

The complaint

Mrs B complains that Admiral Financial Services Ltd trading as Admiral Loans (“Admiral Loans”) is unfairly holding her liable for the debt on a loan which she says was taken out as a result of a scam.

What happened

The background to this complaint is well known to both parties, so I won’t repeat everything here. In brief summary, in March 2023 a loan was taken out with Admiral Loans in Mrs B’s name for £20,000. Mrs B subsequently got in touch with Admiral Loans to let it know the loan had been taken out as a result of a scam. Ultimately Mrs B and Admiral Loans couldn’t reach agreement about things, so Mrs B referred her complaint about Admiral Loans to us. As an Investigator here couldn’t resolve the matter informally, the case has been passed to me for a decision.

I sent Mrs B and Admiral Loans my provisional decision last month, explaining why I was intending to uphold this complaint in part. Now that both parties have had fair opportunity to respond (and have done so), I’ve reviewed everything again, and I’m now ready to explain 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, the responses received to my provisional decision haven’t changed my mind: I’ve reached the same conclusions as in my provisional decision and for the same reasons. I’ve explained my reasons again below.

First let me clarify exactly what this decision is about. I understand Mrs B has explained that in early 2023 she was tricked by scammers into making payments for what she thought was a legitimate investment which resulted in this loan of £20,000 from Admiral Loans being taken out in her name in March 2023. Admiral Loans acted only as a lender, granting the loan for £20,000 and paying it into Mrs B’s bank account held with a third-party bank. This decision concerns only the £20,000 loan with Admiral Loans and whether it’s fair for Admiral Loans to hold Mrs B responsible for the loan bearing in mind how it was taken out and granted.

Mrs B has said she was scammed into taking out the loan with Admiral Loans and given the circumstances she’s explained she has my heartfelt sympathy, and I take on board what she’s said about this in her response to my provisional decision. However, this doesn’t automatically mean Admiral Loans should be unable to hold her liable for the debt. However, having considered things carefully, I am upholding this complaint in part. I’ll explain why.

Should Admiral Loans write-off the loan because of how Mrs B was scammed?

With regards to this element, the first question is: did Mrs B enter into this loan agreement, or was it done without her knowledge and/or consent?

I've thought about this carefully and I think this is a difficult question to answer. Our Investigator thought the loan was most likely taken out with Mrs B's knowledge and consent. But having considered all the evidence, whilst I accept this is a possibility, I think it's more likely that the loan was effectively taken out with Admiral Loans in Mrs B's name without her consent. I say this because I accept Mrs B was most likely tricked into enabling scammers, through remote access software, to access her information and apply for this loan in her name. It appears at least some of the scammers' operations in applying for this loan may have been conducted without Mrs B seeing them. But it seems, from Mrs B's own submissions, at least with regards to one of the loans the scammers took out in her name (perhaps not this one with Admiral Loans), that Mrs B did at least see the scammers inputting what Mrs B has described as fraudulent details into the application, such as her being a homeowner without a mortgage, working full-time, and earning £45,000 per year, none of which, she says, are true, and she was really unhappy about this. But Mrs B appears to have been vulnerable and under the spell of the scammers. She says she didn't consent to the application but felt unable to stop things, and I believe her.

In its response to my provisional decision Admiral Loans has questioned whether we've asked Mrs B whether she observed the applications being made when the scammers took control of her device, and it says a recording of Mrs B's call to Admiral Loans, when she reported the fraud, suggests she was present and aware of the information being supplied on the loan application. But we already queried this with Mrs B, and as I've explained, I don't think I can fairly say Mrs B *consented* to the loan, so this hasn't changed my mind.

Since I'm satisfied Mrs B most likely didn't consent to this loan, I don't think it would be fair for Admiral Loans to hold her to the terms of the loan agreement she never consented to. So, Admiral Loans shouldn't hold Mrs B liable for interest and charges, neither should there be a record of the loan on Mrs B's credit file – so if there currently is, this should be removed.

However, with regards to the principal loan balance, I don't think Admiral Loans was reasonably to know at the time that Mrs B hadn't consented to the loan. So, it wouldn't automatically follow that it would be fair for me to tell Admiral Loans that it should not be able to pursue Mrs B for any of the loan funds that are still outstanding, or that it should be required to refund to Mrs B any repayments to the loan she has already made (if any). I take on board what Mrs B has said about the way the scammers did things. But I can see that after the £20,000 landed in Mrs B's bank account held with a third-party bank, she herself appears to have moved the funds from this account to another account, payments which the third-party bank initially blocked but then released after Mrs B assured it the payments were genuine. So in the circumstances, I think Mrs B had reasonable use of the loan funds, it wasn't Admiral Loans' fault she lost them to a scam, so I can't fairly tell Admiral Loans that it should not be able to pursue Mrs B for any of the loan funds that are still outstanding, or that it should be required to refund to Mrs B any repayments to the loan she has already made (if any).

Irresponsible lending

Mrs B has questioned the affordability of the loan. And I've thought about this really carefully. However, our usual approach, if we were to uphold a complaint about unaffordable lending, is that interest and charges should be removed but the consumer should still pay back the principal amount of the loan they had the benefit from. I've already said above this is essentially what I think should happen in this case. So, even if the loan was irresponsibly lent, the redress I'm intending to direct in this case would already cover what we'd normally award for this.

I've thought really carefully about whether there's anything in this case that persuades me appropriate redress would be different to this. But having given this careful thought, I'm not persuaded there is. We've asked Mrs B for information about her current financial position and she's sent us details showing her current monthly income is £1,920 and her regular monthly outgoings are around £1,100. I appreciate that the outgoings Mrs B has detailed mainly cover what Mrs B would regard as essential spending, and don't allow for other expenses or outgoings that might crop up from time to time. I'm also aware Mrs B has explained that £620 of her monthly income comes from disability benefit, which she says shouldn't be taken into account when assessing affordability. However, if I was to disregard the income Mrs B receives from disability benefit, I think I'd also need to disregard the expenses Mrs B uses that money to cover. So, in any event, whichever way I consider things, I'm not persuaded the financial circumstances here fall into where I might consider appropriate redress being different to what I've already said I'm directing in this case. I'm satisfied Mrs B has sufficient disposable income each month to at least pay some amount each month to repay the principal loan balance. Although, naturally, I'd expect Admiral Loans to agree to a reasonable repayment plan with Mrs B, and to be sympathetic to any financial constraints that may materialise.

My final decision

For the reasons explained, I uphold this complaint in part and I direct Admiral Financial Services Ltd trading as Admiral Loans to:

- remove all interest and charges on the loan;
- take any repayments already made to the loan by Mrs B to date (if any) as having reduced the loan balance;
- remove reference to the loan from Mrs B's credit file; and
- not pursue Mrs B for more than the outstanding amount of the principal loan.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 12 April 2024.

Neil Bridge
Ombudsman