

The complaint

Mr A complains that Chetwood Financial Limited (trading as BetterBorrow) is holding him liable for a loan in his name which he says he did not consent to.

Mr A has a representative in this matter.

What happened

The circumstances of this complaint are well known to both parties, so I will not repeat them all again here in detail. But I will provide an overview of events below.

In June 2022, a £12,000 BetterBorrow loan was taken out in Mr A's name. The loan funds were credited to Mr A's bank account, which he then transferred to a third party. Mr A says that he did not consent to the loan; and that he was coerced into making the transfer. For these reasons, Mr A argues that he should not be held liable for the loan. As BetterBorrow did not agree with this, Mr A raised a complaint which he referred to our Service.

One of our investigators considered the complaint and upheld it in part. Because Mr A did not agree with the investigator's findings, this matter has been passed to me to make a decision.

What I have 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, I agree with the conclusions reached by the investigator for reasons I set out below.

But first, I would like to say at the outset that I have summarised this complaint in far less detail than the parties involved. I want to stress that no discourtesy is intended by this. If there is a submission I have not addressed, it is not because I have ignored the point. It is simply because my findings focus on what I consider to be the central issues in this complaint.

In our investigator's findings, he held, amongst other things, that a third party took out the lending in question without Mr A's consent. Because of this, the investigator directed that Mr A's credit file should be amended accordingly, and that he should not be bound by the terms and conditions of the associated agreement. However, the investigator also thought Mr A had utilised the principal lending; knowing it was from a loan he had not taken out. Therefore, the investigator thought it would be fair for BetterBorrow to pursue Mr A for the principal lending.

BetterBorrow appears to accept that Mr A did not take out the lending himself, nor provide consent to a third party to do so on his behalf. So, I will not deal with this point further.

What I must consider now is whether it would be fair for BetterBorrow to pursue Mr A for the principal lending. To this end, I need to look at whether Mr A received and utilised the loan funds. And, if he did use them, I need to consider whether he was aware of where the funds came from at the time.

Mr A accepts he received the loan funds into his bank account. Mr A accepts he utilised the funds by transferring them from his account to a third party. Mr A also accepts that he saw the name of where the loan funds had originated from. Mr A argues however, that a third party coerced him into transferring the loan funds to them. That is, under the threat of violence and blackmail. The following are some examples Mr A has provided of the alleged threats: informed that his house was being monitored, death threats and, '*... blackmailing threats on him [Mr A], his family and people at work.*' Mr A says the third party communicated all of this to him via calls and messages using a well-known social media platform, which deletes messages upon being read.

Having reflected on what Mr A has said, I take the same view as the investigator. That is, BetterBorrow is entitled to pursue Mr A for the principal lending if it wishes to do so. I will explain why.

I have not seen any evidence supporting the threats of violence and blackmail Mr A alleges. Notwithstanding this, I take the view that a reasonable person in the circumstances which Mr A has described: would not have transferred the loan funds, but instead, would have reported the matter to the police at the time. I say this because I am not persuaded that the alleged threats were so immediate, that Mr A had no other option but to make the three separate transfers he did. I find that he had reasonable opportunities to contact the police – particularly given the alleged threats appear to be somewhat remote.

Mr A suggests that he was in extreme fear about what the third party might do if he told anyone about them. For example, he suggests they told him that, amongst other things, '*... they had people working on the inside in the Banks and no one would believe him as they would wipe away any key notes and voice calls with the bank ...*'. However, it was not very long after the transfers – whereby Mr A says he contacted the police and his bank to tell them about the third party. I find it difficult to see what had significantly changed in this small space of time, which resulted in alleviating Mr A's fears and giving him the courage to contact the police/bank about the third party. If Mr A was able to report the matter when he did, then I find it reasonable to say he could have done so earlier when the loan funds were credited to his bank account.

Mr A also argues that BetterBorrow should never have approved the loan, and by doing so, it has lent money irresponsibly. He argues that had BetterBorrow not approved the loan, he would not have fallen victim to fraud. Even if I held that BetterBorrow should not have approved the loan – it does not follow that it should be 'written off'. I say this because even if the loan should not have been approved, this does not negate the fact that Mr A transferred out the loan funds from his bank account.

So, taking all the above points together – I am satisfied that Mr A did not consent to the lending in his name. However, whilst I acknowledge Mr A may not have benefited from the loan funds – I do find that BetterBorrow is entitled to pursue Mr A for the principal lending if it so wishes.

My final decision

For the reasons set out above, my final decision is that I uphold this complaint in part. I therefore direct that Chetwood Financial Limited trading as BetterBorrow:

- Remove any data reported to the credit reference agencies about the loan.
- Should not pursue Mr A for any interest or charges arising from the loan agreement.
- Is entitled, if it so wishes, to pursue Mr A for the outstanding principal sum of the loan.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 13 January 2023.

Tony Massiah
Ombudsman