

The complaint

Mr S complains that Hitachi Capital (UK) Plc are holding him liable for a loan he says he didn't apply for.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here. In April 2021 Hitachi processed a loan application for £23,000 in Mr S' name. The money was then paid into Mr S' account with his own bank 'H'.

From there the money was ultimately lost to a scam. Mr S later complained to Hitachi who said that the application was made using Mr S' genuine contact details – they continued to hold him liable for the loan.

The matter was referred to our service and one of our Investigators recommended it should be upheld. Hitachi disagreed and so the complaint was passed to me to decide. In February 2023 I issued a provisional decision in which I said:

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

I'm considering this complaint alongside Mr S' linked complaint about H. I accept that Mr S has been the victim of a scam, but that doesn't automatically mean that Hitachi shouldn't pursue him for the loan. Mr S told Hitachi that he wasn't aware of the loan from them. I don't agree this is the case.

As part of his submissions on his linked complaint Mr S has provided a history of the messages between him and the scammers. Relevant parts of those messages (from April 2021) are copied below:

Mr S: *"how come I have got 2 more loans in my bank account?? So all in all that's 63k I owe out who is paying it all back? As I not got it as I have told you Chris and Shane never said it was going to take out more loans ha said it was for setting up the thing to pay back the 25k that I asked my bank for?? I'm getting worried about this now Chris as it all comes back on me."*

Scammer: *"All loans are paid by us to you. We have all of the loans information and specific payment for each one. Open anydesk. I will show you what I mean..."*

Then the following day the conversation continues.

Scammer: *"Did you get the funds from Hitachi?"*

Mr S: *"Not sure"*

Scammer: *"What is your balance in your bank now, check and let me know please."*

Mr S: *"Yes its in..."*

Scammer: *"Ok can you open anydesk?"*

I find these messages to be persuasive evidence as they are a contemporaneous record of what was said. I also think they make clear that Mr S himself didn't knowingly enter into the loan agreement with Hitachi. So as Mr S wasn't party to that agreement, I don't think Hitachi should hold him to the terms of an agreement he didn't enter into. This means he shouldn't be charged any interest or fees and details of the loan should be removed from his credit file.

But this doesn't change the fact that Hitachi did credit Mr S' account with £23,000. And I think the above messages make equally clear that Mr S knew these were loan funds and that the loan was in his name. This would have been supported by the documentation that Hitachi would have sent to him at the time.

Mr S would have had the option to contact either his bank or Hitachi at the time to explain that he didn't want the loan and to arrange the return of the funds. But rather than doing this he knowingly paid (or agreed for) those funds to be paid towards what he believed at the time to be a genuine investment. As such, I can't say that Mr S didn't make use of the money Hitachi had paid into his account. And so I think it is fair and reasonable for Hitachi to still pursue him for the loan amount of £23,000 (should they choose to do so)."

Hitachi acknowledged receipt of my provisional decision but didn't provide any further comments or evidence. Mr S didn't respond.

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.

As neither party had any further comments or evidence for my consideration, I see no reason to deviate from the outcome explained in my provisional decision.

My final decision

For the reasons outlined above, my final decision is that I uphold this complaint in part. Hitachi Capital (UK) Plc must:

- Not pursue Mr S for more than the £23,000 principal loan amount.
- Remove any record of the £23,000 loan from Mr S' credit file.
- If Mr S has already made repayments towards the loan, the proportion of those repayments made up of interest, charges or fees on the loan should be returned to Mr S. And for any such refunds, 8% simple interest (yearly) should be added between the date Mr S made each payment and the date of reimbursement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 4 April 2023.

Richard Annandale
Ombudsman