

## **The complaint**

Mrs D complains that Chetwood Financial Limited (trading as BetterBorrow) is holding her liable for a loan in her name which she says she did not consent to.

Mrs D 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.

A BetterBorrow loan in the sum of £10,000 was taken out in Mrs D's name in October 2021. This amount was credited to Mrs D's bank account, which she then transferred out to a third party. Mrs D's position, broadly, is that she was tricked by a fraudster into thinking the £10,000 was a genuine investment return, and that if she transferred this sum to the fraudster – she would earn a profit. Mrs D says she later discovered she had been scammed, and that the loan in her name had been taken out fraudulently using personal details she had provided the fraudster. Mrs D brought this matter to BetterBorrow's attention and argued that she should not be held liable for the loan. As BetterBorrow disagreed, Mrs D raised a complaint which she referred to our Service.

One of our investigators considered the complaint and partially upheld it. BetterBorrow accepted the investigator's findings in full, but Mrs D only accepted them in part. So, this matter has been passed to me to make a decision.

**On 9 December 2022, I issued a provisional decision upholding this complaint. For completeness, I repeat my provisional findings below:**

*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 partially agree with the investigator's findings. I take the view that this complaint should be upheld in full. I will explain why.*

*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, she held, amongst other things, that Mrs D did not take out the loan. Because of this, the investigator directed that Mrs D's credit file should be amended accordingly, and that Mrs D should not be bound by the terms and conditions of the loan. However, the investigator thought Mrs D had use of the principal sum of the loan.*

*With the above in mind, there are effectively two parts of this case which I need to deal with.*

Did Mrs D consent to the loan being taken out in her name?

*Having considered the evidence before me, I am not persuaded, on balance, that Mrs D consented to the loan being taken out in her name. That is, I am neither persuaded that she took out the loan herself, nor provided consent to another to do so on her behalf.*

*As BetterBorrow has effectively accepted this in its response to the investigator's findings, I do not intend to develop this point further.*

Did Mrs D have use of the principal sum of the loan?

*As well as not being persuaded that Mrs D consented to the loan, I am also not persuaded she had use of the principal sum.*

*Mrs D says she was tricked by a fraudster into thinking the £10,000 credited to her bank account was an investment return. She also says the fraudster tricked her into transferring the £10,000 to them, so she could earn a profit. For these reasons, Mrs D argues that: she was not aware the £10,000 was from BetterBorrow; and that she transferred out the £10,000 in good faith – meaning she did not have use of the funds. Having considered this carefully, I am inclined to accept what Mrs D has said for the following reasons:*

- *As I am persuaded the loan was taken out fraudulently (see above section), it follows that I am also persuaded that the fraudster who took out the loan: would have wanted to try to find a way they could benefit from the funds. In Mrs D's case, I am persuaded this involved the fraudster tricking Mrs D into transferring the loan funds to them.*
- *I find Mrs D's testimony to BetterBorrow and this Service to be credible and consistent.*
- *Mrs D has provided evidence which she says shows her conversations with the fraudster.*
- *Mrs D has provided evidence which she says suggests someone was trying to/was successful in taking out other loans in her name without her consent.*
  - *I have not seen anything satisfactory to cast doubt concerning the veracity of the above two bullets.*
- *Mrs D's testimony stating that she did not check the source of the £10,000 at the time because the fraudster had confirmed to her that it was an investment return: is plausible. Particularly given the fact she had already made an 'initial investment' of £2,750. For these reasons, I cannot fairly say, given the circumstances of this case, that Mrs D ought to have verified the source of the loan funds.*
- *Mrs D says she was told by the fraudster to make five separate transfers amounting to £10,000. This transfer pattern is indicative of fraud – an attempt to evade the payments flagging up to a bank. I find that this supports Mrs D's testimony.*
- *It appears as if Mrs D has referred this matter to her bank and Action Fraud – behavior indicative of someone who did not have use of fraudulent funds.*
- *I have not seen anything to suggest Mrs D acted with any dishonesty or illegality.*

*Taking all the above points together, I am satisfied, that it is more likely than not, that Mrs D did not consent to the loan being taken out in her name; nor did she have use of the principal sum of the loan.*

## **Responses to my provisional decision**

Mrs D responded to say she agreed with my provisional findings. However, BetterBorrow did not agree. Its position, broadly, is that it is holding Mrs D liable for the repayment of the principal sum of the loan because of the actions she took which initiated the situation concerned. Moreover, BetterBorrow states that although Mrs D did not benefit from the principal sum, it believes she played a vital role in the 'redistribution of them'.

## **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 considered BetterBorrow's response, my position on this complaint remains the same. I say this primarily because – as BetterBorrow accepts too – Mrs D did not benefit from the principal sum of the loan. Therefore, whilst I acknowledge Mrs D transferred the principal sum to a third party, I do not find it fair that BetterBorrow pursue her for this, as she was essentially tricked into moving the money on in good faith. Please refer to my provisional findings (above) which sets out my reasoning.

## **My final decision**

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

- Should not pursue Mrs D for any interest or charges arising from the loan agreement.
- Should not pursue Mrs D for the principal sum of the loan.
- Write off the remaining amount of the loan and close the account.
- Remove any data reported to the credit reference agencies about the loan.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 17 January 2023.

Tony Massiah  
**Ombudsman**