

The complaint

Miss H has complained Lendable Ltd is holding her liable for a personal loan she didn't take out.

What happened

A loan with Lendable for £15,000 was taken out in Miss H's name on 22 September 2021. This was used to pay a credit card debt on 11 October 2021. At the time Miss H was in a relationship with someone who was financially controlling, had access to her phone and used her main account (with an institution I'll call N) as his own.

After the relationship ended, Miss H questioned him about a loan that had been taken out where she was left paying a direct debit of £421.53 a month. He admitted taking it out but refused to repay this. Miss H complained to Lendable that she'd not taken this out and shouldn't have to repay it.

Lendable believed they'd done nothing wrong having undertaken the correct checks to ensure they could give a loan to Miss H.

Dissatisfied, Miss H brought her complaint to the ombudsman service. Our investigator confirmed Miss H had not taken out the loan nor signed up to the terms and conditions. Lendable couldn't continue to hold her liable for the loan. He noted that a relative of Miss H's ex-partner had initially made three payments to Miss H's account to cover the direct debit, but this stopped after her relationship came to an end.

He asked Lendable to cancel the loan and repay Miss H money she'd repaid (except £1,266 which she'd received from her ex-partner's family member), along with 8% simple interest.

Lendable didn't accept this outcome. They doubted the evidence provided showed she was in an abusive relationship as messages they'd seen suggested she knew what was happening. They also didn't think her evidence was credible overall and wondered why she hadn't progressed a complaint with the police. They've asked an ombudsman to consider the complaint.

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 reached the same outcome as our investigator. I'll explain why.

Where there is a dispute about what happened, I have based my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in the light of the evidence.

Our investigator completed a view dated 22 June 2023. I've reviewed the evidence myself, including Miss H's messages with her ex-partner, and what she's told us about what happened.

Along with evidence supplied to us by Lendable, we've also looked at evidence from Miss H's current account with N. Our investigator also separately contacted the credit card provider whose debt was repaid by Lendable's £15,000 loan. I'm satisfied this was not in Miss H's name, nor is there any evidence she benefitted from the loan proceeds.

There's no dispute that a loan was applied for on 22 November 2021. All of Miss H's evidence confirms that her partner at the time used her current account as his own. He was unable to take out his own accounts so this sounds realistic.

It's clear that Lendable believes Miss H knew of the loan that her ex-partner had taken out much earlier. They question her evidence she didn't have access to her phone, as it appears her partner didn't live with her full-time, so there were times she would be without him and more than likely did have access to her phone.

At the time the loan was taken out, however, Miss H has told us her partner was using her phone and had set up biometric ID. This enabled him to use her phone to make any financial applications and make and authenticate payments (such as the £15,000 to pay his credit card debt) appropriately with N.

I do accept that it's likely Miss H was aware that a loan had been taken out. But at the time, this had no immediate impact on her financially as monthly payments of £422 were being made to her account until the time she split from her partner.

However I'm not convinced these aspects have any impact on the overall decision I'm making. Financially controlling behaviour has a major impact on those who suffer from it. Whilst Lendable believes Miss H's behaviour may be inconsistent, I think they may misunderstand the pervasive and long-lasting impact of such control. I don't accept the evidence Lendable provided in their response to our investigator's view that as Miss H was aware of her partner's behaviour, and the credit card he held and even helped him in some way, this suggests she wasn't a victim of financial control.

I'm also not surprised that Miss H didn't pursue a complaint with the police despite initially reporting this. Unfortunately we don't live in a world where women always feel comfortable reporting and then pursuing complaints about ex-partners.

It can take some time for individuals to get to grips with what may have happened after a relationship has come to an end. So I don't think Miss H unnecessarily delayed her complaints to Lendable and N.

Overall the evidence suggests Miss H was a victim of fraud. A third party took out a loan in her name and arranged to get the monies paid into Miss H's account. As her partner at the time had access to her account, he was able to transfer this which the evidence shows happened.

On balance I don't believe there's sufficient evidence to indicate Miss H took out the loan with Lendable. She didn't agree to the terms and conditions, nor did she benefit from the money.

I'm also aware that Miss H has continued to make limited payments towards the loan with Lendable. She's aware that leaving the loan unpaid, despite it not being her debt, would have an impact on her credit record during this period our service has been considering her complaint.

I appreciate Lendable is rightly aggrieved that the money was paid to a third party through no fault of their own. They carried out their requisite checks. They believe Miss H is at fault.

That isn't the issue here. I'm considering whether Lendable can hold Miss H liable and I'm satisfied there's no basis for them to do so.

Putting things right

Lendable will need to write off the loan in Miss H's name and stop asking her to repay this. They will also need to remove any reference to this loan from Miss H's credit record.

Miss H received three payments of £422 for this loan into her account. However she's also paid more than this since the first direct debit came out of her account on 20 October 2021. Lendable will need to refund all of those payments, except £1,266, along with 8% simple interest from the dates Miss H was debited.

My final decision

For the reasons given, my final decision is to instruct Lendable Ltd to:

- Write off the fixed-sum loan agreement for £15,000 in Miss H's name;
- Stop asking Miss H to repay this loan;
- Repay the money Miss H has repaid towards this loan, except £1,266;
- Add 8% simple interest to those amounts from the dates she was debited until the date of settlement; and
- Remove any reference to this loan from Miss H's credit record.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 22 September 2023.

Sandra Quinn
Ombudsman