

complaint

Ms P is unhappy that United Trust Bank Limited is holding her responsible for a debt of £50,000 secured on her property which she says she didn't take out.

background

In October 2016 a £50,000 loan secured against Ms P's property was taken out online, via a broker, in Ms P's name. Since the loan was taken out payments were irregular, which eventually led to a possession order being granted to United Trust in July 2017.

In November 2017 Ms P contacted the bank and said she'd become aware of the loan – she advised the loan was taken out fraudulently by someone known to her. Ms P asked the bank to write the debt off. United Trust didn't agree to write off the debt, so Ms P raised a complaint with them.

Ms P also reported the fraud to the police. The fraudster was arrested and in interview admitted taking out the loan with United Trust without Ms P's consent or authority.

In response United Trust said that they received notification in November 2017 from Ms P that the loan was taken out by somebody known to her. But they're not prepared to remove the debt until the police have finished their investigations.

Ms P's wasn't happy with United Trust bank's response so complained to us.

Our investigator looked into Ms P's complaint and thought United Trust needed to do more to put things right. In particular they highlighted that the signature on the loan agreement was different to that submitted on her application to our service. They thought that United Trust should write off Ms P's debt, and in recognition of the bank's delay in cancelling the debt compensate her £500.

Ms P accepted our investigator's opinion but United Trust didn't agree. The bank said:

- A Security Check was completed at the start of the loan – which involved questions taken from Ms P's credit file. These included questions about Ms P's current accounts for example her overdraft limits which were answered confidently and without errors.
- United Trust weren't notified about the alleged fraud until a year after the loan was taken out – despite letters being sent to Ms P's home address by United Trust, their solicitors and the Court.
- A field agent attended Ms P's property on three occasions but wasn't able to speak to anybody. But, they did leave a letter behind which wasn't responded to.
- They contacted Ms P's employer in March 2017, and spoke with Ms P. Ms P said she couldn't speak to the bank as she was at work and provided United Trust with an email address for correspondence. United Trust contacted Ms P but didn't receive a response.

- Although the third party admitted to taking out the loan under Ms P's identity, it's possible they will enter a plea of not guilty in Court.
- They consolidated a number of unsecured debts and redeemed an existing second mortgage to a third party business – if the charge is removed they may have a claim against Ms P.

As United Trust didn't agree with our investigator's opinion, it's been passed to be for a decision.

my findings

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, I agree with what the investigator has said for broadly the same reasons.

security checks

United Trust explained a number of security checks were carried out when the loan was initially taken out. They are concerned because these questions were answered confidently and without any errors.

The third party who has confessed to taking out this and other loans in Ms P's name lived at her address. This meant they had access to Ms P's identification documents and knowledge of Ms P's financial details. They also had the opportunity to intercept post at Ms P's address. I've looked at the loan agreement taken out in October 2017 and compared the signature on the agreement with Ms P's signature when contacting this service. And I think they are noticeably different. While I appreciate United Trust did take steps to verify that Ms P took out the loan – on this occasion, based on the evidence available to me, I'm satisfied that United Trust were dealing with a fraudster who was pretending to be Ms P. As such, I don't think it's fair that Ms P should be held responsible for the loan when she didn't consent to the loan being taken out or the debt being secured on her property.

time taken to report the fraud

United Trust has argued that Ms P could have responded to contact from them sooner. I've considered this point, but as the third party lived with Ms P I find it more likely than not they were intercepting her post. In any case, I'm satisfied Ms P didn't take out the loan. So, even if she could have put the bank on notice sooner than November 2017 it doesn't change the fact that Ms P didn't consent to the loan.

United Trust also contacted Ms P's employer in March 2017 and spoke to Ms P. At the time Ms P said she couldn't speak and provided them with an email address. Given the complexity of this particular case of fraud I don't think it's unreasonable that Ms P didn't respond to the contact. As the fraud started to unfold the third party fraudster was lying to Ms P and it took her some time to unpick all the fraud that was taking place. As soon as Ms P got to grips with the nature and extent of that the third party had done she contacted the police. I don't think it's fair to say that Ms P should be held responsible for a debt she didn't consent to, because she didn't contact United Trust sooner. In this case, as the loan had already been drawn down, contacting the bank sooner wouldn't have changed things.

court case

United Trust is concerned that the person who has admitted taking out the loan may enter a plea of not guilty in court. I agree that it's possible the third party could change their plea. And they could do this for a number of reasons depending on what they're being prosecuted for. We are an alternative to the court and my role is to determine, based on the available evidence, if Ms P can be held responsible for the debt. I'm satisfied, I don't need to wait until the court case is completed to decide this.

I'm persuaded that the third party took out the loan without Ms P's knowledge or consent. When the third party was arrested by the police, during interviews they admitted to taking out the loan with United Trust in Ms P's name. I understand that the bank want to wait until the court hearing. But my role here is to consider whether United Trust can hold Ms P responsible for the loan. And based on the evidence I'm not satisfied they can, because Ms P didn't sign the loan agreement and a third party has admitted to taking out the loan in Ms P's name.

consolidated debt

United Trust feel we need to consider the wider implications in this case. The loan taken out was used to consolidate a number of unsecured debts and redeemed an existing second mortgage to a third party business. United Trust say if the charge is removed there may be a claim against Ms P. I do appreciate the point raised by United Trust. But, in this case, my role is to consider whether Ms P can be held responsible for the debt.

Ms P has suffered stress and anxiety since discovering the loan was taken out fraudulently in her name. She notified the bank in November 2017, but despite the police confirming to United Trust that somebody known to Ms P had committed fraud, they haven't taken any action to remove the debt.

In conclusion I don't think that Ms P took out the secured loan with United Trust, and therefore shouldn't be responsible for the debt. I think it's fair and reasonable for the bank to write-off the debt, based on the evidence that's been provided. And I think United Trust should also compensate Ms P for the impact caused by them not writing off the debt.

my final decision

My final decision is that I uphold Ms P's complaint against United Trust Bank Limited. To put things right I require United Trust Bank Limited to:

- Write off the balance of owing on the secured loan and remove any associated interest and charges
- Contact the relevant authorities to remove any interest secured on Ms P's property
- Remove any negative markers and reference to the loan from Ms P's credit file
- Pay Ms P £500 in compensation for the distress caused

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 20 March 2019.

Jeff Burch
ombudsman