

The complaint

Miss H complains that Quidie Limited (trading as Fernovo) is holding her liable for a loan in her name which she says she did not consent to be taken out.

What happened

The circumstances of this complaint are well known to both parties, so I will not repeat them all again here in detail. But I will provide an overview of events below.

On 22 November 2020, a loan in the sum of £250 was taken out in Miss H's name. In short, Miss H's position is that her former partner took this loan out without her consent. Miss H also argues that her former partner transferred the loan funds from her bank account to his – without her authorisation.

Miss H raised this matter with Fernovo. It carried out an investigation and held her liable for the outstanding balance of £72.64 (based on the principal amount of £250, less £177.36 already paid).

One of our investigators considered the complaint and upheld it. Miss H accepted the investigator's findings, but Fernovo did not. So, this matter has been passed to me to make a decision.

On 4 November 2022, I issued a provisional decision upholding this complaint. For completeness, I repeat my provisional findings below:

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

I would like to say at the outset that I have summarised this complaint in far less detail than the parties involved. I want to stress that no discourtesy is intended by this. If there is a submission I have not addressed, it is not because I have ignored the point. It is simply because my findings focus on what I consider to be the central issues in this complaint.

In the investigator's findings, she held that Miss H cannot be bound by the terms and conditions of the Consumer Credit Agreement ("CCA") concerned. She held this on the basis that Fernovo had accepted in its final response that the loan was taken out fraudulently. In Fernovo's response to the investigator's findings, it said, amongst other things, 'We did not request [Miss H] to be bound by the agreement. We simply requested from her to return the funds that were transferred to her account not any interest or charges ... we have no objection to delete this account from her credit file, once repaid.'

As it appears Fernovo accepts that Miss H did not consent to the loan being taken out in her name, it follows that she did not enter into the associated CCA. Therefore, she cannot be bound by the terms and conditions of it. Because of this, I consider that Fernovo cannot pursue Miss H for any interest or charges arising from the loan agreement – amongst other things which I set out later in this decision.

I will now turn to whether I consider it fair and reasonable for Fernovo to pursue Miss H for the principal sum of the loan. To that end, I must consider whether Miss H had use of the principal sum. Having thought about this carefully, I am not persuaded that she did. I will explain why.

- *It is only logical that a third party who has taken out a loan fraudulently – which is accepted in this case – would want to benefit from the principal sum.*
- *I have seen evidence which suggests that the provider of Miss H's bank account – which the principal sum was credited to – accepts that a third party made unauthorised transactions on her account.*
- *Notwithstanding the above bullet, Miss H's bank statement shows that the principal sum was transferred to the third party's account the following day it was credited to Miss H's account. To my mind, this is indicative of what I would expect someone to do who had taken out a loan fraudulently.*
- *I have not seen any satisfactory evidence to suggest that Miss H was complicit in transferring the principal sum to the third party.*

Taking all the above points together, I am persuaded, on balance, that Miss H did not have use of the principal sum of the loan. It follows therefore that I find it would not be fair and reasonable for Fernovo to pursue Miss H for it.

As this is a provisional decision, both parties in this matter have a short period to make further submissions before I make my final decision. Neither party needs to repeat submissions or provide evidence previously shared with our Service.

Responses to my provisional decision

Miss H responded to say she had nothing further to add. However, Fernovo did not respond.

What I have 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.

Given that Miss H had nothing further to add and Fernovo did not respond – I see no reason to depart from my provisional findings

My final decision

For the reasons set out above, I uphold this complaint. I therefore direct that Quidie Limited (trading as Fernovo):

- Should not pursue Miss H for any interest or charges arising from the loan agreement.
- Should not pursue Miss H for the principal sum of the loan.
- Write off the remaining amount of the loan and close the account.
- Remove any data reported to the credit reference agencies about the loan.
- Refund Miss H any repayments she made towards the loan.
- Refund Miss H any interest or charges she paid on the loan.

- Adding 8% simple annual interest from the date the above sums were paid to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 16 December 2022.

Tony Massiah
Ombudsman