

The complaint

Mrs C complains that Oakbrook Finance Limited (trading as Likely Loans) (“Oakbrook”) are unfairly holding her liable for a loan that she says she didn’t take out.

What happened

The details of this complaint are well known to both parties, so I won’t repeat everything again here. In brief summary, Mrs C fell victim to an investment scam in April 2022 after she was contacted by a scam investment broker (“F”) who encouraged her to invest in cryptocurrency.

As part of the scam, Mrs C said that F took out several loans in her name, without her knowledge or consent, including a £10,000 loan with Oakbrook. These funds were paid into Mrs C’s bank account, where they were then transferred on to the scammer via her cryptocurrency wallet.

After realising she’d been scammed, Mrs C reported the fraud to her bank and to Oakbrook, as she said she didn’t consent to or know about the loan, such that it shouldn’t hold her liable for it. She also said that the loans were unaffordable. However, Oakbrook said the loan application had been completed with all her genuine details and that it had sent information to her about the loan. It said that she also knowingly moved the funds from her personal account to her crypto wallet, where it was then transferred on to the scammer. As a result, it thought Mrs C likely knew she had taken out a loan and said it would still be holding her liable for it. Unhappy with this, Mrs C referred the matter to our service.

Following our investigation into the matter, Oakbrook offered to waive the loan interest, but said it would still be holding Mrs C liable to repay the loan capital. Our investigator thought this was fair, as she thought Mrs C would’ve likely known the loan had been taken out on her behalf, and that she would’ve known she was paying those loan proceeds to the scammer from her bank account. The investigator was also satisfied that Oakbrook had carried out proportionate checks to conclude that the loan was affordable.

Mrs C still didn’t think this was fair as she wants the entire loan written off. As she didn’t agree, 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 as I’m satisfied it’s fair and reasonable for Oakbrook to hold Mrs C liable to repay the loan principal. I’ll explain why.

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 Mrs C was involved in the loan application with

Oakbrook, and whether she ought reasonably to have known that she had received the proceeds of a loan into her account.

It is accepted that Mrs C likely didn't complete the loan application herself, and that this was likely to have been completed by the scammer using information they'd already obtained from Mrs C. But that doesn't mean she cannot fairly or reasonably be held liable to repay it if she knew that finance was being taken out on her behalf, and if she knowingly received and used the funds of those loans.

Mrs C has acknowledged that she was aware of a credit being paid into her account from Oakbrook. But she's told our service that she was led to believe this was F's money, which it had paid into her bank account in order to demonstrate that she would receive returns on her investment, which she had to pay back to the scammer via cryptocurrency. She has maintained that she wasn't aware it was the proceeds of a loan.

However, the evidence I've seen suggests that Mrs C was well aware that loans were being taken out in her name and being paid into her account. Mrs C's bank ("Firm A") has provided a call recording of a conversation it had with her at the time of the scam about the payment activity on her account. Firm A enquired about the large credits being paid into Mrs C's account and asked if they were loans. Mrs C confirmed that they were, and that she had taken them out for home improvements.

Firm A was concerned as it could see Mrs C was also sending money to cryptocurrency exchange platforms. It said it wanted to make sure she wasn't taking out loans to buy cryptocurrency, to which she assured the bank that she wasn't. Firm A also asked Mrs C whether she could afford to repay the loans, to which she confirmed that she could.

I can see from the correspondence sent between Mrs C and the scammer that she also said that she didn't want any more loans being taken out in her name, and even said she was going to check her credit score. Oakbrook said it had also sent Mrs C information via text message and email about the loan, which she has said she received and even informed the scammers about. She says the scammers told her that it was all part of their company and that it was standard procedure for messages to come out. But this wouldn't have just been promotional material about borrowing, it would've been specific information about Mrs C and the finance that had been applied for in her name.

So, in light of this evidence, I don't consider Mrs C's testimony regarding her awareness of the loans to be plausible, as it's clear she was fully aware that loans had been taken out in her name and paid into her account – including the loan from Oakbrook – which she then transferred on to the scammer. She ought reasonably to have known that she would need to pay this money back after it had been paid into her account. And she didn't at any point contact Oakbrook before paying the money to the scammer to say she didn't apply for or want the loan.

Mrs C says she shouldn't be held liable for the loan as she didn't consent to it being taken out on her behalf. As I've explained above, the evidence suggests to me that Mrs C was aware and likely consented to the loan being taken out on her behalf by the scammer. But even if she didn't consent to it, given she ought reasonably to have been aware that the money she was transferring was part of a loan that had been paid into her account, I don't consider it would be fair and reasonable to ask Oakbrook to write off the debt in any event as she has knowingly used the funds they've lent her.

Oakbrook has since offered to waive the loan interest but has said it will still be holding Mrs C liable to repay the loan capital. And for the reasons I've set out above, I'm satisfied this is fair and reasonable in all the circumstances.

Was the loan affordable?

Mrs C submits that Oakbrook should've never granted the loan in the first place as it should've been apparent that she could not afford to repay it.

Oakbrook has explained that it assessed Mrs C's affordability using her current account turnover data obtained from her credit report. Its checks demonstrated that Mrs C would have disposable income of over £2,000 after factoring in the loan repayments, which left a comfortable margin after allowing for living expenses and her other existing credit commitments.

I'm therefore satisfied that Oakbrook carried out reasonable and proportionate checks to conclude, based on the information gathered, that the loan was affordable. I've also not seen anything from Mrs C's credit report that would indicate she wouldn't be able to sustainably repay the loan..

My final decision

Oakbrook Finance Limited has made an offer to waive the interest of the loan, meaning Mrs C will only have to repay the principal amount.

I conclude that this settlement offer is fair in all the circumstances. My decision is that Oakbrook should write off the loan interest in the way it has offered to do within 28 days of receiving Mrs C's acceptance of this decision.

Mrs C should note that if she accepts my decision, it will be legally binding on all parties, and she probably then wouldn't be able to take further legal action over this matter. If, however, she rejects the decision, although her legal rights will remain intact, it will purely be a matter between Mrs C and Oakbrook as to whether its offer to write off the loan interest still remains open for acceptance. Strictly speaking, an offer is not binding on the offeror after rejection of it has been communicated.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 4 March 2024.

Jack Ferris
Ombudsman