

## The complaint

Mr B complains that JN Bank UK Ltd is holding him liable for a loan he says he didn't apply for.

## What happened

I sent my provisional decision to both parties on 9 August 2023. I said:

*"The background to this complaint is well known to both parties and so I'll only refer to some key events here.*

*JN Bank approved a £3,500 loan in Mr B's name on 6 September 2021. It was set up over a three-year repayment term at about £126 per month.*

*Mr B contacted JN Bank on 17 February 2022. In this call, he enquires about the balance of the loan and asks how he can make a payment. JN Bank explained to Mr B the loan was for £3,500, that the account was in arrears as only one payment in November 2021 had been received, and it would cost about £3,480 to settle the debt. Mr B refers to "getting someone to make a payment for it because they owe" him and that he thought a payment was made in December 2021 or January 2022. He then questions how he can repay the loan, both in full as well as in instalments. After JN Bank explain his options, Mr B says his aim is to pay more than the monthly repayments as he just wants to get rid of it. He also updates his telephone number and email address with JN Bank (as they differed to those on their system).*

*Mr B contacted JN Bank again the next day. In this call, he said he'd only recently found – about a week ago after receiving a letter dated 11 February 2022 asking for payment – that the loan had been taken out in his name by a very close friend (who I'll refer to as 'Mr D'). He then explains while he intends on paying it, he doesn't want it affecting his credit score and so enquires about when the repayments are due. Mr B told JN Bank that it was Mr D that had made the previous repayment. And that he was thinking of contacting the police about the matter – although he's not sure if he wants to report it, as he's a very close friend, and so he's thinking of paying it himself and getting the money from him instead. He reiterated that his main concern was ensuring his credit score isn't "messed up". Mr B explains Mr D was able to do this as, due to knowing him for 23 years, they've got each other's person information – including passport and driving license etc.*

*JN Bank told Mr B that their fraud manager would look into the matter and, if it's confirmed as fraud, they can take it from there. They explained that due to the account status being in arrears, it may still potentially be referred to a debt collection agency. But the only way to stop that happening in the meantime would be to make a payment, and that he could do so by using the details provided the previous day. Mr B explained he'll make a payment but added that if Mr D didn't pay him then he's thinking of escalating the matter.*

*JN Bank wrote to Mr B on 4 April 2022 telling him that they hadn't found sufficient*

evidence to show the loan had been taken out fraudulently. He was therefore liable to make all contractual payments and that, failure to do so, could negatively impact his credit file.

A complaint was raised but JN Bank didn't change their position. In short, they said:

- The loan was paid into a nominated bank account held in Mr B's name. And they received a repayment for the loan from this account, as well a repayment from another account in Mr B's name.
- Initial communication following attempts to collect repayments – after failed direct debit attempts – included no indication or report of fraud.
- There was communication prior to the fraud report to update account details.
- They'd received confirmation from Cifas that there were no reported fraud concerns.

Mr B referred his complaint to the Financial Ombudsman. Our Investigator upheld the complaint in part. Having seen the chat history between Mr B and Mr D, he was satisfied the loan was taken out by Mr D and not Mr B. And so, as Mr B didn't agree to the loan he didn't think it was enforceable under the Consumer Credit Act. He thought JN Bank should remove interest or charges applicable to the loan and remove any details of it from Mr B's credit file. But given Mr B had given Mr D access to the bank account the loan funds were paid into, thereby allowing Mr D to be able to transfer the funds to his own account, he thought it was reasonable for JN Bank to pursue Mr B for the loan capital – less what had already been paid – if they wished.

Mr B didn't agree with our Investigator. In short, he added:

- He didn't take out the loan and so he doesn't think he should be punished for someone else's actions. Nor should he be held liable for a loan he didn't agree to.
- Mr D had access to the details on his bank card. He didn't have access to the physical card or his physical identification documents. Nor could he access his email or telephone. So, he doesn't think he gave sufficient information to Mr D to have enabled him to access his bank account through online banking (which he himself didn't use). But, even if it was, he doesn't think this would imply enough guilt on his part to warrant him being required to repay the capital.
- Other lenders have accepted Mr D fraudulently applied for loans with them and aren't holding him liable.

JN Bank acknowledged our Investigator's view but didn't respond to it.

### **What I've provisionally 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.

A consumer shouldn't be held liable for a credit agreement they didn't consent to. I've therefore considered whether, on balance, I think Mr B consented to this loan agreement.

*Having done so, I don't think he did. This is because:*

- Mr B has provided his chat history with Mr D. I'm satisfied this shows Mr D admitting taking out the loan without Mr B's knowledge or consent, along with discussions about repaying the amount owed.*
- Once received in Mr B's account, the loan funds were paid – via card payment – to an account held in Mr D's name with a third-party electronic money institution (EMI). The EMI account provider has confirmed the funds were then sent to an account, with another banking provider, also held in Mr D's name.*
- The telephone number and email address provided in the loan application don't match those Mr B provided our service, or those held by his bank account provider that received the loan funds.*
- The EMI account provider has confirmed the telephone number for Mr D's account. This matches the telephone number provided in the loan application.*
- JN Bank attempted to call Mr B on two occasions in September and November 2021 prior to the fraud being reported and the telephone number being updated. Their notes show the first call was disconnected after responses were given to security questions. And the person who answered the second call said they weren't Mr B. This further supports the likelihood Mr D applied for the loan and provided his own telephone number.*
- Mr B has shown borrowing was taken out fraudulently in his name with other lenders around the same time. This therefore adds further weight to the likelihood Mr D applied for this loan fraudulently.*
- I've noted JN Bank has referred to contradictions in Mr B's position in respect of the loan, between the calls of 17 and 18 February 2022, as he acknowledged ownership and liability of the loan initially. However, I think Mr B has given a plausible explanation for this. That being he didn't fully understand how much was owed at the time, demonstrated by the enquiry made to JN Bank in the first call. And given Mr D is a longtime friend of his, he was mindful of not trying to get him into trouble. I've found Mr B's testimony about the fraud, once reported, to have been consistent and persuasive here and I think Mr B's desire to protect his friend was understandable. I also think it's unlikely, had Mr B taken out the loan himself, that he would've needed to contact JN Bank to obtain details of the loan – such as the amount borrowed and the contractual repayments – as he would've already had it available to him.*
- I've considered that arrears letters were sent to Mr B from October 2021 onwards. And JN Bank has pointed out that no dispute was raised before the call of 17 February 2022. Although Mr B says he never received these letters, as they were correctly addressed, I think it's most likely they were delivered to him. It's therefore unclear why these weren't responded to earlier – albeit Mr B has said Mr D would wait in his room at times without him there and so, the mail could potentially have been intercepted. Nevertheless, I don't think the failure to respond to the arrears letters sooner, is enough to evidence Mr B applied for the loan.*
- JN Bank has also referred to repayments being made from accounts in Mr B's*

*name, with one made in November 2021 before the fraud was reported. Mr B has however explained that Mr D was able to set up online banking access for his account, and that it was him that made the November 2021 payment. I've looked at Mr B's bank account statements and it shows a credit from Mr D (for almost the same value) on the same day the repayment was made. Although it's unclear exactly how Mr D obtained online banking access to Mr B's account, this supports Mr B's claim that the loan repayment was made by Mr D, through his bank account.*

*For the above reasons, and after taking everything into consideration, I think it's more likely than not that Mr B didn't apply for the loan.*

*I've gone on to consider whether it would be reasonable for JN Bank to pursue Mr B for the debt outside of the loan agreement. But I don't think that would be fair here. This is because, from what I've seen, I'm not persuaded Mr B had knowledge Mr D had applied for the loan in his name. Nor am I satisfied that he has benefitted from the funds, as they were subsequently sent to an account in Mr D's name shortly after. At which point, I think it would be worthwhile to add that the funds were sent to Mr D's account by card payment. And given Mr D had these details available to him, due to the trust created from their long-standing relationship, it would've been relatively easy for him to have facilitated these payments. I therefore don't think it would be appropriate to attribute responsibility to Mr B for this. Sadly, I think Mr B has been the victim of fraud by a close friend, in which he trusted, and so couldn't reasonably have prevented it.*

*I'm also satisfied Mr B hasn't received funds from his own bank in lieu of the loan money paid away from his account. As such, JN Bank not pursuing him for the debt won't put Mr B in a position of betterment.*

*For these reasons, I'm currently of the view that it wouldn't be fair for JN Bank to hold Mr B liable for the loan. And so, to put things right, I think they should write off the outstanding amount on the loan and remove any reference of it with credit reference agencies.*

*On a final note, I've considered that Mr B has made repayments towards the loan. I've therefore thought about whether these should be returned. Having done so, I don't think this would be fair as I understand the funds used to make the repayments haven't come from Mr B's personal money – but instead, they've come from Mr D or his family. So, he hasn't suffered a personal loss here.*

### ***My provisional decision***

*My provisional decision is that I uphold this complaint.*

*I intend to direct JN Bank UK Ltd to write off the outstanding amount on the loan and remove any reference of it with credit reference agencies."*

Mr B accepted my provisional decision. But JN bank didn't respond to it.

Now that both parties have had an opportunity to respond, I can proceed to making my final decision on Mr B's complaint.

### **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.

In the absence of any further points for my consideration, I see no reason to depart from the above. I therefore remain of the view that it wouldn't be fair for JN Bank to hold Mr B liable for the loan. And so, to put things right, I think they should write off the outstanding amount on the loan and remove any reference of it with credit references agencies.

### **My final decision**

My final decision is that I uphold this complaint.

I direct JN Bank UK Ltd to write off the outstanding amount on the loan and remove any reference of it with credit reference agencies.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 11 October 2023.

Daniel O'Dell  
**Ombudsman**