

The complaint

Mr W is unhappy Chetwood Financial Limited (trading as BetterBorrow) is holding him liable for a loan applied for in his name as part of a scam.

What happened

The background to this complaint is well known to both parties, so I'll only refer to some key events here.

In May 2022 Mr W was unfortunately caught up in a crypto investment scam. As part of the scam, Mr W provided the scammer with personal information to facilitate the opening of a crypto exchange account (which I'll refer to here as 'N'). Mr W says the scammer then used this information to apply for three loans in his name, one of which was with BetterBorrow.

On 20 May 2022 the first of the three loans was paid into Mr W's bank account from a lender (which I'll refer to as 'Z'). The loan was for £25,000. Mr W then transferred all the funds from this loan to his account with 'N' on 23 May 2022.

On 23 May 2022 a loan was applied for in Mr W's name from BetterBorrow for £12,000. The funds were deposited in Mr W's bank account on the same day before he transferred the money, in seven instalments between 24 and 25 May 2022, to his account with 'N'.

On 27 May 2022 the third loan (from a lender I'll refer to as 'S') was paid into Mr W's bank account. The loan was for £15,000. That money was then all transferred to 'N' on 30 May 2022.

The funds from all three loans are no longer in Mr W's account with 'N' and has unfortunately been lost as part of the scam.

Realising he'd been the victim of a scam, Mr W contacted BetterBorrow on 30 May 2022. He explained the loan had been taken out in his name without his knowledge, and he asked BetterBorrow to cancel it.

BetterBorrow conducted a fraud investigation. Whilst it accepted Mr W had no knowledge of the credit agreement and so wasn't liable for the interest, fees and charges, it said he needed to repay the principal sum of £12,000.

Mr W complained to BetterBorrow. He said the loan was applied for without his knowledge and BetterBorrow didn't do enough to stop that happening. He said he had no communication from BetterBorrow about the loan – nor did it carry out sufficient checks on affordability. Mr W wanted the loan written off.

BetterBorrow didn't agree. It said it had processed the loan application correctly and done all necessary checks to confirm Mr W's identity and that he could afford the loan. BetterBorrow said as Mr W had willingly provided his personal details to a third party to facilitate the loan application, and had ignored signs this was a loan, he was liable to repay the £12,000.

Mr W referred his complaint to the Financial Ombudsman. He said he'd had no contact from BetterBorrow during the application process about the loan or whether he could afford it, nor had he agreed to the terms of the loan. Mr W said he hadn't benefited from the money and was now suffering extreme distress and worry at the thought of having to repay it.

Our Investigator considered Mr W's complaint but didn't uphold it. She accepted Mr W hadn't applied for the loan and so hadn't entered into the loan agreement, meaning he wasn't liable for interest, fees, and charges. But she thought Mr W should've contacted BetterBorrow before transferring the £12,000 out of his bank account – given the payment was referenced '*Received from BetterBorrow Loan*' on his bank statement. So, our Investigator thought Mr W should've done more to mitigate his loss.

In terms of the affordability of the loan – our Investigator said Mr W would still be liable for the principal sum even if we thought the lending was unaffordable. And so, the outcome of his complaint would be the same.

Mr W disagreed with our Investigator's findings and asked for an Ombudsman's final decision. He said he shouldn't be liable for money he didn't borrow.

Mr W also said the scammer had told him they had changed the reference for the £12,000 payment on his bank statement and said this was their money that had bounced back to Mr W's account and needed to be returned to them.

And because he'd not heard of BetterBorrow – Mr W said he didn't realise this was a loan, instead believing what he'd been told by the scammer. Mr W said if he had realised this was a loan, he wouldn't have transferred the funds.

Mr W also maintained BetterBorrow hadn't done thorough enough checks to ensure he could afford the loan. And if the correct email address had been used on the application, he would've received information to show this was a loan and not transferred the money to the scammer.

Mr W said he was the innocent victim of a scam and shouldn't be punished for trusting what he was told by the scammer.

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, I've reached the same outcome as our Investigator – and for largely the same reasons. I realise this will be very disappointing for Mr W and I'd like to assure him I haven't taken this decision lightly.

In doing so, I've very carefully considered all the evidence – including contact notes and phone recordings from Mr W's bank which have been provided in relation to his complaint about 'Z'. I'd like to assure Mr W that if I don't mention a particular point, it's not because I haven't considered it, but I've focussed instead on what I believe to be important to the outcome of this complaint.

I should also add that where the evidence is incomplete, inconclusive, or contradictory (as it is here), I must make my decision on the balance of probabilities – that is, what I consider is more likely than not to have happened in the light of the available evidence and the wider surrounding circumstances.

Mr W has complained to us about the actions of all three lenders ('Z', 'S' and BetterBorrow). Whilst the information relating to 'Z' and 'S' form part of the wider surrounding circumstances to Mr W's complaint, to clarify, I'm only making findings on the actions of BetterBorrow in this final decision.

I don't doubt that Mr W has been the victim of a cruel and sophisticated crypto investment scam. And I'm pleased to see BetterBorrow accepts he didn't enter into the loan agreement and so isn't holding Mr W liable for the interest, fees and charges applicable to the loan, nor is it reporting the loan against Mr W's credit file. I think that is fair.

Where a lender is found to have irresponsibly lent, this doesn't mean that the borrower automatically has the loan written off. We'd usually say that the lender shouldn't profit from their mistake by adding interest, fees or charges. But we'd normally still say that it's fair for the lender to pursue the principal loan amount. In this case, BetterBorrow has said it will only pursue the principal amount. So, I'm not going to consider the affordability of the loan in detail, as Mr W is already in the position he would be in, were I to find in his favour for that aspect of his complaint.

It isn't in dispute that BetterBorrow paid £12,000 into Mr W's account. And as it isn't seeking to add interest, charges or fees to that amount, nor to report it against Mr W's credit file, all that remains to be decided is whether it is fair for BetterBorrow to pursue that amount, should it choose to do so.

Mr W's main point is that he says he didn't know the £12,000 was a loan, and if he'd known, he wouldn't have transferred it to the scammer.

However, I've considered the wider circumstances including events both before and after the BetterBorrow loan arrived in (and was paid away from) Mr W's account. And based on this, I think Mr W ought to have known, and most likely did know, that the funds from BetterBorrow were a loan, prior to paying them away.

I say this because Mr W had by this time had several conversations with his bank about the risks of crypto investment scams. Whilst there isn't specific reference to the BetterBorrow loan – the notes from 24 May 2022 include the following:

'Notified customer that investing in crypto with funds from the loan breaches terms and conditions. Made customer aware that the crypto market is volatile and can impact the ability to repay loans'.

In addition to this, Mr W did notice the incoming funds from BetterBorrow on his bank statement. The messages between him and the scammer indicate that he was told this was a payment from them which had 'bounced back' and that they had made it appear as 'Received from BetterBorrow Loan' so the bank wouldn't question anything. But I think the scammer telling Mr W this should've rung alarm bells with him. Yet Mr W doesn't seem to have conducted further checks with BetterBorrow or his bank before transferring the money.

Further to this, Mr W's main point is that if he'd known the BetterBorrow funds were a loan – he wouldn't have transferred them. But when 'S' called Mr W prior to putting the loan into his account, he told it he had applied for the loan and that it was for home improvements. He then subsequently transferred the funds to 'N'. I appreciate that Mr W says he was pressured by the scammer into agreeing to the loan with 'S'. But I can't ignore that the action he took in relation to this loan undermines Mr W's position that he wouldn't have transferred the BetterBorrow funds if he'd known they were from a loan.

Taking all the evidence into consideration, I don't think this is a case where it would be fair and reasonable for me to prevent BetterBorrow from pursuing Mr W for the principal loan amount. So, I'm not going to tell them to do anything further to resolve this complaint.

My final decision

For the reasons explained above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision **before 18 April 2023**.

Anna Jackson
Ombudsman