

The complaint

Mr L complains that Chetwood Financial Limited trading as BetterBorrow (“BetterBorrow”) is holding him liable for the debt on a loan which he says he neither applied for nor knew about.

What happened

The background to this complaint is well known to both parties, so I won’t repeat everything here. In brief summary, on 15 March 2022 a loan was taken out with BetterBorrow in Mr L’s name for £9,000. Mr L subsequently got in touch with BetterBorrow to let it know he hadn’t applied for the loan. BetterBorrow and Mr L couldn’t reach agreement, so Mr L referred his complaint about BetterBorrow to us. Our Investigator here couldn’t resolve the matter informally, so the case has been passed to me for a decision.

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 materially the same conclusions and for the same reasons as our Investigator.

In this case, my first consideration is: did Mr L enter into this loan agreement, or was it done without his knowledge and consent as he alleges?

Having considered this carefully, I think it’s most likely the loan was taken out in Mr L’s name without his knowledge and consent, and he therefore did not enter into the loan agreement. I say this because:

- BetterBorrow says the loan was taken out in Mr L’s name through ClearScore and that there wasn’t anything about the application to suggest it hadn’t come from Mr L. However, as BetterBorrow well knows, ID theft is where someone uses someone else’s identity to obtain goods or services or funds, leaving the victim to deal with the consequences. And I think this is what most likely happened here – fraudsters used Mr L’s details to apply for the loan with BetterBorrow and to benefit from the loan funds. I’ll explain why.
- Mr L says his phone was stolen whilst he was on a night out; and that his phone, mobile banking app, and ClearScore app passcodes were the same or similar. So, if a third party had seen Mr L enter his passcode into his phone (before it was stolen) they could have accessed Mr L’s phone and his mobile banking and ClearScore apps on it. I have found what Mr L has said about his phone being stolen plausible and persuasive.
- BetterBorrow has sought to challenge this. For example, it’s questioned why, if Mr L thought his phone was stolen, he didn’t report this to his bank right away. And it’s questioned – if a third party had applied for the loan without Mr L’s knowledge or

consent – why they would have used Mr L's genuine email address in the application, when they could have instead – I understand BetterBorrow's point to be – used a different email address that wouldn't have risked alerting Mr L to the fraud. However, I haven't found BetterBorrow's points on this to be persuasive at all. Mr L reported the matter to Action Fraud. And he's explained that at first, when he couldn't find his phone, he thought he must have lost it; but he nonetheless told his bank this. But that it was only a few days later (on 15 March 2022, when BetterBorrow granted the loan), when he got emails about the loan, and when he realised money had been taken from his bank account, that he realised his phone had been stolen – and that's when he immediately went to his bank. Mr L has provided evidence to show he requested a new sim card the day after the night he 'lost' the phone, and that he bought a new handset. Furthermore, with regards to the fraudsters using Mr L's email address, as our Investigator explained, fraudsters use increasingly varied methods. One possible explanation is that the fraudsters likely had access to Mr L's emails through his phone, and using a different email address, particularly through ClearScore, could have alerted BetterBorrow and foiled the fraud.

- The loan funds were paid into Mr L's bank account, and Mr L's bank upheld Mr L's fraud claim. Further, there were some funds remaining in Mr L's current account when Mr L reported the fraud (which have been returned to BetterBorrow). If Mr L had taken out the loan himself and sought to trick BetterBorrow about this, it seems unlikely he would have reported the fraud before all the loan funds had been moved on from his account.
- BetterBorrow has questioned how, even if a third party had access to Mr L's phone and his phone passcode, they could have gained access to his ClearScore to apply for the loan given ClearScore's specific requirements for passwords. However, our Investigator has explained how this might have been possible.
- Mr L's bank has provided us with information indicating new payees and all the loan funds were transferred out of Mr L's account using Mr L's passcode. And I'm satisfied in this case it's most likely that Mr L's phone was stolen and the fraudsters somehow managed to gain access to the phone, Mr L's banking and ClearScore apps through the phone passcode.

Since I'm satisfied Mr L most likely didn't apply for or agree to this loan, I don't think it would be fair for BetterBorrow to hold him to the terms of the loan agreement he never saw or agreed to. So, BetterBorrow shouldn't hold Mr L liable for interest and charges, neither should there be a record of the loan on Mr L's credit file – so if there currently is, this should be removed.

However, I'm also satisfied in this case that it wouldn't be fair for BetterBorrow to pursue Mr L for the outstanding loan funds. I say this because I'm satisfied Mr L appears to have had no benefit from these at all. And it seems to me as soon as he reasonably knew or ought to have known what had happened, he acted quickly and appropriately to try to mitigate matters. It wouldn't be fair for him to be pursued for an outstanding loan balance in circumstances like this. BetterBorrow has pointed towards Mr L's conduct and said that he's acted with gross negligence and by having a passcode for his phone the same or similar to his banking app he enabled the fraud. However, I can't say a third-party witnessing Mr L inputting his passcode on his phone amounts to gross negligence on Mr L's part. And whilst Mr L could have been more careful by having a different passcode for his phone compared to his mobile banking app, I'm not persuaded this meets the threshold for gross or contributory negligence here. Mr L didn't have anything to do with this loan. Fraudsters tricked BetterBorrow into granting it. And when the money hit Mr L's account fraudsters moved it on from there without any dealings from Mr L. So, whilst I've considered everything

BetterBorrow has said, I'm satisfied here it wouldn't be fair for BetterBorrow to pursue Mr L for the outstanding funds – I'm satisfied BetterBorrow should write off the loan.

My final decision

For the reasons explained, I uphold this complaint and I direct Chetwood Financial Limited trading as BetterBorrow to:

- write off the loan and not pursue Mr L for any repayment of the loan; and
- amend Mr L's credit file removing any information about the loan and searches.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 28 November 2023.

Neil Bridge
Ombudsman