

The complaint

Miss L complains that Chetwood Financial Limited trading as BetterBorrow (“BetterBorrow”) is holding her liable for a loan which was taken out in her name by scammers.

What happened

The background to this complaint is well known to both parties, so I won’t repeat everything here. In brief summary, in April 2022 a £10,000 loan was taken out in Miss L’s name with BetterBorrow. Miss L subsequently told BetterBorrow that scammers, not her, had taken out the loan. Ultimately Miss L didn’t then reach agreement with BetterBorrow, so she referred her complaint about BetterBorrow to us. Our Investigator was unable to resolve the matter informally, so the case has been passed to me for a decision.

I sent Miss L and BetterBorrow my provisional decision earlier this month explaining what I was minded to decide. Now that both parties have had the opportunity to respond, I’m ready to explain my final 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 decided to uphold this complaint in part for materially the same reasons as explained in my provisional decision. I’ve explained why again below, with some further comment where I have deemed it appropriate to address Miss L’s response to my provisional decision.

Miss L says that at the time she knew the loan was being applied for in her name, but that she didn’t consent to it. So, in this case my first consideration is: did Miss L enter into this loan agreement, or was it done without her consent as she alleges?

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

- There’s no doubt Miss L knew the loan was taken out in her name. However, she’s described how she was at the time, unbeknownst to her, embroiled in an investment scam; and that the scammers had previously encouraged her to take out loans to ‘invest’ but she’d refused. She says she was unwell on the particular day this loan was taken out; but the scammer was on the phone to her and used some remote access software to show her ClearScore credit score; he said it would be better if she borrowed and repaid credit. Miss L says then, despite her telling him (as before) that she didn’t want any loans, he nonetheless proceeded to start applying in her name anyway (using the remote access software); she says she told the scammer several times to stop but he didn’t stop but just laughed at her and said she’d have the loan repaid by Christmas.

- I've found Miss L's submissions on this to be plausible and persuasive. I'm satisfied this means I can't fairly say Miss L consented to the loan.

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

At the same time, I don't think BetterBorrow was to know at the time that the application hadn't come from Miss L or that there was anything untoward about it. In her response to my provisional decision Miss L has said no signed document for the loan has been presented, and she says if there is one it must have been produced without her awareness. I take on board what she's said about this and her not consenting to the loan. But I'm not disputing here that she didn't enter into the loan (for the reasons I've explained above). At the same time, I'm satisfied the scammers had the means to – and indeed did in this case – trick BetterBorrow into thinking the application was legitimately from Miss L. But I don't think BetterBorrow was to know at the time that the application hadn't come from Miss L or that there was anything untoward about it. And I'm not persuaded I can fairly say Miss L took reasonable steps to mitigate matters at the point she saw the scammer applying for the loan in her name. She reasonably ought to have tried shutting off the remote access software and/or her devices. And this would likely have prevented the scammers from either taking out the loan in her name, or, at the least, being able to move the loan funds out of Miss L's account into theirs. Miss L didn't do this but allowed the scammers to move the loan funds on from her account to an 'investment' apparently in her name. In circumstances like this, I don't think I can fairly say that BetterBorrow should not be able to pursue Miss L for any of the loan funds still outstanding, or that it should be required to refund to Miss L any repayments to the loan she has already made (if any).

Miss L has questioned how she was accepted for the loan in the first place. And I've thought about this. But our usual approach on unaffordable lending is that interest and charges should be removed but the consumer should still pay back the principal amount of the loan they had the benefit from. I've already said above this is essentially what I think should happen in this case. So even though BetterBorrow has accepted this loan was irresponsibly lent, the redress I'm directing in this case would already cover what we'd normally award for this. I haven't seen anything in this case that persuades me more than this would be appropriate. So, I'm satisfied this wouldn't change things.

My final decision

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

- remove all interest and charges on the loan;
- remove reference to the loan from Miss L's credit file;
- take any repayments already made to the loan to date as having reduced the loan balance;
- not pursue Miss L for more than the outstanding amount of the principal loan.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 17 November 2023.

Neil Bridge
Ombudsman