

complaint

Ms S complains that Novitas Loans Ltd allowed a drawdown of her loan without her authorisation.

background

Ms S took secured borrowing from Novitas to finance legal proceedings related to her divorce. In August 2015 she agreed a third loan – this time for £80,000 - to be used to pay the legal fees of her new solicitors. Novitas received a form dated 10 December 2015 to drawdown £38,573 from this loan which it processed and paid to those solicitors. On 7 January 2016 Ms S contacted it to say that she hadn't given permission for these funds to be released. The solicitors told it in a letter dated 16 January 2016 that the form had been signed in its presence by Ms S. Novitas sent this letter to Ms S. She did not pursue a dispute with Novitas but in May 2016 told it not to release any more money without contacting her. She changed solicitors in October 2016 and Novitas was informed that the previous solicitors were being taken to court for the release of documents. The court ruled that Ms S should pay those solicitors £14,000 for this. Ms S took a further loan of £20,000 in November 2016 which allowed payment of this amount.

Ms S complained after her legal proceedings had been settled. She said that the drawdown form did not bear her signature and she wanted the money repaid. And that the rate of interest on her borrowing from Novitas was excessive and she could not afford to pay it.

The adjudicator did not recommend that the complaint be upheld. He said that:

- He agreed that the signature on the drawdown form did not match that on other forms signed by Ms S.
- The solicitors were acting for Ms S from August 2015 to October 2016 and fees would have been incurred.
- He was persuaded that the money would still have been drawn by Ms S. The fact that a further £14,000 was paid indicated that Ms S did owe fees in excess of the original amount that was drawn down.
- He said that any dispute about the amount of fees due would need to be pursued with the solicitors. We did not have jurisdiction to look at its actions and he set out for Ms S the relevant bodies that might be able to help her.

Ms S did not agree. She said that the loan facility was not a guarantee of direct payment to the solicitors. She had told the solicitors she did not agree this, having already paid them a fixed fee. It could not be denied that the signature did not match hers. And she disputed that she signed the form in front of the solicitors as it said she had. Novitas had a duty of care and had not checked the signature. She did not think that the possibility of collusion between Novitas and the solicitors had been investigated. She said that this was a clear breach of trust by a regulated entity and she had not been protected.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The issue is whether the money was paid with the knowledge and authority of Ms S. The discrepancy of her signature on the form is important but it is not definitive here. The position of the solicitors is that, whatever the form of signature, it was made by Ms S. I need to look

at all the surrounding circumstances to make a decision as to whether Ms S is being fairly held responsible for this amount of her borrowing by Novitas.

Ms S said she had agreed a fixed fee to those solicitors of between £22 and £24,000 which she had already paid. Clearly the amount of this loan facility was put in place in expectation of fees in excess of that. Had the solicitors not continued to work for Ms S and there had been no basis at all for this payment, I think it most likely Ms S would have pursued this further at the time. She makes serious allegations of fraud. But once she had received the copy of the letter from those solicitors in January 2016 she did not seem to raise this issue again with Novitas until she made this complaint. In the interim it had sent her statements of the loan showing this amount. And I think it was fairly entitled to conclude that she knew about this payment which had not been reversed and that she therefore accepted it as made from her loan.

I don't doubt Ms S was in a disagreement with these solicitors about the costs and progress of her legal proceedings. She says she felt tied in to continuing to use them. And information I've seen indicates that there were orders and applications made to court in the period to October 2016. As the adjudicator says Ms S paid a further £14,000 to these solicitors drawing further borrowing from Novitas.

I appreciate the difficult personal circumstances Ms S has faced over a number of years. But I'm not persuaded that Novitas has acted unfairly. It's shown she received independent legal advice before agreeing to the facilities. The documentation set out the terms and interest rate applicable. And for the reasons I've given I don't see a basis for me to find that it should refund the drawdown of £38,573 to Ms S. I'm afraid that this is a matter she would need to pursue directly with the solicitors. I know she has already been in touch with the relevant bodies that might be able to assist her.

Ms S has explained the difficult financial position she is now in. I'd expect Novitas to treat this fairly. That does not mean it needs to take any particular action. And I note that during the time this complaint has been considered it's said that it has not been applying interest.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 15 December 2017.

Michael Crewe
ombudsman