

The complaint

Miss T is unhappy that Chetwood Financial Limited (trading as Better Borrow) is holding her responsible for a debt arising from a loan she says she didn't apply for, or benefit from.

What happened

Miss T started investing in cryptocurrency through, what she believed to be, genuine investment traders. Unfortunately, this was part of a sophisticated scam. Miss T says she was coerced into taking out a loan with a business I'll call 'L' in order to fund the investment, but she says she later became aware that the scammers had also applied for two other loans in her name, one with a business I'll call 'Z' and one with Better Borrow, which is the subject of this decision.

When Miss T became aware that she had been the victim of a scam, she contacted Better Borrow to explain that she had not agreed to take out this loan. Better Borrow acknowledged that Miss T had fallen victim to a fraud but found she should still be held liable for the debt. It said that Miss T had enabled the scammers to take out the loan by sharing personal information and that she must have been aware that the loan had been taken out in her name.

Miss T was unhappy with Better Borrow's response, so she asked our service to look into things again. Miss T told our service that she hadn't authorised a third-party to take out the loan on her behalf and that she had no involvement in the onward transfer of the loan funds. She therefore felt that being held responsible for the loan was unreasonable.

An Investigator looked into the evidence submitted by both parties and concluded that Miss T shouldn't be held responsible for the debt. They did not consider that Miss T had been aware of the loan application and so did not feel Better Borrow could reasonably hold her liable for the debt. So the Investigator concluded that Better Borrow should write off the loan, refund any payments made and remove any reporting of it from Miss T's credit file.

Better Borrow disagreed with the Investigator's assessment of the complaint. It maintained that Miss T had been aware of the loan application, and noted that the loan application included a series of detailed questions about Miss T's financial situation (based on her credit file) which would be very difficult for a third party to answer on her behalf.

As Better Borrow disagreed with the Investigator's assessment, the complaint was passed to me for review. I issued my provisional decision on this case on 19 September 2023. In that decision I explained why I did not intend to uphold this complaint – because I considered that the evidence suggested Miss T was aware that this loan had been applied for in her name.

Better Borrow agreed with my findings, Miss T did not. She responded setting out more detail about what had happened, and maintained that she had not been aware that a loan had been applied for in her name at Better Borrow.

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.

In my provisional decision I explained the following:

"Section 83 of the Consumer Credit Act 1974 outlines that a debtor under a regulated consumer credit agreement shall not be liable to the creditor for any loss arising from the use of the credit facility by another person not acting, or to be treated as acting, as the debtor's agent.

So, in simple terms, Miss T can't be held liable for a debt that another person, not acting on her behalf, took out. Taking the above into consideration, I must conclude – on the balance of probabilities – whether the loan was applied for by Miss T, or an agent acting on her behalf.

I've thought very carefully about this, and have looked closely at all the evidence we've received about what happened here. This includes evidence from the related cases Miss T has referred to our service about the other loans that were taken out and about the bank accounts that the funds were moved through by the scammers.

I also want to make it clear that I don't doubt that Miss T has been the victim of a sophisticated and unpleasant scam. There is no question in my mind that she was misled and manipulated by the scammers. But even so, with the evidence I've seen, I consider that it is more likely than not that Miss T was aware of the Better Borrow loan when it was applied for, and on that basis I don't think I can fairly say that she should not be held liable for the outstanding balance.

I say this because of the following evidence:

- *Messages between Miss T and the scammer from 22 July 2022 – two days after this loan was taken out – where she refers to multiple loans and her belief that the scammers would be paying them back, and from 26 July 2022 where Miss T again refers to the scammers repaying the three loans. These messages do not suggest that Miss T was surprised by the existence of any of the loans, just that she was expecting the scammers to pay them back.*
- *I've found on one of Miss T's other complaints that she was more likely than not aware of the loan taken out with Z, and she has confirmed she was aware of the loan taken out with L. It seems very unlikely that she would be aware of the first and last loans taken out but not aware of this loan.*
- *The kinds of questions that Better Borrow has said would have been asked when this loan was applied for would have required very detailed knowledge of Miss T's financial situation, Miss T has not said she shared that level of detail with the scammers.*

Each of these points alone may not have indicated conclusively that Miss T was aware of the Better Borrow loan, but looking at the overall picture I'm satisfied that the evidence I've seen from around the time this loan was taken out suggests that it is more likely than not Miss T was aware of the loan. I don't doubt that she was manipulated into allowing it to be taken out, but that is not the same as not being aware of the loan at all.

With this in mind I consider that this loan was most likely taken out by a third party acting as Miss T's agent, so it follows that she can be held liable for the debt under the Consumer Credit Act 1974. I do appreciate that she has not had the benefit of these funds as they were ultimately sent to a scammer, but I don't think I can fairly say that Miss T should not be held liable for repaying the loan when I'm satisfied that she was most likely aware it was being taken out in her name. I also consider it is fair and reasonable that she be liable for the interest associated with the loan, not just the capital, as she would have been aware that the loan would likely include an element of interest. And with all of this in mind, I also think it is fair for the status of the loan to be reflected on Miss T's credit file.

I know this will be very disappointing for Miss T, but for the reasons I've explained, I do not currently intend to uphold this complaint."

Better Borrow has confirmed it agrees with my findings and has no further comment to make. Miss T has provided a detailed response to my provisional decision, and I appreciate her taking the time to do so.

I want to reiterate that there is no doubt here that Miss T was the victim of a nasty scam, but that doesn't mean that she isn't responsible for lending that was taken out to fund that scam if she was aware that lending was being taken out for her benefit.

Miss T has said that when referring to 'multiple loans' she was referring to the fact that the website she was aware she'd taken the loan with 'L' out on referred to multiple loan companies. But the messages I've seen don't make sense in that context.

In my opinion, the messages between Miss T and the scammers do suggest that she was aware of multiple loans being taken out by 22 July 2022 at the latest. So if, as Miss T says, she wasn't originally aware the Better Borrow loan and the loan with 'Z' were being applied for, then I have to question why she didn't raise any concerns about this until the scammers didn't pay the loan back as promised. I would think that if a loan had been taken out without her permission, then that would be of significant concern to her, I can't understand why she would not have realised something might be wrong immediately.

I understand that Miss T says she did not approve this loan being taken out, she says that the scammers would have had all the information they needed to take it out without her knowledge. But I remain satisfied that the evidence I've seen suggests she more than likely was aware it was being taken out on her behalf. So given that I think she agreed for it to be taken out, it follows that I remain satisfied it is reasonable for Better Borrow to hold her liable for the loan.

Miss T has asked whether Better Borrow would consider accepting a reduced amount in settlement of the loan, but that is a conversation she needs to have with Better Borrow. I will not be requiring Better Borrow to write off any of the balance. It follows that I also consider that it is reasonable for the loan to remain on Miss T's credit file, as that needs to be an accurate reflection of what she owes.

I know this won't be what Miss T was hoping to hear, and I'm sorry we couldn't help her further.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 25 October 2023.

Sophie Mitchell
Ombudsman