

The complaint

Ms H complains that Lendable Ltd is holding her liable for the debt on a loan which she says she neither applied for nor consented to.

What happened

The background to this complaint is well known to both parties, so I won't repeat everything here. In brief summary, in March 2023 a loan was taken out with Lendable in Ms H's name for £14,500. Ms H subsequently got in touch with Lendable to let it know she hadn't applied for or consented to the loan. Lendable investigated things and ultimately couldn't reach agreement with Ms H, so she referred her complaint about Lendable to us. As an Investigator here couldn't resolve the matter informally, the case has been passed to me for a decision.

I sent Ms H and Lendable my provisional decision last month, explaining why I was minded to uphold this complaint in part. Now both parties have had fair opportunity to respond, I'm now ready to explain 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.

I've focused on what I think is the heart of the matter. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

I've reached the same conclusions as in my provisional decision and for materially the same reasons. I've explained my reasons again below, with some further comment, where I have deemed this appropriate, to address the responses to my provisional decision.

First let me clarify exactly what this decision is about. I understand Ms H has explained that in March 2023 she was tricked by scammers resulting in six loans being taken out in her name without her knowledge or consent. Ms H has explained that three of these loans were written off by the respective lenders. But there are still three loans in her name: this £14,500 loan with Lendable, a £15,000 loan with M, and a £15,000 loan with A. At the same time as issuing this decision on Lendable's involvement, I'm also concurrently issuing decisions on Ms H's linked complaints about M and A.

In this case, Lendable acted only as a lender, granting the loan for £14,500 and paying it to Ms H's bank account with S, from where I understand the funds were transferred onto Ms H's bank account with R, before they were transferred on again (from there) ultimately to scammers. This decision concerns only the £14,500 loan with Lendable and whether it's fair for Lendable to hold Ms H responsible for this loan bearing in mind how it was taken out and granted.

Ms H has said this loan was taken out as a result of a scam and given the circumstances she's explained she has my sympathy. However, this doesn't automatically mean Lendable should be unable to hold her liable for the debt.

Should Lendable write off the loan because of how Ms H was scammed?

The first question is: did Ms H enter into this loan agreement, or was it done without her knowledge and/or consent as she alleges?

Having considered this carefully, I think it's most likely the loan was taken out in Ms H's name *without* her knowledge and consent, and she therefore did not enter into the loan agreement. I say this because Ms H has plausibly and persuasively explained how she was tricked into allowing scammers remote access to her devices and enabling them access to the information they needed to apply for the loan. Ms H is adamant she wasn't aware of the loan until *after* the scammers had applied for it, and that she didn't consent to the loan. And having reviewed the evidence around the WhatsApp messages sent between Ms H and the scammers, I'm satisfied this is most likely true.

This loan was applied for and landed in Ms H's bank account with S on 20 March 2023. The WhatsApp messages on that day (and before) don't indicate Ms H was aware the loan application would be made. And the WhatsApp messages on 21 March 2023 indicate she didn't know about the loan application or consent to it at the time. In particular, I note the message Ms H sent the scammers on 21 March 2023 at 12.47pm: *"Couldn't sleep. I thought your firm was sorting the money not taking out a loan in my name"*. I also note that on 24 March 2023 Ms H messaged the scammers saying, *"You are not using my name. I have credit reports pinging my phone and emails asking questions"*. This was the same day as the loan with M was taken out. I've no reason to think Ms H wouldn't also have received such notifications about this Lendable loan on 20 March 2023. But Ms H receiving notifications about credit searches, and her receiving notification about the loan having been granted after it had been applied for, don't mean Ms H knew about the loan application when it was made, or that she consented to it. And in this case, for the reasons I've explained, I'm satisfied it's more likely than not that Ms H did not consent to this loan.

I've carefully considered what Lendable has said about this in its response to my provisional decision. In particular, it's pointed to evidence it says suggests Ms H had an arranged meeting with the scammer at 6.30pm on the day of the application; it's said the loan was applied for just 21 minutes later; and that Ms H's genuine mobile number and email address were verified, and Ms H actively verified the loan using her phone number, and therefore she would have been aware of the loan application. But this hasn't persuaded me to change my mind. I think the WhatsApp evidence and everything else I've already set out above is more persuasive – that Ms H most likely didn't consent to the loan, for the reasons I've already explained.

Since I'm satisfied Ms H most likely didn't apply for or consent to this loan, I don't think it would be fair for Lendable to hold her to the terms of the loan agreement she never agreed to. So, Lendable shouldn't hold Ms H liable for interest and charges, neither should there be a record of the loan on Ms H's credit file – so if there currently is, this should be removed.

At the same time, I don't think Lendable was to know at the time that the application had been made in Ms H's name without her consent. So, it doesn't automatically follow that it would be fair for me to tell Lendable that it should not be able to pursue Ms H for any of the loan funds that are still outstanding, or that it should be required to refund to Ms H any repayments to the loan she has already made (if any). I take on board what Ms H has said about how she was scammed. However, I can see that the £14,500 loan funds landed in

Ms H's bank account with S clearly marked as from Lendable. And I don't think it's unfair to say at this point Ms H wasn't as careful as she reasonably ought to have been. Such that, if she hadn't consented to the loan, I think she ought to have taken reasonable steps at this point (but didn't) to verify the funds weren't from a loan in her name, before allowing or facilitating them to be sent on from her account with S first to her account with R and then to the scammers. In response to my provisional decision, Ms H has said she didn't receive her bank statements until the sixth of each month so she wasn't immediately aware of the source of the funds; and not only that, she was unwell at the time, and she didn't have the technical capability to disable or remove the remote access software. But I still think it's not unfair to say Ms H wasn't as careful as she should have been. Ms H might reasonably have tried shutting off the remote access software, or at least her devices, and looked into things further before allowing the transfers. This decision isn't about the prevention of those payments or recovery of them (because Lendable played no part in that). And based on what I've seen and explained, I'm satisfied Ms H had reasonable use of the funds. I'm sorry she lost them to a scam but I can't reasonably say this was Lendable's fault. This means I'm satisfied I can't reasonably tell Lendable, on the basis Ms H was scammed, that it should not be able to pursue Ms H for any of the loan funds that are still outstanding, or that it should be required to refund to Ms H any repayments to the loan she has already made (if any).

Irresponsible lending

Ms H has questioned the affordability of the loan. And I've thought about this really carefully. Our usual approach, if we were to uphold a complaint about unaffordable lending, is that interest and charges should be removed but the consumer should still pay back the principal amount of the loan they had the benefit from. I've already said above this is essentially what I think should happen in this case due to Ms H not consenting to the loan. However, there may be some exceptional cases where we might think appropriate redress extends further than this, and I think this case is one of them.

In this case, I understand the loan was for £14,500, with an interest rate of 10.45% per year, which was repayable over 36 months at £493.06 per month. Ms H presented in the application as being age 63, employed full-time earning £2,295 net per month, and as being a homeowner without a mortgage. Lendable has said the information submitted on the application, along with information from a credit check and a credit bureau product, was sufficient to pass its checks. It's said that Ms H's credit file showed she was managing her active accounts well: four credit cards, one mortgage account, one current account, one dual fuel account, and one utility bill; and it used the credit bureau product, based on inflows and outflows from current accounts held by Ms H, which matched the information Ms H had given about her income.

However, Lendable was required to ensure that it didn't lend irresponsibly. It was required to complete reasonable and proportionate checks to satisfy itself that the loan would be affordable and that the borrower would be able to repay the loan in a sustainable way. And in this case, given the amount of the loan being applied for and the size of repayment that would be payable each month, which would extend past Ms H's state retirement age by almost a year, I would reasonably expect Lendable's reasonable and proportionate checks to have included relatively detailed verification of her income and expenditure, greater than it did. This is particularly so here where Lendable was aware that on the application Ms H had declared she didn't have a mortgage but its own credit checks demonstrated this to be inaccurate. Clearly, relying on what the applicant had stated about their finances would be inappropriate to help determine affordability.

In this regard, I'm aware that in its response to my provisional decision, Lendable has argued that all information provided by Ms H was verified thoroughly. It's said it assessed her debt servicing ratio including her monthly mortgage repayments, which were pulled from

her credit file at the time of the application; and it calculated that with the new loan, she would be spending 40% of her monthly income servicing debts including her mortgage; and through its checks it was able to confidently establish that the income stated on the application matched the figures paid into Ms H's bank. But I don't accept Lendable's point that Ms H's age shouldn't be relevant. I would reasonably expect Lendable to take into account Ms H's personal circumstances in determining the appropriate level of verification checks. So, whilst in some cases a check on Ms H's stated income, as Lendable performed in this case, might be appropriate and sufficient, I still think, for the reasons I've already explained, that Lendable reasonably ought to have undertaken greater verification of her income and expenditure.

I can't be sure exactly what evidence and information Lendable would have obtained. In the absence of it having done this, I've reviewed copies of Ms H's bank statements from around the time of the lending. I'm not suggesting Lendable was required to review bank statements, but I think they give a good indication of what it would most likely have discovered about Ms H's financial circumstances had it completed reasonable and proportionate affordability checks. Lendable ought to have known that Ms H had a monthly mortgage payment of £386. The statements show that Ms H's essential monthly living costs, including her mortgage, were broadly £1,350 and I think this is likely to be what Lendable would have discovered had it sought to verify her expenditure in some way. When including the scheduled monthly loan repayment of £493 for the loan with Lendable, this would take this to £1,857.

I understand Lendable thought Ms H's net monthly income was £2,295. But if it had sought to appropriately verify this – which I'll say again, as I think it should have – it would have likely found out that this wasn't right. Instead, I think it would have likely discovered her income to be around £1,525 each month. This is less than the outgoings I've outlined above, and therefore I consider Lendable lent irresponsibly to Ms H in this case.

So, in this case, I'm satisfied Lendable lent irresponsibly. Ms H was scammed. And given her current financial situation, and Lendable's failings, I'm satisfied to ask Ms H to repay all of the loan balance (even excluding interest and charges) would be unfairly onerous and unsustainable. It appears there is no reasonable prospect of her being able to pay back the capital amount in the medium to long term. Her financial situation is such that it appears, at best, that she has around £175 available each month (and it may be less than this) to pay towards this loan and two other loans that were taken out in her name as a result of the scam. In total, this would require her to repay just under £45,000 in capital to all three lenders (around a third of which to Lendable). With her current financial circumstances, it will likely take her almost 22 years to pay this back and I'm mindful that Ms H is approaching state retirement age, meaning that it is very likely her financial circumstances may drastically change. So, I do think, therefore, we have a case here whereby it would be onerous, and unreasonable, to expect Ms H to reasonably repay the majority of the remaining loan balance with Lendable. At the same time, I think she probably has sufficient disposable income each month to at least pay some amount each month to repay some of the principal loan balance. So, taking everything into account, I think in this case that a fair outcome would be for the principal loan balance to be reduced down to £5,000, and for Lendable to only pursue Ms H for repayment of this amount. Although, naturally, I'd expect Lendable to agree to a reasonable repayment plan with Ms H, and to be sympathetic to any financial constraints that may materialise. I appreciate that in her response to my provisional decision, Ms H has asked that my direction expressly state that Lendable should "offer as much forbearance as possible to ensure a sustainable payment solution". But I'm satisfied what I've already said about this sufficiently addresses this.

In response to my provisional decision, Lendable has questioned why it is being asked to write off the bulk of the loan given the loan funds were disbursed to a well-established bank

account in Ms H's name and subsequently lost from there, and given both banks, S *and* R, ought to have been able to potentially prevent Ms H's payments and loss to a well-known scam method like this. But I understand that whilst Ms H did complain directly to S and R about things, she had no joy. She didn't then refer complaints to S and R to our service – and I'm required to consider this case in front of me. And my decision that the loan should be written down to £5,000 here is based on Lendable's failure to lend responsibly, and what I consider is a fair resolution to this given these circumstances. I've explained above why I think this outcome is fair, and Lendable's points haven't changed my mind.

My final decision

For the reasons explained, I uphold this complaint in part and I direct Lendable Ltd to:

- remove all interest and charges on the loan;
- amend Ms H's credit file to remove any information about the loan and searches;
- write off the loan down to an amount of £5,000;
- not pursue Ms H from the date of settlement for repayment of more than £5,000.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 30 May 2024.

Neil Bridge
Ombudsman