

## **complaint**

Mr H complains that Provident Personal Credit Limited (trading as Satsuma Loans) holds him liable for a loan that was fraudulently taken in his name.

## **background**

Mr H says that he allowed his former wife ("Mrs H") to have his bank debit card to buy groceries but that, without his knowledge or agreement, she used the details on the card to get a £300 loan from Satsuma and draw out the money from his bank account.

Three other loans were also taken out with another short term lender, and Mr H raised a complaint with his bank about loan repayments taken under his debit card details. The bank refunded £10.95 paid to Satsuma and also money paid to the other lender. The other lender subsequently accepted that the loans taken with it had been obtained fraudulently, and closed the accounts.

Mr H asked Satsuma to cancel the loan, on the basis that he had not applied for it or received the money. He says he provided such evidence as he could to support his case that the loan had been obtained fraudulently.

Satsuma did not accept that Mr H was not liable for the loan, and said that although his bank had accepted that the card payments were fraudulent this was not evidence that the loan application was also fraudulent.

As things were not resolved, Mr H brought his complaint to this service where an adjudicator investigated it. From the evidence, the adjudicator was satisfied that Mr H had not applied for the loan and had not materially benefitted from it. In view of that, the adjudicator recommended that Satsuma should cancel the loan and remove all evidence of it from Mr H's credit file.

Satsuma did not agree and said, in summary:

- There had been earlier discussions with the adjudicator about Mr H repaying the capital, and it is not clear what new evidence has caused the adjudicator to say that the loan should be written off.
- Mr H's wife had access to his bank card and PIN. This would be regarded as negligence. If Mr H's wife fraudulently applied for the loan, they would expect to see evidence of a police investigation confirming that.
- The fact that a different email address was used to apply for the loan does not prove the application was fraudulent.
- Mr H's bank has refunded transactions, but that does not prove the loan application was fraudulent. Mr H's bank has not commented about the loan application.
- Even if other lenders have waived loans, that does not mean Satsuma must also do so. It can't take that into account as evidence in support of Mr H's case.

- It may be willing to remove the credit reference information, if Mr H repays the capital. Otherwise, it will require evidence to show the loan application was fraudulent, or confirmation of fraud from the police.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'm satisfied, from the evidence, that Mr H has given us a truthful account of what happened when he lent his former wife his debit card. I accept that he did not make the loan application to Satsuma, and that (as his former wife drew all but £50 of the loan proceeds out of his account) he did not materially benefit from the application.

The points Satsuma makes about negligence are not directly relevant to Mr H's liability for this loan. The concept of gross negligence in the care of the card or PIN is something that a bank may raise as a defence to a claim for a refund of unauthorised transactions, but not where use was made of credit.

So Satsuma is not able to use that argument as a reason to make Mr H liable for a loan that he did not apply for and did not receive. To hold Mr H liable for this loan, Satsuma must satisfy me that he made or authorised the application or had the money from the loan. It has not done that, and I have found Mr H's evidence credible.

Mr H reported the matter to the police. The fact that Mrs H has not been prosecuted by the authorities does not, of itself, mean that Satsuma can hold Mr H liable to repay a loan that I am satisfied he did not take.

I find that Mr H should not be held liable for this loan and that reference to the loan should be removed from his credit file. I also agree with the adjudicator's suggestion that he should not have to return the £50 of the loan proceeds that remained in his account, given the inconvenience he was caused.

### **my final decision**

My final decision is that I uphold this complaint and I direct Provident Personal Credit Limited (trading as Satsuma Loans) to:

- cancel Mr H's liability for this loan; and
- remove all evidence of the loan from Mr H's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 4 April 2016.

Jane Hingston  
**ombudsman**