

The complaint

Mr C complains that Chetwood Financial Limited ("Chetwood") is holding him liable for the debt on two loans which he says he didn't apply for.

What happened

The background to this complaint is well known to both parties, so I won't repeat everything here. In brief summary, Mr C has explained that in 2022 he fell victim to an investment scam whereby the scammers, unbeknownst to him, took out loans in his name with Chetwood totalling £20,000; the scammers then tricked Mr C into paying the loan funds to them (the scammers).

Mr C subsequently realised what had happened and he contacted Chetwood to explain the loans had been fraudulently taken out in his name. Ultimately Mr C couldn't reach agreement with Chetwood, so he referred his complaint about Chetwood to us. One of our Investigators looked into things but was unable to resolve the matter informally. The case has therefore been passed to me for a decision.

I sent Mr C and Chetwood my provisional decision last month (October 2023), in which I said:

"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'm minded to uphold this complaint in part, which is a different outcome compared to that recommended by our Investigator. So, I'm issuing this provisional decision to give everyone a further opportunity to comment before I finalise my decision.

The first question is: did Mr C enter into these two loan agreements, or were they done without his knowledge and consent as he alleges? Having considered this carefully, I think it's most likely the loans were taken out in Mr C's name without his knowledge and consent (and therefore he did not enter into these loan agreements). I say this because:

- Mr C has plausibly explained how the scammers already had enough information to take out the loans in his name. And from the nature of the contact between Mr C and the scammers, I can easily imagine how they could have tricked Mr C into providing any further information they might have needed throughout the applications.*
- I've found what Mr C has said about him being scammed, and the pretext the scammers gave him for the money coming into his account, plausible and persuasive.*
- I understand it's common ground the email address and phone number on the loan applications weren't Mr C's.*
- I'm persuaded Mr C was scammed and that he wasn't aware of the loans in his name at the time.*

Since I'm satisfied Mr C most likely didn't apply for or agree to these loans with Chetwood, I don't think it would be fair for Chetwood to hold him to the terms of the loan agreements he never saw or agreed to. So, Chetwood shouldn't hold Mr C liable for interest or charges, neither should there be any records of the loans on Mr C's credit file – so if there currently are, these should be removed.

At the same time, I don't think Chetwood was to know at the time that the applications hadn't come from Mr C or that there was something untoward about them. I take on board what Mr C has said about the scammers persuading him at the time that the loan funds that landed in his account were bonuses from the scammers; and that there was no need to be concerned about the loan funds showing on his account as "LiveLend Loan" and "BetterBorrow Loan" because, the scammers said, they were just references. However, I don't think it's unfair to say that Mr C, given the circumstances, really ought to have taken reasonable steps to verify the funds weren't loans in his name (before he sent the funds on anywhere else). Instead, Mr C just took the scammers word for it, and paid (and lost) the money to the scammers for an investment he thought was legitimate. I don't doubt Mr C wished he hadn't done so, and that he was taken in by the scammers. But in circumstances like this, I don't think I can fairly say that Chetwood should not be able to pursue Mr C for any of the loan funds still outstanding, or that it should be required to refund to Mr C any repayments to the loan he has already made (if any).

Mr C has questioned how he was accepted for the loans 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 if the loans had been irresponsibly lent (and I'm not saying they were), the redress I'm intending to direct in this case would already cover what we'd normally award for this. I haven't seen anything in this case that persuades me appropriate redress would be different to this. So, I'm satisfied this wouldn't change things.

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

- *remove all interest and charges on the loans;*
- *take any repayments already made to the loans by Mr C to date (if any) as having reduced the respective loan balance;*
- *remove reference to the loans from Mr C's credit file;*
- *not pursue Mr C for more than the outstanding amount of the principal loans of £20,000 in total."*

Chetwood responded and said it accepted my provisional decision. Mr C responded with some further comments which I'll address below.

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 the same conclusions as in my provisional decision and for the same reasons.

I won't repeat in detail here everything Mr C has said in response to my provisional decision, and please let me assure the parties that no discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter. If there's something I've not mentioned, it

isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

I understand from Mr C's response to my provisional decision that he feels he was the victim of an issue between fraudsters and Chetwood. He's sent information about other people who he says have fallen victim to the same fraudsters; and he's questioned why he, as the victim, should have to repay the loans, and why Chetwood shouldn't, instead, pursue the fraudsters' bank or the fraudsters themselves to retrieve the loan funds.

I'm sorry Mr C was tricked by fraudsters. However, this was the fault of the fraudsters, not Chetwood. I can't see it was Chetwood's fault fraudsters were able to take out loans in Mr C's name given the information Mr C gave them. Chetwood didn't pay the loans to the fraudsters, but instead to Mr C who then sent the funds onto the fraudsters. The issue I need to decide here is not whether Chetwood should pursue the fraudsters or their bank, but whether it's fair for Chetwood to pursue Mr C for the outstanding amount of the principal loans which it paid to Mr C. I must decide this case based on its own merits. Other instances or cases that on their surface may look similar can be quite different. I couldn't reasonably ask Chetwood to write off the principal loan amounts unless: its acts and omissions unfairly resulted in Mr C's loss; and/or I was satisfied this was a fair and reasonable outcome. And I already explained in my provisional decision why I don't think it would be fair for Chetwood to be prevented from pursuing Mr C for the outstanding amount of the principal loans.

Mr C has made various points around him not approaching Chetwood for, or signing for, the loans; and Chetwood not sending him paperwork for the loans at the time of application, which he says would have prevented things. I understand Mr C has also questioned why Chetwood still wants him to repay the principal loan amounts when, he says, it hasn't provided a copy of the loan applications.

However, it's common ground that the email address and phone number on the loan applications weren't Mr C's. And, in the circumstances, I wouldn't expect Mr C to have received notification about the loans before they were deposited into his bank account. I don't think this was Chetwood's fault because I'm satisfied the fraudsters had the means to – and indeed did in this case – trick Chetwood into thinking the applications were legitimately from Mr C. I don't think Chetwood was to know at the time the applications hadn't come from Mr C or there was anything untoward about them. Neither do I think Mr C's point about the loan applications should affect matters here. The loan funds were paid into Mr C's bank account, not to the fraudsters. And I've already explained why I don't think Mr C most likely applied for or agreed to these loans with Chetwood – so Chetwood shouldn't hold Mr C liable for interest or charges, neither should there be any records of the loans on Mr C's credit file – so if there currently are, these should be removed.

As per my provisional decision, however, the matter of the principal amount of the loans is a different thing. It doesn't automatically follow that just because Mr C didn't apply for or enter into these loans that Chetwood shouldn't be able to pursue him for the principal amount of the loans when this is money he received into his bank account and made use of. Mr C sadly lost this money to a scam, which was due to the scammers, and Mr C has my sympathy.

I don't think it would be fair to hold Chetwood responsible for this. As explained in my provisional decision the loans were paid directly into Mr C's bank account and appeared there as "LiveLend Loan" and "BetterBorrow Loan" – and I'm satisfied Mr C shouldn't just have taken the fraudsters' word on things, but should have instead taken reasonable steps to verify the funds weren't loans in his name (before he utilised them for his own purposes for an investment, which sadly, as we know, Mr C subsequently realised was a scam). Mr C

has said that LiveLend and BetterBorrow aren't household names. But both names suggest lending. And both names were followed by the word "Loan". And in any event Mr C has said he did question this, it's just that he trusted the scammers' answer, in circumstances where I think he really ought to have paused and looked into things more. So this isn't a persuasive argument in my opinion. As I've said, I don't doubt Mr C wished he had done things differently here. But I can't fairly hold Chetwood responsible for this. And I don't think it would be fair for me to tell Chetwood it can't pursue Mr C for the principal amount of the loans in circumstances like this. I appreciate Mr C has said a different lender has decided *not* to pursue him, but that doesn't change what I think is fair here.

Mr C has also said that Chetwood must know about ID theft like this, and he's questioned whether it's able to safeguard itself with insurance. However, I've already said why I don't think Chetwood was to know there was anything untoward about the loans in this case, and why I think the outcome I've proposed is fair. But in any event Chetwood has said it doesn't hold insurance for loans taken out as part of a scam or any type of fraud, so this wouldn't change things.

Finally, Mr C has questioned how he is going to afford to pay back the principal amount of the loans. I explained in my provisional decision that 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 said this is essentially what I think should happen in this case. So, even if the loans had been irresponsibly lent (and I'm not saying they were), the redress I'm directing in this case would already cover what we'd normally award for this. I've considered everything Mr C has said about this and I do truly sympathise with his position. But the information I've seen doesn't persuade me that appropriate redress would be different to this. So, I'm satisfied this wouldn't change things. I've already said interest and charges should be removed and the loans removed from Mr C's credit file. If Chetwood pursues Mr C for the outstanding loan balances, I'd expect it to be sympathetic to any financial constraints.

My final decision

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

- remove all interest and charges on the loans;
- take any repayments already made to the loans by Mr C to date (if any) as having reduced the respective loan balance;
- remove reference to the loans from Mr C's credit file;
- not pursue Mr C for more than the outstanding amount of the principal loans of £20,000 in total.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 20 December 2023.

Neil Bridge
Ombudsman