

## **The complaint**

Mrs P has complained that Oakbrook Finance Limited, trading as Lively Loans, is holding her liable for a loan she says she didn't take out.

## **What happened**

Mrs P was abroad from 2 February 2019 to 17 February 2019. On 1 February, her bank sent her a new debit card because the one she had was due to expire.

Mrs P's new debit card details were registered to three accounts with two gambling websites on 7 and 28 February. Payments were made to the gambling websites on 12 February, 5 and 12 March.

On 7 March, Likely Loans received an application in Mrs P's name for a loan for £2,000. It paid the funds directly into Mrs P's account on 8 March. The money was used to fund the payments to the gambling websites.

Mrs P found out about the loan and betting transactions when she checked her statement. She complained to her bank, believing it would also investigate the loan. She raised a fraud complaint directly with Likely Loans on 14 May, after receiving a Notice of Arrears.

Mrs P said she didn't apply for the loan and knew nothing about it. She also said she didn't have an account with the gambling websites and didn't make the disputed payments.

She said she had given a spare set of keys to her neighbours for use in an emergency in September 2018. She said no-one would have been in her house while she was abroad because her husband worked from 6.30am to 8.30pm and her children were staying with an aunt. She said she recognised the mobile phone number, which Likely Loans had. It was her neighbours' number. She believes the neighbours entered her house, while it was empty, and stole the replacement debit card and personal details.

She asked Likely Loans to stop chasing her for the repayments and to release her from any liability.

Likely Loans investigated her complaint but didn't uphold it because neither the police nor her bank had contacted it to confirm that she had been the victim of a fraud. It also said she hadn't provided the documents which it had requested.

As Mrs P wasn't happy with Likely Loans' decision, she asked this service to investigate.

An investigator looked into her complaint and decided to uphold it. He was persuaded this was a fraudulent loan application – most likely made by the neighbours. He recommended that Likely Loans:

- write off the loan and
- remove any adverse information on Mrs P's credit file.

Likely Loans disagreed with the investigator's opinion. It said Mrs P wasn't a credible witness because:

- she said she had given the keys to a builder. Then she said she had given the keys to her neighbours.
- She told her bank she didn't know the third parties on the betting accounts. She later said she did know them.
- The third parties were not her neighbours because they lived on a different street.
- It isn't usual practice to leave house keys with strangers.
- There was no need to leave keys with neighbours because her husband was still going home.
- She didn't pursue a police investigation.

Likely Loans concluded that the third parties must have been family members because they shared the same surname. Therefore, it was more likely than not that she allowed them to use her account and to take out the loan.

Likely Loans have asked for an ombudsman's 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.

The investigator wrote a detailed view that sets out in full the facts, the transactions, and the evidence. Both Mrs P and Likely Loans have read the investigator's view, so I won't repeat every detail here, only those which form the basis of my decision. However, I can assure both that I've read the file, including their comments.

Having done so, my review of the evidence has led me to the same overall conclusions as the investigator and for much the same reasons. I'm persuaded by the evidence that one or more third parties applied for the loan fraudulently in Mrs P's name.

To reach my decision, I've considered:

- the application for the loan
- the account the loan monies were paid into
- how the funds were used.

I've also taken into account Mrs P's version of events.

Firstly, I've looked at the evidence of the original application made in Mrs P's name. The application has her name, date of birth, postal address and employment details. However, the email address and mobile number are different. They are not Mrs P's contact details. The gambling websites had the same number in three accounts. Those accounts weren't in Mrs P's name.

This meant that Mrs P didn't receive the email and text messages confirming that the loan had been approved, which is why she didn't respond at the time. This benefited the third parties because the risk of being caught early was reduced. And I can't see a reason why Mrs P would make an application but change these details.

On 7 March, someone, who said she was Mrs P, called Likely Loans to say she hadn't received the funds. I've listened to that call. I've also listened to a call with Mrs P. The voices are different. I'm not convinced that the caller on 7 March was Mrs P. The notes

from Lively Loans also record that the application caller didn't match Mrs P. So, I'm satisfied that the caller wasn't Mrs P.

Secondly, I can see that the loan was paid into Mrs P's bank account. So, whoever made this application knew they could easily get the money from her account. On the face of it, that would be Mrs P. However, the evidence from her bank shows that attempts were made to use her card in the UK while she was abroad. I've seen her travel documents. These confirm she was abroad at the time. So, it wasn't her using the card. There were unsuccessful attempts at ATMs because the third party didn't know the PIN. But they didn't need the PIN for the betting transactions. All they needed were the card number and security number. It was easier to use the card for internet transactions. And this meant they could get access to the funds in her account.

The funds were spent on seven online betting transactions across three accounts. As I've already mentioned, these accounts were not opened in Mrs P's name. The postal address on the three accounts was the same. It wasn't her address. The mobile phone number matched the number on the loan application. It wasn't Mrs P's number.

Also, the loan application and six of the betting transactions were made from the same IP address. There is no evidence linking Mrs P to that IP address.

Based on this evidence, I'm satisfied that one or more third parties applied for the loan in Mrs P's name and spent the funds. And there isn't really any dispute that this happened. Likely Loans' position is that Mrs P colluded with the third parties because she knew them, and they had her card and personal details.

Mrs P admits she knew them. She says they are neighbours and the people whom she trusted with her house keys. She has explained how they might gain access to her home and personal details. But this isn't proof of fraud by her. And it's a giant leap to say this means she colluded with them in a fraudulent activity.

I've seen her bank account transactions for January 2019 to May 2019. There are no gambling transactions. Most transactions are for general shopping. There are a couple of high value purchases. The loan and disputed transactions appear unusual and out of character for the account. I find it hard to believe that she would allow neighbours to use her account for betting, much less apply for a loan.

In fact, I was surprised by some of the assumptions made by Likely Loans. I consider that many people think of people who live in their area as neighbours. A neighbour doesn't have to be an immediate neighbour.

Also, I don't think it's uncommon to give a trusted neighbour a spare set of keys. It might be unwise, but this isn't proof of fraud or collusion.

I was also astonished by the assumption that because Mrs P and the neighbours shared the same surname (a non-English name) and lived close by, they were family members, and this meant she consented to the loan. In my opinion, this is a completely unreasonable assertion. I note that the investigator has shared data with Likely Loans on how many people share this surname.

Lastly, Mrs P is under no compulsion to report the matter to the police. I can see it shows good faith but it's no bar to a settlement. As it is, she did report the fraud to the police.

However, it's not her responsibility or duty to pursue the investigation. That is a matter for the police. So, I don't think it's fair for Likely Loans to say it won't cancel loan because the police didn't contact it. And the same arguments apply to her bank not contacting Likely Loans.

In summary, I believe there's compelling evidence that one or more third parties made a fraudulent loan application in Mrs P's name. I don't consider there's evidence showing that Mrs P knew about the loan or consented to it. And I've seen no evidence that she benefited from the money. Therefore, it isn't fair and reasonable to ask her to repay it. I will now be instructing Likely Loans to put things right.

### **My final decision**

My final decision is that I'm upholding this complaint and I am instructing Oakbrook Finance Limited, trading as Lively Loans to: -

- stop pursuing Mrs P for this loan which she didn't apply for
- remove any data about this loan from Mrs P's credit record.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 5 December 2020.

Razia Karim  
**Ombudsman**