

The complaint

Mrs S is unhappy with BetterBorrow, who is a trading name of Chetwood Financial Limited.

Mrs S complains BetterBorrow lent to her irresponsibly.

For the purposes of this decision, I have referred to Chetwood Financial throughout as it is accountable for the actions of BetterBorrow.

What happened

Mrs S fell victim to an investment scam in early 2022. As part of the scam, Mrs S was led to believe she needed to pay fees and charges to withdraw funds from her investment. She didn't have the funds to meet these costs and so, over a space of three weeks, Mrs S and her husband applied to borrow £156,450 over 11 loans with several different lenders.

In April 2022 Mrs S applied to Chetwood Financial for, and was given a loan for £10,250, which was repayable over a period of 60 months. The repayments were around £233 a month, and in total Mrs S agreed to pay back about £13,960 over the five years, after interest was added.

Mrs S says she was groomed and coached by the scammers on how to apply for the loans. Mrs S thinks Chetwood Financial should have checked her circumstances more thoroughly before agreeing to lend because with better checks, Chetwood Financial ought to have seen she could not afford this loan.

Chetwood Financial says it completed appropriate checks before it approved lending to Mrs S and these showed the borrowing was affordable. It also ran checks to verify Mrs S' details including her name, address and bank details and asked authentication questions which it cross-referenced with the information showing on her credit file. These didn't lead it to believe the loan application wasn't made by Mrs S.

Unhappy with the response Mrs S got from Chetwood Financial, she brought her complaint to this service. Mrs S wants Chetwood Financial to forgo collecting on the loan altogether. Our investigator considered the complaint. He concluded that with reasonable and proportionate checks, Chetwood Financial would have considered Mrs S able to sustainably afford this loan.

Mrs S disagreed with the investigator and because an agreement couldn't be reached, the case has been passed to me to decide.

Mrs S' loan with Chetwood Financial is her third in the chain of loan applications and this decision is looking only at this one loan agreement. I am aware Mrs S (and her husband) have referred other cases concerning some of the other loan applications and these shall be looked at under separate case references.

In my provisional decision I explained that:

'We've set out our approach to complaints about unaffordable and irresponsible lending on our website. I've taken this into account in deciding Mrs S' complaint. Having done all of that, I'm not currently persuaded it was reasonable for Chetwood Financial to agree to lend – I'll explain my reasons.

Chetwood Financial needed to take reasonable steps to ensure that it didn't lend to Mrs S irresponsibly. It should have completed reasonable and proportionate checks to satisfy itself that Mrs S would be able to pay the loan in a sustainable way. There is no set list of what reasonable and proportionate checks should look like, rather greater thoroughness might be reasonably expected where a person on a lower level of income may be borrowing a high sum, or taking out borrowing over a longer period which could potentially cost more in the longer term.

Chetwood Financial did complete some checks to see if the loan was affordable. Chetwood Financial has said Mrs S would not have been offered the loan if she had not passed its checking criteria. In summary, it explained that part of its checks involved reviewing Mrs S' credit profile to assess her income and expenditure, and it also used information from Mrs S' active credit file. Chetwood Financial concluded that after taking out the proposed loan, Mrs S would be left with £208 disposal income a month. It had also allowed for a £194 buffer as part of its assessment.

Mrs S was borrowing a sizeable amount over a significant term, but Mrs S was also in permanent employment on a good salary – she had declared she took home on average £3,233 a month when applying for the loan. Chetwood Financial used an automated check of her current account turnover to validate the declared income. I have some concerns about Chetwood Financial only relying on a credit reference agency data tool to analyse Mrs S' current account turnover data and validate the income she had declared. I say this because an amber status was returned as the result.

I asked one of our investigators to clarify with Chetwood Financial what amber meant and the thresholds for the value returned. Chetwood Financial explained it meant that Mrs S' average income across the six months leading up to her application was at least 90% of the income that was declared and was also 80% or more of what was declared for at least five or six months. I can see how such a result may provide a level assurance in some cases but that very much depends on a borrower's expenditure and the level of disposable income which results – that is in effect the margin for error. So, in Mrs S' case, a 10% overstatement of the income declared would still pass the validation check but, at £323, it is sufficient to wipe out the £208 disposable income figure Chetwood Financial calculated (and most of its built-in buffer too).

I have further concerns about the lender only relying on a credit reference agency data tool because an amber status may include joint incomes. Mrs S' current account was held jointly with her husband and both of their salaries were mandated to the one account. This means Chetwood Financial ought either to have carried out further checks to ensure that Mr S' income was available (also taking account of his expenditure) or to have validated Mrs S' income by another means. I have reviewed Mrs S' current account statements and seen that her average take home pay between January and March 2022 had been around £2,885 a month – £338 less than the amount Chetwood Financial used in its affordability check

I have also considered Mrs S' expenditure and I noted that in addition to the monthly mortgage and other credit commitments showing on her credit file, Chetwood Financial used a national average for her other living expenses. It arrived at a figure of £711. I've not seen that Chetwood Financial asked Mrs S about her household composition – for example,

whether she had dependants – and without such information, it's difficult to say how accurately its estimate reflects her actual circumstances.

During the time since the investigator issued his findings, Mrs S has shared more details about her household's monthly non-discretionary spending, which totalled around £1,500 – it was made up of:

<i>Food and household shopping</i>	<i>£300.00</i>
<i>Council tax</i>	<i>£222.00</i>
<i>Utilities</i>	<i>£182.00</i>
<i>Insurances</i>	<i>£216.00</i>
<i>Phone/TV/Internet</i>	<i>£175.00</i>
<i>Travel (including petrol)</i>	<i>£190.00</i>
<i>Childcare</i>	<i>£200.00</i>
<i>Healthcare</i>	<i>£11.00</i>

I have looked at Mrs S' bank statements and noting her account was joint with Mr S, I think it's fair to say these were split equally between Mrs and Mr S. My cursory review allows sufficient confidence in the figures she has provided – and the figure Chetwood Financial estimated for Mrs S is within an acceptable margin.

So, taking account of her share of the non-discretionary spending, her share of the joint mortgage and her other credit commitments, her existing average outgoings came to £2,630 a month. And with no suggestion Mrs S intended to consolidate any of her existing credit commitments, this left Mrs S with £255 a month before the new loan commitment of £233, leaving her with just £22 spare a month.

Given that this figure is well short of the amount Chetwood Financial applied as a buffer, I think had the lender done more at the time of the application, it would not be satisfied that Mrs S could sustainably repay this loan. After reviewing the information we have about Mrs S' circumstances, I'm satisfied it shows if proportionate checks had been carried out, it was unreasonable for Chetwood Financial to agree to the loan.

Finally, I've considered whether Chetwood Financial ought to have identified Mrs S' application was in connection to the investment scam she had fallen victim to. But the evidence from the time does not support the application being less than genuine – for example, the funds were released to a bank account which Chetwood Financial had confirmed as belonging to Mrs S. Although Chetwood Financial did not ask the purpose of the loan, having also considered Mrs S' other loan applications, I very much doubt she would have revealed her true intentions for the funds. So, I can't fairly say Chetwood Financial could have prevented Mrs S' investment in the scam – afterall, she had already secured funds from other lenders and continued to approach more lenders for further funds to invest.'

Responses

I asked the parties to the complaint to let me have any further representations that they wished me to consider by 8 March 2023.

Chetwood Financial disagreed with my provisional findings and in summary, it said:

- The amber current account turnover check showed that the total credits to Mrs S' account had been consistently above 90% of Mrs S' declared income over the six months prior to her application. It predicted the likelihood of Mrs S' declared income being a true statement, as the precise income cannot be determined.

- In this case, its checks showed Mrs S' declared income was false and marginally inflated. It considers its checks proportionate and pointed out Mrs S' false income declaration would not have been detected but for the checks.
- Having subsequently reviewed previous searches for loans by Mrs S, it could see applications had been declined where three dependents were declared. In instances where no dependents are declared during its application, it assumes two dependents in its affordability calculations.

Mrs S replied and in summary, she said:

- She did not benefit from this loan because the funds were lost to an investment scam.
- Flaws with the reporting of information to the credit reference agencies allowed the scammers to take advantage of and manipulate Mrs S into taking out loans in quick succession.
- Chetwood Financial didn't question her about her financial commitments including a second charge mortgage.
- Mrs S and her husband can't afford to repay the loans they took out as part of the scam and they are concerned about the impact this may have on their future mortgage needs unless the loans are written off.

Mrs S also submitted a copy of a letter from trading standards addressed to this service's chief ombudsman and to the chief executive of the Financial Conduct Authority. The letter echoes much of Mrs S' comments. It also speaks more widely about the delay in reporting of information between the credit reference agencies and lenders and how the absence of real-time information helped to facilitate the scam Mrs S fell victim of.

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.

I've considered both Chetwood Financial and Mrs S' submissions carefully, but I'm not persuaded to reach a different outcome to my provisional decision. I'll explain why.

Both Mrs S and trading standards have commented on the delay in reporting of information between the credit reference agencies and lenders and how the absence of real-time information helped to facilitate the scam she fell victim of. But my decision is confined to considering the regulated activities Chetwood Financial is responsible for – and it is not responsible for how other businesses report information to credit reference agencies nor the activities of the credit reference agencies. So, regrettably, I cannot consider their comments as part of this decision, which can only deal with Mrs S' complaint of irresponsible lending by Chetwood Financial.

Mrs S pointed out that Chetwood Financial didn't question her about her financial commitments including a second charge mortgage (secured loan). But as I explained in my provisional decision, Chetwood Financial got such information from Mrs S' active credit file. I think it is reasonable to say, given the extent of the coaching Mrs S received from the scammers on what information to give to the lender, that the information showing on her credit file at the time would have been the more reliable account. Indeed, I note contrary to Mrs S' belief, Chetwood Financial increased the £840 she declared as her housing cost to £1,129, which I think shows it took account of her share of the repayments towards a secured loan. I am satisfied it was reasonable for Chetwood Financial to base its

assessment of Mrs S' credit commitments using the information gained from its search of her credit file.

Chetwood Financial says its checks were proportionate. Chetwood Financial needed to engage with the information it got from its checks – in Mrs S' case, its checks warned she may have overstated her income by as much as 10%. I accept in some applications a margin of 10% or less may not be critical to the decision to lend. For example, if credit commitments and non-discretionary spending leave a significant surplus – i.e greater than 10% of the income declared. And in those circumstances, I may be more inclined to find checks proportionate.

But in Mrs S' case, as the surplus income Chetwood Financial identified was less than 10% of the income she had declared, and its lending rules required a surplus over and above the buffer amount, the overstatement was critical to its lending decision. I still think it should have prompted Chetwood Financial to undertake further checks to validate her income. And for the reasons given in my provisional decision, if proportionate checks had been carried out, it was unreasonable for Chetwood Financial to agree to the loan.

I have noted Chetwood Financial has since found Mrs S had loan applications declined, which had been made through different comparison websites and after declaring she had three dependants. Chetwood Financial explained getting this information at the time of application would have been challenging. I am also not persuaded looking for such information at the time of Mrs S' application would have been proportionate – it's search of her credit file hadn't revealed any recent searches for credit. So, I cannot reasonably place much weight on it. In any event, it would not remove the obligation on Chetwood Financial to ensure Mrs S could repay the loan sustainably.

Putting things right

I'm sorry to hear of the devastating impact this matter has had, and is having on, Mrs S and her family. I don't wish to cause them any further distress – but I must give my decision based on what I consider to be fair and reasonable, taking into account all of the evidence in the circumstances relating to this individual case.

When I find that a business has done something wrong, I'd normally direct that business – as far as it's reasonably practicable – to put the complainant in the position they *would be in now* if the mistakes it made hadn't happened.

In this case, that would mean putting Mrs S in the position she would now be in if she hadn't been given the loan in question.

However, this isn't straightforward when the complaint is about unaffordable lending. Mrs S was given the loan and she used the money. In these circumstances, I can't undo what's already been done. So, it isn't possible to put Mrs S back in the position she would be in if she hadn't been given the loan in the first place.

I note Mrs S wants Chetwood Financial to forgo collecting on the loan altogether. Mrs S says she did not benefit from loan because the funds were lost to an investment scam. As I explained in my provisional decision, it was not foreseeable to Chetwood Financial how Mrs S intended to use the loan funds. Mrs S did have the benefit of the loan funds insofar as they were paid to her bank account, albeit she then transferred and lost the money to the scam. Mrs S has approached her banks to seek the return of those transferred funds and their responses are under separate consideration by this service. In the circumstances, I cannot reasonably hold Chetwood Financial responsible for all or part of her loss to the scam or tell it to write-off the loan.

I would again remind Chetwood Financial about its obligations to treat Mrs S fairly and offer due forbearance should she now find herself in financial hardship. And equally, remind Mrs S that she may also wish to seek independent debt advice.

I must consider another way of putting things right fairly and reasonably given the circumstances of this complaint. Having done so, I think Chetwood Financial Limited should:

- a) Remove all interest, fees and charges applied to the loan from the outset. The payments Mrs S made should then be deducted from the new starting balance. If the payments Mrs S has made total more than the amount she was originally lent, then any surplus should be treated as overpayments and refunded to her.
- b) Add 8% simple interest* calculated on any overpayments made, from the date they were paid by Mrs S to the date the complaint is settled.
- c) Remove any adverse information recorded on Mrs S' credit file as a result of this loan (once Mrs S has repaid any outstanding balance).

*HM Revenue & Customs may require Chetwood Financial to deduct tax from this interest. Chetwood Financial should give Mrs S a certificate showing how much tax it's deducted if she asks for one.

My final decision

For the reasons I've explained, I uphold Mrs S' complaint and I direct Chetwood Financial Limited to put things right for her in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 24 April 2023.

Stefan Riedel
Ombudsman