

The complaint

Miss A complains that Lendable Ltd is holding her liable for the debt on a loan which she says she neither applied for nor knew about.

What happened

The background to this complaint is well known to both parties, so I won't repeat everything here. In brief summary, in August 2021 a loan was taken out with Lendable in Miss A's name for £3,000. Miss A subsequently got in touch with Lendable to let it know she hadn't applied for the loan. Lendable investigated things and ultimately couldn't reach agreement with Miss A, so she referred her complaint about Lendable to us. Our Investigator couldn't resolve things informally, so the case has been passed to me for a decision.

I sent Miss A and Lendable my provisional decision earlier this month. I'm satisfied both parties have now had adequate opportunity to provide any comments they had in response. So 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.

Neither Miss A nor Lendable sent me any comments in response to my provisional decision. And having considered things again, I've reached the same conclusions and for the same reasons as explained in my provisional decision. I've explained my reasons again below.

In this case, my first consideration is: did Miss A enter into this loan agreement, or was it done without her knowledge and consent as she alleges?

Having considered this carefully, I think it's most likely the loan was taken out in Miss A's name without her knowledge and consent, and she therefore did not enter into the loan agreement. I say this because:

- In my view Miss A has plausibly and persuasively explained that late-on-19-August-2021/early-on-20-August-2021 she was staying away in Blackpool and she invited some people back to her accommodation to socialise. She's said that during the course of the night her phone was connected to a speaker and used to play music, and she disclosed her passcode I understand after her phone had locked but a member of the group wanted to change the music. She's said that by the time she realised the three visitors, on leaving, had stolen her phone along with some other items, it was too late, they'd already left. She's provided a crime reference which she says she was provided with when she reported the stolen phone to the Blackpool police. She's also provided an email from a third party from which I'm satisfied she made a successful stolen phone claim on 21 August 2021 for a replacement phone.

- I understand from what Miss A has said that unfortunately the passcode for her banking app may have been the same as the passcode for her phone but that, in any event, she had security information for her social media and banking app saved in the notes app on her phone, as well as photos of her ID and passport. I've not seen evidence that leads me to doubt this.
- Miss A has explained, again in my view plausibly and persuasively, that she only managed to access her relevant accounts again when she received her replacement phone, at which point she became aware that the people who had stolen her phone had successfully applied for a number of loans in her name.
- I've thought very carefully about everything Lendable has said about this. In particular, I understand that the £3,000 Lendable loan funds were paid into a bank account in Miss A's name held with RBS, and then paid on from there to a third party. And Lendable's position is that Miss A was aware of the loan because an email and an SMS were sent to her email address and phone number which were authenticated to approve disbursement of the loan funds; and that Miss A retained full control of her RBS account because, it says, her RBS online banking was accessed numerous times around the relevant time using facial recognition. However, the information I've seen from RBS states that the banking passcode would've been needed if facial recognition wasn't available. I'm satisfied the people who stole Miss A's phone would've already known her banking passcode. And I haven't seen any evidence that a passcode wouldn't have been accepted but only facial recognition. So, I'm satisfied that the people who stole Miss A's phone most likely had access to everything they needed – including access to her phone and banking app – and that it's unlikely Miss A was aware of things.
- Whilst not conclusive in its own right, I also note that RBS and Admiral appear to have written off loans taken out in Miss A's name in the same circumstances. And despite what Lendable says, Miss A *did* report to RBS that her phone had been stolen. This doesn't automatically mean this complaint about Lendable should be upheld but it does add weight to Miss A's case.

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

However, I'm also satisfied in this case that it wouldn't be fair for Lendable to pursue Miss A for the outstanding loan funds. I say this because RBS has confirmed that it did not refund to Miss A the Lendable loan funds (after they were paid out of her RBS account to a third party). And I'm not persuaded Miss A benefited from them, since I think it's most likely it wasn't her who moved them onto the third party. So, Lendable should also write off the loan and not pursue Miss A for any repayment of the loan; and it should refund to Miss A any repayments she has already made to the loan (if any) plus interest calculated at 8% simple per year from the date they were made to the date of settlement.

My final decision

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

- refund to Miss A any repayments she's already made to the loan (if any) and pay Miss A interest calculated at 8% simple per year from the date they were made to the

date of settlement (if Lendable deducts tax from this interest, it should provide Miss A with the appropriate tax deduction certificate); and

- write off the loan and not pursue Miss A for any repayment of the loan; and
- amend Miss A's credit file removing any information about the loan and searches.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 20 March 2024.

Neil Bridge
Ombudsman