account. So, rather than looking at whether he is bound by the loan contract, I'm considering whether it's fair and reasonable for Lendable to seek repayment of the amount it paid out. I would generally consider that fair if he was aware of the loan, and/or that the loan funds were being moved on – even if that was done as part of a scam.

I'd emphasise that I'm reaching my decision about what likely happened on the balance of probabilities. I don't need to determine exactly what happened, but what is *more likely* to have happened. Overall, I do consider it more likely that Mr C knew about the loan.

While I accept Mr C's assertion that he was prompted by the scammers to download remote access software on his phone and laptop, I'm not persuaded that explains how the scammers could have taken out the loan without his involvement.

Lendable's records show the application was completed using Mr C's device. What we know about the type of phone he used, and the remote access software he downloaded, suggests the scammers could have used the software to view what Mr C was doing on his phone. But it doesn't appear they would have been able to take control of it. I've not seen any evidence to support or explain how they might have been able to bypass this. So, on balance, it appears more likely Mr C would have been involved in the application.

As the investigator pointed out, the application also used Mr C's genuine ID and contact details. He received a number of emails and texts about the loan, which appear to have been opened. From what I've seen, it *does* appear possible that the scammers could have used remote access software on Mr C's laptop to respond to emails without his involvement. Regardless, it still appears Mr C received a number of messages notifying him about the lending.

I'm also conscious N first warned Mr C about the scam, and notified him that his devices might be at risk, in early May 2022. That is when N told him to get his phone professionally cleaned. At that point, the scam payments stopped. But it appears they started again towards the end of the month – and that is when the loan was applied for.

I've considered what Mr C has told us about the scam, and why he engaged with the scammers further following the warning from N. At points Mr C has said he was investing, but only agreed to send £250 and didn't know the scammers were taking further payments. But when he spoke to N originally, he said he didn't know the scammers were taking payments at all, and was instead expecting to *receive* money from a cryptocurrency investment his late father had built up. At that point, there wasn't mention of Mr C investing himself.

Mr C also had access to the account the funds were paid into. While he says he didn't move the funds on, the information I have about that isn't particularly clear. When an investigator here looked into Mr C's complaint about N (relating to the funds that were moved on), it appears they thought Mr C *did* move on the funds – and I can't see he disputed this.

Overall, Mr C's testimony about why he carried on dealing with the scammers following N's warning isn't particularly clear to me. I'm satisfied this is down to confusion rather than malice or ill-intent on his part. It appears he was vulnerable, and was being manipulated by the scammers. But the apparent inconsistencies make it harder for me to place as much weight on his assertion about what he thought was happening at the time. Particularly combined with the points I've explained above about how the loan was applied for.

I've listened to the call recording Mr C has provided between him (and his son) and the scammer. This took place after Mr C realised he had been scammed. But the scammers were still pretending to be part of a legitimate cryptocurrency investment scheme. Mr C's son says that loans have been taken out – and the scammers appear to confirm this. But there wasn't any discussion or agreement that the applications had been made without his awareness or consent. So I don't consider this evidence conclusive.

For these reasons, I'm not persuaded it's unfair for Lendable to seek to recover the loan funds it paid Mr C. That said, I do appreciate he has been left with a substantial loss due to this scam. That may have left him a financial position where he will struggle to repay the lending. If so, I would expect Lendable to treat him with forbearance and due consideration.

Lendable has said it is willing to consider further concessions – but wants to know more about Mr C's financial circumstances before reaching any kind of arrangement (such as writing off some of the lending). I think that is reasonable, as it will need to ensure any arrangement is sustainable and affordable for Mr C.

If Mr C wants Lendable to consider this proposal further, he can provide it with the income and expenditure information it has asked for. I will pass on details to him about how to do this. If he is unhappy about what Lendable offers following the provision of this information, that would be a new event which would therefore be a new/separate complaint.

My final decision

For the reasons given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 2 February 2024.

Rachel Loughlin
Ombudsman