

## The complaint

Miss G complains that Bank of Ireland (UK) Plc (BOI) are holding her to the terms of a loan agreement that she says she didn't enter into.

## 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 November 2022 BOI processed a loan application in Miss G's name. The loan was for £25,000 with a repayment term of 36 months. On 29 November 2022 the loan funds were paid into an account Miss G's held with 'N'.

On 30 November 2022 Miss G called BOI and said that she'd received a text message from BOI about a loan application that wasn't her. She asked that the loan funds not be paid if they hadn't already. She said the loan funds had all been moved to her account with R and that she had been threatened. She also acknowledged that she had previously called BOI about the loan, but said this was because she was under duress.

BOI investigated and said that they wouldn't be treating this as a fraudulent application. They pointed out that Miss G had called them twice before the funds were paid chasing for this to happen sooner. They continued to hold her liable for the loan.

Miss G complained, said that the loan wasn't affordable for her and wanted to know details of the checks BOI had undertaken when agreeing the loan. She also explained that this loan formed part of a scam she'd been the victim of. This included multiple loans being taken with different lenders and Miss G alleging that these loan funds were paid away from her account without her knowledge or consent. When BOI maintained their position, the matter was referred to our service.

One of our Investigators considered the complaint and didn't recommend it should be upheld. She didn't think BOI had treated Miss G unfairly. Miss G disagreed and asked for an Ombudsman to review her complaint. In February 2024 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 aware of Miss G's linked complaints and have familiarised myself with the broader circumstances of this complaint. But this decision only relates to the actions of BOI. Overall, I'm intending to reach the same outcome as our Investigator. But as my reasons are slightly different, I'm issuing this provisional decision to give both sides a further opportunity to comment before finalising my decision.*

*Miss G hasn't been able to provide a great deal in terms of documentary evidence of what she said happened between her and the scammer. She says this is in part because the*

scammer used messages that delete themselves after a period of time and also because she was advised to wipe her phone as a security precaution when the scam was discovered. In light of this Miss G's testimony is an important factor in the consideration of this complaint.

Broadly speaking Miss G's testimony to our Investigator was as follows. She responded to an advert on social media and was contacted and talked through the process of investing which involved downloading screen sharing / remote access software on both her computer and phone. After her initial investments showed good returns, she wanted to withdraw her money. She says at this point the scammers were pressuring her to put more money in and asked her to take a loan to invest more. When she declined to do this, she says the scammer told her he had already taken four loans in her name, which had been used to purchase cryptocurrency that he was now trading for her. Miss G says she didn't move any of the loan funds on and that this was all done by the scammer, through the screen sharing / remote access software.

Miss G says the scammer told her that he needed her help to "push through" a further loan (the one with BOI) and that those funds would then mean that all her profits could be released. Miss G says she contacted BOI and chased up the loan. The loan funds were then moved through Miss G's accounts before being used to purchase cryptocurrency which she says was then lost to the scammer.

I don't find Miss G's testimony evidence to be credible or reliable. I say this for a number of reasons. Miss G says she had no involvement in or knowledge of the loans in her name until the scammer shared this with her on 25 November 2022. But part of the evidence provided by N on a linked complaint shows that on 23 November 2022 Miss G's mobile banking was logged into using a fingerprint and that her full statements were viewed. At this point two loans she disputes taking would have been visible on the statements as well as the outgoing payments that moved the funds on. The use of a fingerprint to log in would have required physical possession of her phone and isn't something I think likely could have been done remotely as Miss G alleges. And given I'm persuaded that, on balance, it was Miss G on that login, and the evidence provided shows that the statements were viewed, I think if she really had no knowledge of or involvement in those transactions and loans as she now states, she would have disputed this at the time.

Further to this there was another login on 24 November 2022 (again using a fingerprint to access the app). And during that session an outgoing payment for £10,000 was made which is one of the ones Miss G says she knows nothing about. And in my consideration of the linked complaint about N, I'm currently more persuaded by the technical evidence and think Miss G instructed that payment. There are other instances of logins to mobile and online banking with N but I won't list them all.

Some of the information from the other lenders also includes that they sent information such as welcome packs etc to Miss G (using the same email address she has used to communicate with our service). Some of these were sent before Miss G says she knew of the loans. Again, if Miss G hadn't had involvement in those loans, it's difficult to understand why they weren't disputed when she received information about them.

Further to this, when reporting what had happened to the businesses involved, Miss G's testimony has changed. When she contacted N their call notes record that she said she was forced to take and then move the loans, before later claiming that she largely had no involvement in this at all.

The net result of all of this is that I think Miss G knows more about what went on than she has shared with our service. I find the evidence compelling that Miss G would have known about some of the loans sooner than she says she did. And as I've mentioned, in relation to

*the linked complaint, I'm not currently persuaded the movement of loan funds (from N) was unauthorised as she's alleged. Accordingly, it is difficult to put much weight on her testimony.*

*In this case, Miss G says she knew about the BOI loan and made an error of judgment under coercion from the scammer by calling at the time to chase the funds. Given my finding above about the reliability of Miss G's testimony, I think it's more likely than not that she entered into the loan agreement with BOI. Had she not consented to this loan, it's difficult to understand why she would have called BOI as she did. Miss G's correct details were used on the loan application (a third party could easily have used a different email address if trying to hide it). And the funds were paid into her account. So overall, I don't think BOI did anything wrong by holding her to the terms of the loan agreement.*

*Miss G has also argued that the loan is unaffordable for her and that it shouldn't have been agreed on that basis. As I've mentioned above, the loan had a 36-month term. And the monthly repayments were to be around £784.*

*Repayments of this amount and for the term involved represents a significant financial commitment. And BOI fairly and reasonably ought to conduct reasonable and proportionate checks to ensure the loan was affordable for Miss G in a sustainable way. I can see that BOI did conduct certain checks which included checking Miss G's declared income against information gathered from other sources. But in this case, I agree that I don't think the checks BOI did at the point of agreeing the loan were sufficient. I think BOI ought to have done more to investigate Miss G's financial situation at the time to ensure she would be able to maintain the agreement on a sustainable basis.*

*So, I've next gone on to consider what would have happened had BOI conducted these further checks. Miss G's statements from the time show that her monthly income from her employer was around £4,300. Taking into account Miss G's essential expenses at the time, I'm not persuaded a more detailed look at her financial circumstances would have concluded that the monthly loan repayments of around £780 weren't affordable and sustainable. As such, I don't think BOI's lending decision was irresponsible or that the lending was unaffordable.*

*I understand much of Miss G's submissions on this point centre around the multiple loans being taken out in a short period of time. But it is common that loans won't immediately show on checks done with the credit reference agencies. And I can only assess BOI's lending decision based on the information that was available to it at the time. Despite this I would still expect BOI to work with Miss G and to treat her sympathetically and positively and to look to arrange an affordable repayment plan for her. But there isn't a reasonable basis upon which I can require them to write off the lending as Miss G would like.*

*Miss G has made a number of further points which include BOI's sharing of data with her, the identity checks done at the time and the use of email to send an agreement. I've considered these, but as I think she took the lending she is disputing, none of those points make a difference to the outcome of this complaint."*

BOI didn't respond to my provisional decision. Miss G responded with some comments that I'll address below.

### **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.

Miss G has argued that the loan isn't recoverable because she says there is no legal contract, it is unaffordable and therefore void. She's made some legal arguments as to why

this is the case which include *“lack of consent, impossibility of performance and illegal consideration.”*

The crux of Miss G’s argument is still largely coming from her position that she didn’t enter into the agreement, and my on-balance finding is that BOI concluding that she did, is fair. So I don’t agree that this means BOI can’t pursue the outstanding debt or that the agreement is invalidated.

Miss G has also re-iterated her position regarding the affordability of the loan, she’s also said she wants to know how I’ve concluded this loan was affordable for her. She says that she can’t afford five loan repayments. But as I’ve set out before, my decision is specific to BOI’s lending decision based on the information available to it at the time (which wouldn’t have included knowledge of other recent loans). And my conclusion on affordability is based on Miss G’s account statements and the income and expenditure spreadsheet she provided to our service. Discretionary monthly spending wouldn’t be taken into account when assessing affordability. Miss G’s own assessment included nearly £1,000 of monthly spending on *“clothes / footwear, hairdressers, sport, fun money and holidays”* – none of which I would consider to be essential spending in the context of an affordability assessment. I maintain that there was sufficient remaining after essential expenditure and commitments each month to meet the requirements of the loan such that it wasn’t unaffordable.

So whilst I would agree with Miss G that BOI should have conducted more detailed checks prior to agreeing the loan, that isn’t in itself enough to mean that the lending was unaffordable or for me to uphold the complaint. I don’t think it likely Miss G would have disclosed anything at the time which would have impacted BOI’s decision to lend or that further checks at the time would have resulted in the lending being considered unaffordable.

Miss G mentioned that I acknowledged that credit files aren’t updated instantaneously, something she considers to be a ‘loophole’. I understand why Miss G says this, but it still doesn’t change my mind as to the outcome of this complaint. BOI would only ever have been able to make a decision based on information available to them. And I can’t hold them responsible for the time credit reference agencies might take to update their systems.

I’ve considered everything Miss G has said, but nothing has persuaded me to deviate from the outcome explained in my provisional decision.

### **My final decision**

For the reasons outlined above, my final decision is that I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss G to accept or reject my decision before 23 April 2024.

Richard Annandale  
**Ombudsman**