

The complaint

Mr K complains that Admiral Financial Services Limited (“Admiral”) are unfairly holding him liable for a loan that was taken out in his name as part of a scam.

What happened

Mr K fell victim to a scam in November 2022. He was approached by a third party (“the scammer”) who introduced him to an ‘investment opportunity’ which he says they assured him was legal.

The scammers met him in a car and asked for his phone in order to check his transactions to see if the scheme would work. He was told that if he had an investment paid into his bank account and passed the funds on to the scammers, he could keep a cut of the money. A loan was applied for with Admiral on 15 November 2022. The funds were deposited into his account on 18 November 2022, and Mr K said the scammers took him to his bank to withdraw £5,000 in cash, where he was coached in what to say to the cashier in order to make the withdrawal. The money was withdrawn and he gave it to the scammers.

Mr K eventually discovered that the scammers had used his phone to apply for two loans in his name, one of which was with Admiral, which he said he wasn’t aware of, and that he didn’t complete any form of loan application.

Mr K reported the fraud to Admiral and asked it to consider waiving the loan or even just the interest. He also didn’t think the loan should have been granted by Admiral in the first place as the income stated on the loan application was incorrect.

Admiral considered Mr K’s fraud claim, but it thought he had sufficient awareness and understanding that a loan had been applied for in his name, which he had sufficient time to return instead of paying to the scammers. Admiral also said it had carried out proportionate checks on the loan, which met its affordability criteria, so it said it would still be holding him liable for the debt. Unhappy with this, Mr K referred the matter to our service.

Our investigator didn’t uphold the complaint. He didn’t think Admiral had acted unfairly by holding Mr K liable for the loan, as he thought he would’ve likely been aware that finance had been taken out in his name. He also thought that Admiral has carried out proportionate checks into the affordability of the loan. Mr K disagreed, so the matter has been escalated to me to determine.

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 agree with the conclusions reached by the investigator and have decided not to uphold it for the following reasons:

Loan liability

Section 83 of the Consumer Credit Act (CCA) 1974 sets out that a person won't be held liable for a debt if it was taken out by another person who wasn't acting as their agent. So, I've considered the extent to which Mr K was involved in the loan application, and whether he ought reasonably to have known that he had received the proceeds of a loan into his bank account.

Mr K said he didn't know a loan was being applied for in his name, and says the scammers used his phone and details from social media to complete the application. However, he also said that he did provide some of his details to the scammer directly in response to what he believed were reasonable requests, presumably in relation to the scheme Mr K thought he was getting involved in. I appreciate that Mr K may not have physically applied for the loan himself, or even known that this is what was happening at the time. But even accepting this as the case, I still don't think Admiral has acted unfairly by holding Mr K liable to repay the loan. I'll explain why.

First, I think Mr K ought reasonably to have been aware that a loan had been applied for in his name by the scammer. On the day the loan had been applied for, Admiral sent Mr K an email and text message informing him of the loan, three days prior to it being paid into his account on 18 November 2022. A loan with another provider was also applied for on the same day for £6,000. This clearly shows on his statements as "New Loan". I appreciate the money paid in from Admiral did not say the same, but in any event, it should have been apparent from the £6,000 being paid in on 15 November 2022 that he was receiving the proceeds of another loan, rather than anything to do with an investment.

However, at no point prior to withdrawing the money did Mr K contact Admiral or the other lender in an attempt to return the money, or to say he hadn't applied for any loans. The correspondence was sent to his genuine email address, so there's no reason to suspect he wouldn't have received it, or had time to see it three days prior to the money being paid into his account. So on balance, I think Mr K was aware or ought reasonably to have been aware that a loan had been applied for on his behalf.

Mr K then proceeded to withdraw the money in cash, and said he was promised a cut in return for his account be used to receive the money. I'm therefore satisfied he has utilised and partly benefitted from money, which I think he ought reasonably to have known were the proceeds of a loan that would have to be repaid. So, I don't think it's unfair for Admiral to hold him liable for the debt in these circumstances.

It also isn't clear what Mr K thought the scheme was that he was assisting the scammers with, or why he would be paid for receiving an 'investment' into his account. Mr K says he was assured the investment scheme was legal, but it's not clear what information Mr K was given to assure him of this, because rarely would there ever be a legitimate reason for this sort of arrangement, other than somebody trying to hide illicit activity or even to launder money. He had also been told to lie to the bank in order to withdraw the money, which should have indicated that he was involved in something untoward. But it doesn't appear that Mr K questioned this at any point and nonetheless chose to be part of the scheme in order to receive payment for his part in it. This leads me to believe he was likely aware that he might be involved in something illicit, or that he was reckless as to this risk.

The 'clean hands' doctrine of equity provides that those who come to equity must do so with clean hands, meaning a court would deny equitable relief to a party where they haven't acted in good faith. In these circumstances, I'm not persuaded Mr K can be said to have acted in good faith for the reasons I've set out above, so I don't consider it would be appropriate for me to ask Admiral to waive the loan or interest in any event, even if he was not aware of the loan being taken out in his name.

I understand Mr K has been diagnosed with ADHD, which I acknowledge may have affected his decision making and led to him acting impulsively. However, I haven't seen sufficient evidence to demonstrate that he would've had no appreciation of what he was doing. There were also three days between the point the loan was applied for, and the funds being received into Mr K's account, so the loan wasn't paid out to the scammers in the 'heat of the moment'. And while I appreciate he has a neurodivergent condition, he would've still had sufficient time to reflect on what was happening in between. Admiral also wouldn't have been aware of any vulnerabilities at the time of application either, so this hasn't changed my opinion that it's fair and reasonable for him to be held liable for the loan.

Affordability

Mr K also doesn't think the loan should have been granted by Admiral in the first place as it should have seen it was unaffordable. Admiral explained that it carried out automated checks regarding Mr K's identity, address, bank details, affordability and his credit history.

Admiral has submitted a breakdown of the figures it used to calculate whether the loan was affordable. Mr K's income was stated as being £21,375, and his credit checks showed that he had no existing debts recorded on his credit file at the time. His disposable income was calculated at around £470 per month after factoring in his rent and other living costs, and there was no other adverse information on his credit file to show he wouldn't have been able to afford the loan.

Having reviewed Admiral's affordability scoring, I'm satisfied that it carried out reasonable and proportionate checks to conclude, based on the information gathered, that the loan was affordable. I appreciate Mr K disputes the income figure that was provided, but I don't think there was anything that ought to have reasonably alerted Admiral to the fact that this figure may have been false or inaccurate, such that they shouldn't have reasonably relied on it or asked for proof.

As a result, I'm not persuaded Admiral acted irresponsibly by lending the £5,000 to Mr K, so I won't be asking it to take any further action.

My final decision

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 10 April 2024.

Jack Ferris
Ombudsman