

The complaint

Miss D has complained that Brent Shrine Credit Union Limited (trading as My Community Bank) are holding her liable for a debt which she says was taken out by ID theft.

What happened

Both sides are most familiar with the case, so I'll summarise what happened in brief.

In 2021, a £1,500 unsecured personal loan was taken out from Brent Shrine in Miss D's name. A number of loans with other companies were also taken out in her name at around the same time. The money was paid into Miss D's bank account, then transferred away.

Miss D has explained that she fell victim to a romance scam. She developed a relationship with a man she met online, who offered to teach her about cryptocurrency investing. He persuaded her to agree to a loan with a different company, and to give him access to her online banking, crypto account, and ClearScore account, promising large returns if he did the trading for her. He then took out further loans without her consent (such as this one), drained her savings, took all the money for himself, and cut contact.

Brent Shrine held Miss D liable for the loan. They said the application had passed their checks and she'd been negligent.

Our investigator upheld the complaint. Brent Shrine didn't agree, so the complaint's been passed to me to decide.

I sent Miss D and Brent Shrine a provisional decision on 26 July 2023, to explain why I thought the complaint should be upheld in part. In that decision, I said:

It seems that Miss D has been scammed here. Miss D has provided screenshots showing that she gave the scammer access to her accounts, that he promised he was trading for her, and that he asked her not to check her online banking – giving the excuse that it was to avoid technical difficulties. She's provided screenshots from her crypto account showing that it was drained, and her bank has provided statements showing that her savings were also drained. Miss D's testimony has been credible, and fits with known methods of scams, as does her bank account's activity. She reported the matter to the police, Action Fraud, and the relevant companies. And the other loan companies found she'd been defrauded.

I appreciate this can't have been an easy time for Miss D, and I appreciate why she feels that she shouldn't have to repay this loan. It's worth keeping in mind that it's the scammer who's primarily responsible for what happened. But I can only consider what Miss D and Brent Shrine did in this dispute between them, and I must be fair to both sides.

It doesn't seem unreasonable that Brent Shrine lent out this loan. It passed all the necessary checks, ultimately because Miss D gave the scammer everything he needed to pretend that he was her.

It's not clear whether Miss D applied for this loan herself. For example, I can see the scammer's phone number was used, and the IP address used does not match up to her. But I find that Miss D was either aware, or ought reasonably to have been aware, that this loan was being taken out in her name and would need to be repaid. The loan was applied for using Miss D's email, and the application was verified by clicking a link she was emailed. Miss D logged into her online banking and checked her account shortly after this loan was paid into it, and while the loan funds were being transferred out. Indeed, Miss D made a number of the bank transfers out herself. I can see this was her, as these transfers were made on her own mobile phone – not the scammer's – at the same IP addresses she used for her genuine activity, having logged in using her biometric fingerprint.

I think it's most likely that Miss D was persuaded to receive the loan funds and pay them on as part of a scam, as she was the first loan with the other company.

Further, I need to consider whether Miss D did enough to verify what was really going on and to reasonably mitigate her losses. I'm afraid I think Miss D ought to have had more concerns along the way about what she was being asked to do. So that also means she should bear some responsibility for her losses.

While I understand that the scammer manipulated Miss D into believing they had a romantic connection, he was still an unverified individual who she'd never met in person. He was not a qualified or regulated person such as an investment broker or advisor, he didn't provide any official documents or contract for Miss D to rely on, and Miss D had nothing which verified what he was telling her. I can't see that Miss D carried out any reasonable checks or due diligence. Essentially, she gave her financial details and full access to her accounts to an online stranger without having a reasonable basis to believe what he was telling her.

Further, I can see that Miss D's own bank contacted her a number of times to discuss her account activity and the possibility she was being scammed. They even discussed scams like this one. But Miss D did not take heed of this and repeatedly assured them that everything was alright.

So even if I were to find that this loan was taken out without Miss D's knowledge or consent, I still could not fairly tell Brent Shrine to write off the loan's principal in these circumstances. I'm afraid that Miss D did not have a reasonable basis to believe what she was being told, and she ought reasonably to have realised that she was receiving and helping pass on the proceeds of a loan which would need to be paid back. And it wouldn't be fair to hold Brent Shrine responsible for the scammer's actions or Miss D's negligence, when they lent out the loan in good faith based on genuine details.

This is a difficult message for me to give, and I know it's a difficult message for Miss D to receive. But given the evidence I have so far, and the circumstances of this case, I'm unable to reasonably reach any other conclusion.

Of course, I do accept that Miss D was scammed. And it seems that she did not benefit from this loan – the money ultimately went to a third party. I think it would be unfair for Miss D to have to pay interest and fees on a loan which she was scammed into forwarding on while in a vulnerable position, and which she didn't benefit from. It also would not be very appropriate for Brent Shrine to look to profit from fraud in this situation. Further, there's a good chance that Miss D did not actually apply for this loan herself – and Brent Shrine can't hold her to the terms of a loan agreement she didn't actually agree to. So I think the fairest thing is for Brent Shrine to waive the interest and fees in this case, to remove the account from Miss D's credit file, and to work with Miss D to come to a repayment arrangement she can afford for the £1,500 principal sum.

I said I'd consider anything else anyone wanted to give me – so long as I received it before 23 August 2023. Brent Shrine agreed with the provisional decision. Miss D explained that while she wasn't happy with the outcome, she had no further information to give.

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.

Neither side have sent me any new evidence or arguments. So having reconsidered the case, I've come to the same conclusion as before, and for the same reasons as set out in my provisional decision above.

I understand that this decision will come as a disappointment to Miss D, though it is not my intention to disappoint her. But I've explained above why I'm unable to reasonably come to another conclusion. I hope that now the case has come to an end and Brent Shrine have agreed to do what I set out, it will help her to move forward from what must have been a very distressing time indeed.

Putting things right

I direct Brent Shrine Credit Union Limited to:

- Remove any interest and fees from this loan;
- Remove any record of this loan from Miss D's credit file; and-
- Work with Miss D to come to an affordable repayment arrangement for the loan's £1,500 principal sum, outside the terms of the loan agreement.

My final decision

For the reasons I've explained, I uphold Miss D's complaint in part, and direct Brent Shrine Credit Union Limited to do what I set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 19 September 2023.

Adam Charles

Ombudsman