

The complaint

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

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 March 2022, Mrs L says after making a payment to do some crypto trading – a third party telephoned her explaining he would support her with her trading account. In May 2022, a £12,000 LiveLend loan was taken out in Mrs L's name. The loan funds were credited to Mrs L's bank account, which she then transferred to a third party. Mrs L says the third party took out the loan without her consent; and the third party coerced her into making the transfer. For these reasons, Mrs L argues that she should not be held liable for the loan. As LiveLend did not agree with this, Mrs L raised a complaint which she referred to our Service.

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

(It should be noted that Mrs L says the third party took out other loans in her name with different lenders. However, in this case, I will only be considering the LiveLend loan.)

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.

It is not necessary for me to make a finding on whether Mrs L should be held liable for the loan in question. I say this because LiveLend has agreed with the investigator in this matter that the loan should be written off and Mrs L's credit file amended accordingly. It is also not necessary for me to make a finding on whether the loan was unaffordable. I say this because if I found the loan was unaffordable – Mrs L would still be in the same position she is in now. That is, I would still direct that the loan should be written off.

Mrs L has advanced the argument that if LiveLend had carried out proper due diligence when the loan was applied for, it should have declined the loan and spoken to her before processing it.

I do acknowledge the point Mrs L is making. However, the fact remains that Mrs L transferred the loan funds to a third party. Even if LiveLend should not have approved the loan – it does not follow that it should be written off. I say this because even if the loan was wrongfully approved, this does not negate the fact that it was processed and the loan funds were credited to Mrs L's bank account, which she then transferred out to a third party. Ultimately, the loan funds have been spent, so whilst it may be the case that LiveLend should not have processed the loan – it is fair, as a starting point, that it should be entitled to pursue Mrs L for the principal sum of the loan which she transferred out.

Turning now to the circumstances in which Mrs L says she transferred the loan funds to the third party – that is, under duress. Mrs L says the third party, amongst other things, shouted at her, made threats, told her he knew where she lived and that she was being watched.

I have not seen any evidence supporting what Mrs L says the third party told her. Notwithstanding this, I take the view that a reasonable person in the circumstances Mrs L has described: would not have transferred the loan funds, but instead, would have reported the matter to the lender, their bank and/or the police at the time. I say this because I am not persuaded that the third party's alleged threats and other comments were so immediate, that Mrs L had no other option but to make the transfer she did. I find that she had reasonable opportunities to seek help – particularly given the alleged threats were somewhat remote and over the telephone.

To support the above proposition, I have noted that Mrs L contacted LiveLend regarding the loan about a month after the transfer. I find it difficult to see what had significantly changed within this time, which resulted in alleviating Mrs L's fears and giving her the courage to contact LiveLend. There is no evidence to suggest the danger Mrs L believed she was in had passed when she finally contacted LiveLend – in fact, she has suggested that the third party was still 'harassing' her. If Mrs L was able to report the matter when she did, then I find it reasonable to say she could have done so earlier when the loan funds were credited to her bank account.

I note Mrs L says other lender(s) have found in her favour. However, I consider matters on a case by case basis, so I am unable to comment on what other lender(s) have decided. I also note Mrs L says the police have been involved in this matter. Whilst this may be the case and Mrs L has been a victim of a cruel scam, this does not take away from the fact that she transferred out the loan funds to a third party for reasons I have already given.

Taking all the above points together – I am satisfied that Mrs L did not consent to the loan in question. However, I do find that LiveLend is entitled to pursue Mrs L for the principal sum of the loan if it so wishes.

I acknowledge the impact Mrs L says this matter has had on her, and I do apologise that this is not the outcome she was hoping for.

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 LiveLend):

- Remove any data reported to the credit reference agencies about the loan.

- Should not pursue Mrs L for any interest or charges arising from the loan agreement.
- Is entitled to pursue Mrs L for the outstanding principal sum of the loan if it so wishes.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 30 June 2023.

Tony Massiah
Ombudsman