

## **The complaint**

Miss H complains that she's being pursued for a loan taken out with NewDay Ltd ("NewDay") that she didn't apply for or use.

## **What happened**

Miss H has explained to us that she was previously in a coercive relationship in which her ex-partner had full financial control. She told us she discovered this £5,000 loan by checking her credit score. She's reported the matter to the police.

Miss H said the loan was taken using an email address that doesn't belong to her, and her ex-partner's phone number. It was paid into a joint account which she didn't have access to. She also said that her post was intercepted.

Miss H would ultimately like it to be determined that she isn't responsible for the loan and for any record of it to be removed from her credit file.

NewDay told us it sold its loan book on to a third party ("Company A"). It said this was regardless of the standing of the account at the time of purchase and that Company A now administers the accounts instead of NewDay. It said it no longer has responsibility or the accounts or any associated complaints, including issues or events prior to the purchase – which Company A said was in July 2021 – and that it's unable to review and respond to Miss H's complaint as it doesn't have the right or means to do so. Company A said it's still in active communication with NewDay who would provide the original lending information required.

To make sure the correct party is held responsible for this complaint, our investigator asked for confirmation and evidence of the terms of the sale of the loan book from NewDay to Company A, specifically around liability for acts and omissions prior to this sale. This information was requested on 2 May 2023 and chased at the end of May 2023.

The Dispute Resolution ("DISP") rules that we follow, specifically DISP 3.5.9(3) and DISP 3.5.14(1) say that the ombudsman can reach a decision on the basis of what has been supplied and take account of the failure by a party to provide information requested and that failure to comply with a time limit means the ombudsman may proceed with consideration of the complaint. So, having had no response from NewDay and with these rules in mind, the investigator provided their view of the case.

The investigator concluded that, in line with the Consumer Credit Act 1974 Section 83 (1), Miss H shouldn't be held liable for the loss as the ex-partner wasn't acting, nor should they be treated as acting, as Miss H's agent. And they weren't persuaded Miss H was aware, consented to, or knowingly benefited from the loan taken out in her name. They recommended the loan be written-off, reference to it removed from Miss H's credit file and any loan repayments refunded along with 8% simple interest per annum from the date of payment until date of refund, subject to evidence from Miss H. Miss H agreed.

NewDay didn't agree. It asked for an ombudsman's decision but didn't provide any

reasoning for why it disagreed. The investigator asked about this, particularly for the purpose of determining whether this was about its liability in respect of the case or the circumstances around the loan itself – setting a deadline of 5 July 2023. As our Service didn't receive a response, this was chased with a further deadline given of 20 July 2023.

I contacted NewDay informally on 21 August, as our rules allow, to ask for the liability information previously requested and to explain that, in the absence of a response, I was minded to proceed on the same basis as our investigator. I asked for this to be provided by 29 August 2023 and provided a reminder around this on 25 August 2023, which was acknowledged. I also arranged for contact to be made with Company A in a further attempt to obtain the liability information.

On 6 September 2023, our Service was made aware by Company A that the loan had defaulted and had been sold on. But NewDay failed to respond to my request for information, and neither party has provided the required liability information. So, I'm now proceeding to issue 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.

Having done so, I agree with the outcome reached by our investigator for the following reasons:

- In the absence of sufficient proof to support that liability for acts and omissions prior to the sale have passed over to Company A, and in line with DISP 3.5.9(3) and DISP 3.5.14(1), I hold NewDay responsible for this complaint.
- The Consumer Credit Act 1974 Section 83 (1) states "*The debtor under a regulated consumer credit agreement shall not be liable to the creditor for any loss arising from use of the credit facility by another person not acting, or to be treated as acting, as the debtor's agent.*" Miss H has provided consistent and persuasive testimony around why she wasn't aware of this loan. So, in the absence of any response to disagree with the overall outcome reached on the case, I see no reason to depart from the findings of our investigator. I don't think it would be fair to hold Miss H liable for this loan.
- In reaching my decision, it's important to note that it's somewhat unclear whether Miss H benefited from the loan in part. For example, there was around £500 in the account prior to the loan being paid in, and £500 was paid directly to Miss H's own account shortly after the loan payment – which is said to have been an amount her ex-partner owed her. So, it's debatable whether Miss H was given loan funds or existing funds. Payments were also made from this account for things such as bills and insurance, which may have also benefited Miss H. But, on balance, I'm persuaded that Miss H didn't *knowingly* benefit from it. And it could reasonably be said that she didn't. Given the circumstances surrounding this case and the lack of engagement from NewDay, I've proceeded on this basis.

So, for these reasons, I'm upholding this complaint.

### **Putting things right**

Since the investigator's involvement and my informal attempts to mediate this matter, we've been made aware that the loan has been sold on. So, to put things right, NewDay will need

to take slightly different action to what was previously recommended:

- NewDay will need to arrange for the remainder of the debt to be written-off, which may require it to buy back the debt from the company that now owns it;
- NewDay should arrange for debt to be removed from Miss H's credit file;
- If it can be shown that Miss H has made repayments towards the loan, these should be refunded along with 8% simple interest per annum from the date of repayment to the date of settlement.

### **My final decision**

For the reasons given, I uphold this complaint against NewDay Ltd. I direct it to put things right as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 9 October 2023.

Melanie Roberts  
**Ombudsman**