

## **The complaint**

Miss C has complained about a secured (second charge) loan she took out with Together Personal Finance Limited. She's said she was a victim of a romance scam, and as part of that she borrowed this money from Together and paid it to that third party (who I will refer to as X).

## **What happened**

In January 2021 a broker, acting on behalf of Miss C, submitted an application to Together for a secured loan. The application was said to be for debt consolidation and home improvements.

After reviewing the application and supporting documentation Together issued a loan offer on 4 February 2021 which set out that Miss C was borrowing £130,000 (plus fees) over a 19-year term on a repayment basis, with the initial monthly payments being around £1,080 a month. Miss C signed to accept that offer on 4 February 2021, with the funds being drawn down the following day.

The following is my understanding of what has happened; taken from Together's contact records for the account.

Miss C went one month into arrears in October 2021, saying she couldn't make her payment on the due date that month due to a third-party company taking a double payment from her bank account. A Default Notice was sent on 19 January 2022 after the payment due on 5 January 2022 wasn't made, and then Miss C brought her account back up to date on 24 January 2022.

The account went back into arrears in April 2022 when the direct debit was returned as unpaid, with the account brought up to date again in May 2022. In November 2022 another direct debit was returned as unpaid, as was the one in January 2023.

The notes indicate that on 27 January 2023 Miss C told Together that she'd been a victim of fraud on her bank account so she was unable to make the loan payments. She said she'd raised it with the bank's fraud team and would get her money back, at which time she would pay off the arrears. It was left that Miss C would call Together again by 19 February with an update on how much she could pay, and then a payment plan could be put in place.

The direct debit in February 2023 was returned as unpaid and Together attempted to contact Miss C as it hadn't heard from her. As it had been unsuccessful in its attempts to speak to Miss C Together issued a Default Notice on 5 March 2023.

Miss C called Together on 17 March 2023 to say she expected to receive a judgement from her bank by the end of the month and she was aiming to bring the account back up to date by the end of March / the beginning of April. It was agreed that Miss C would call Together by 31 March with an update.

The March 2023 direct debit was returned as unpaid and with no call from Miss C, despite its attempts to contact her, Together reviewed the account and decided to pass it to litigation, with a final warning letter being sent on 22 April 2023. A court hearing was arranged for 5 July 2023.

Miss C called Together on 23 June 2023 and said she was still waiting for her bank to repay the funds she had lost due to the fraud on her bank account. At that time, the last successful payment that had been made to the loan account was on 19 December 2022. Miss C said she would have the funds the following week to clear the arrears so the court hearing could be adjourned. Miss C also said the broker had acted inappropriately and the loan was fraudulent and mis-sold and so a complaint was raised.

In its response of 30 June 2023, Together summarised the complaint as 'I understand your complaint is about our decision to begin proceedings at court due to the position of your account and also that this loan was mis-sold to you.' It said, in summary:

- Miss C's account was currently in arrears of over £7,000 and she'd told Together on 27 January 2023 that she'd been a victim of fraud on her bank account and that meant she was unable to maintain her payments.
- Miss C had said she would come back to Together by 19 February with an update, but as it heard nothing further, and she didn't respond to its attempts to contact her, it issued its letter of 26 February warning that it was looking to issue a Default Notice.
- As a response wasn't received, the Default Notice was issued on 5 March, with Together finally making contact with Miss C on 17 March at which time she agreed to provide an update by the end of March.
- It heard nothing further from Miss C until it spoke to her on 23 June, by which time a decision had been made to move to litigation which meant applying for a warrant for possession in court.
- What Miss C needed to do to get the hearing adjourned, or for a suspended possession order to be agreed instead.
- If Miss C thought her loan had been mis-sold then that was a complaint she would need to make to the broker that gave her the advice to take it out.

I will refer to this as "the first complaint".

Miss C cleared the arrears the day before the hearing and so the hearing was adjourned. Unfortunately the account went immediately back into arrears, with no payments made after the arrears had been cleared on 4 July 2023. As there was no response from Miss C to its attempts to contact her, Together issued a further Default Notice on 2 September 2023, a final notice before litigation was sent on 27 September 2023, and a court hearing was listed for 6 December 2023.

Miss C spoke to Together on 28 November 2023 and said she'd not been notified of the hearing date, and hadn't received any correspondence before that warning that action would be taken. She said she wanted the hearing postponed until her complaint about fraud connected to the loan had been answered. Together said it had responded to the first complaint in June 2023, but Miss C said she hadn't received that response. She said she hadn't followed it up sooner because she'd been out of the country for a few months, and it was too expensive to answer Together's calls whilst she was abroad. Miss C said she had referred the matter to our service, but she didn't have the reference number to hand. Together said it would email its response to the first complaint to Miss C, but it wasn't willing to postpone the hearing date.

On 6 December 2023 the court granted a 28-day possession order, with the attendance notes indicating that Miss C didn't attend but an unknown gentleman was there and he said

that Miss C didn't live in the property, providing an alternative address for her. The order meant that if Miss C didn't pay the full arrears by 3 January 2024 then Together could seek possession of the property.

Miss C called Together on 12 January 2024. She said she had no idea who the gentleman was that attended the hearing or why he said she didn't live at the property. She said she'd contacted the court ahead of the hearing and was told there was no hearing in place, which is why she didn't attend. Miss C said she'd clear the arrears in a week's time.

Miss C cleared most of the arrears on 19 January 2024, just leaving the account one month in arrears. Together attempted to discuss the arrears situation with Miss C but she said she'd been advised by our service to not make any further payment or to correspond with Together.

On 26 February 2024 a gentleman called Together to say he had been renting the property from Miss C, thought it had been taken into possession by Together as the locks had been changed and he wanted to arrange to collect his belongings. He said he was the unknown gentleman that had attended court and said that as far as he was aware the property was now vacant.

Miss C spoke to Together the same day saying her previous complaint hadn't been addressed properly as she didn't say the loan had been mis-sold. She said her complaint was that she was scammed and never received the funds from the loan.

Together reviewed the original complaint call and explained to Miss C why it had been dealt with the way it had. It said it would now look into her complaint on the basis of Miss C saying it was a romance scam and she didn't receive the funds as they were sent to X. Miss C said that if the necessary checks had been done, and questions asked, then the mortgage wouldn't have been funded. I will call this "the second complaint".

Together responded to the second complaint on 6 March 2024. It summarised the complaint as 'I understand your complaint is that:

- You didn't receive the £79,287.00 we sent
- Had we questioned the purpose of the loan, we would've known you were a victim of a scam
- You didn't receive our letter dated 30 June 2023'

It said £50,713 was used to consolidate Miss C's debts, with the remaining £79,287 being requested for home improvements for which the funds were sent to the bank account Miss C nominated. It said that the application declaration stated the purpose of the funds and Miss C signed that to accept the information was correct, and it also spoke to her on the phone and in that call Miss C spoke at length about the home improvements she intended to make. In respect of the letter of 30 June 2023 it said that it was correctly addressed and hadn't been returned as undelivered and Miss C hadn't told it the letter hadn't been delivered until she was told, in the call of 28 November 2023, that a hearing had been scheduled.

I understand that since Miss C cleared most of the arrears in January 2024 no further payments have been made.

In the meantime, Miss C referred her complaint to the Financial Ombudsman Service on 15 January 2024. Our Investigator said that we couldn't consider the first complaint as Miss C hadn't referred that to us within the six months allowed under our rules. In respect of the second complaint, our Investigator said we could consider that but he didn't uphold any of the issues complained about.

Miss C didn't agree and so the case was passed to me to decide.

Earlier this month I issued a decision about our jurisdiction in which I said:

'We can't consider the first complaint as that wasn't referred to us in time. We can only consider the second complaint and I'll review that and issue my decision on the merits of that complaint in due course.'

I also explained:

'... as part of this complaint, I can only consider Together and its acts or omissions. I can't consider any acts or omissions of Miss C's bank account or credit card providers, the acts of a claims management company she previously used or the actions of X. I can't look at the overarching scam as a whole, instead I am limited to just looking at Together and what it did – and didn't – do. We're not the regulator and I'm unable to look at this more holistically in the way that Miss C would like. I understand that is likely to disappoint Miss C having paid careful regard to all her submissions, but I simply don't have the power – under our rules – to look at this as a whole, instead I am limited (for this complaint) to just considering the acts or omissions of Together in isolation.'

I've now reviewed the parts of the complaint I said we can consider and I issue this final decision as the last stage of our process of this complaint about Together.

### **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.

Although I've read and considered the whole file, I'll keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome.

### The lending decision

It's important to note that Together was the lender, but it didn't sell the loan or give Miss C advice. That was done by the broker, and it was therefore the broker's responsibility to ensure the loan was suitable for Miss C. It wasn't up to Together to check that the loan met her needs – but Together did need to ensure that it was responsible to lend. That means checking that Miss C would be able to repay the borrowing in an affordable and sustainable way.

When an application is made to borrow money, the lender must assess whether the borrower can afford the repayments. This secured loan is a regulated mortgage contract which means the provisions in the Mortgages and Home Finance: Conduct of Business Sourcebook ("MCOB") apply.

Chapter 11 of that is entitled 'Responsible lending, and responsible financing of home purchase plans'. It says a lender must treat customers fairly by assessing whether the customer will be able to repay the sums borrowed and interest. To do that the lender must take account of the income of the customer, and the customer's committed and basic essential expenditure.

This means that before agreeing to lend, a lender must carry out reasonable and proportionate checks to assess whether a borrower can afford the loan repayments alongside the borrower's other expenditure.

I've kept all these things in mind, and I've thought carefully about the information Together relied on when it decided to lend to Miss C.

Miss C was asked about her income and expenditure. Together verified Miss C's income by requesting information from her accountant. Together also carried out a credit check and carried out an affordability check based on Miss C's declared outgoings. Having reviewed everything, I can see those checks suggested Miss C had enough disposable income each month to afford the loan repayments.

Miss C was entering into a new credit commitment with Together - she was agreeing to make monthly repayments of around £1,080. So, I think it is right that Together wanted to gather information about Miss C's financial circumstances before it agreed to lend to her. I think that Together's checks were proportionate to achieve that aim.

But simply performing proportionate checks isn't always enough. A lender also needs to react appropriately to the information those checks show. Those results might sometimes lead a lender to undertake further enquiries into a consumer's financial situation. Or, in some cases, the results might lead a lender to decline a loan application outright. So, I've looked at what Together gathered to see whether it needed to ask for more or whether it made a fair lending decision.

Together's credit check showed that Miss C was making use of unsecured credit at the time she applied for the loan. Miss C's open accounts appeared to be well maintained with no issues reported. The credit check showed around £50,700 on credit cards with all of those to be consolidated. She had no CCJs, and no missed payments in the last two years (other than one over a year before to a communications provider).

The Together loan was used to consolidate the credit cards, leaving no unsecured debts outstanding and with the new Together loan having a lower interest rate. On top of that Miss C was receiving an additional approximately £79,000 that she'd asked for which she'd said was to undertake some home improvements to her property.

Together discounted the monthly credit card payment figures for the cards that were being fully repaid when it assessed affordability, and I think that was a fair thing to do as those were to be repaid. Once everything was included the affordability check indicated that Miss C had sufficient funds available to meet the £1,080 monthly loan repayments.

There was nothing in what Miss C had said about her expenditure which was a cause for concern or presented common sense grounds for doubting what she had said. And I don't think her credit history ought to have prompted further investigation of her expenditure either. While Miss C held multiple unsecured borrowing streams the purpose of this loan was to consolidate that debt and reduce her monthly outgoings. And the remainder of the money being requested for home improvements again wouldn't have been a concern.

Whether or not that was a suitable course of action is a matter for the broker, not the lender. But as far as the lender's obligations are concerned, I don't think the fact that Miss C was applying to consolidate debts was enough to raise concerns about her level of expenditure or the sustainability of how she managed her credit commitments. On balance, therefore, I'm not persuaded that anything in the expenditure Miss C declared on this application, or in her past credit record, ought to have led Together to question the expenditure she'd declared on common sense grounds. It follows that I don't think I can fairly find that Together ought to have known about and taken into account any pattern of spending shown on Miss C's bank statements as part of its lending decision. It was entitled to rely on what Miss C had told it.

Miss C has said that Together should have asked her more questions about the nature of the home improvements as, had it done so, the romance scam may have come to light.

The majority of Miss C's contact would have been with her broker that she appointed to act on her behalf, with Together relying on the information that was provided by the broker as being accurate, such as what Miss C wanted to use the money for.

I've listened to the call between Miss C and Together of 1 February 2021 and I'm satisfied Together asked a lot of questions about the nature of the planned home improvements, with Miss C going through them at some length. Miss C not only detailed what she said she was planning to do to her property, she also went into some detail about why that was needed and what other works were to be done in the communal areas of the block. Miss C even apologised for talking at length about the works, explaining she was passionate about it. Having listened to that call very carefully there was nothing within it that would have indicated Miss C wasn't intending to do any works to her property, and that Miss C instead intended to transfer the money to X.

Miss C has said that as the loan was taken out during the early 2021 Covid-19 lockdown, Together should have questioned the rationale for completing home improvements at that time.

But being in lockdown at the time of the application wouldn't have been a reason for Together to question whether Miss C was being honest when she told it in the call about all the work she wanted to do to her property. When that lockdown was announced at the start of January 2021 it was expected to last until around the middle of February, and even if it was extended beyond that point it would have meant Miss C had the funds ready to go ahead as soon as she could. It also meant she was paying less interest on the roughly £50,700 she borrowed for debt consolidation sooner than if Miss C waited until lockdown was over to borrow this money.

The roughly £79,000 that Together had been told by Miss C that she intended to use for home improvements to her property was released by Together into Miss C's bank account, the same bank account that she said she would be paying the monthly direct debits from. What Miss C then did with the funds was outside of Together's control and isn't something I can hold it liable for. The remainder of the funds were sent to Miss C's creditors to pay off her unsecured debts.

In conclusion, I think Together made proportionate checks when it agreed to this secured loan and on balance didn't do anything wrong when it agreed to lend.

#### What happened between 1 July 2023 and 15 January 2024

I've reviewed what happened between 1 July 2023 and 15 January 2024 to see if I think Together has treated Miss C fairly in that period and having considered everything very carefully I'm satisfied that it did.

At the start of July 2023 the loan account was just under £7,500 in arrears, and it had been in and out of arrears since October 2021. Default notices had been sent to Miss C on 19 January 2022 and 5 March 2023 due to the conduct of the account, with Miss C clearing the arrears on 4 July 2023 which was the day before the first intended court hearing for possession.

As no further payments were made after the arrears were cleared, and with Miss C not responding to Together's attempts to engage on the matter, a further default notice was issued on 2 September 2023 and then a final notice before litigation on 27 September 2023.

That doesn't seem unreasonable in the circumstances as Together couldn't allow the situation to worsen again.

A court hearing was booked for 6 December 2023, with Miss C contacting Together a week before the hearing, at which point she said she hadn't been notified of the hearing date or received any of the earlier correspondence warning that the account would be passed back to litigation. Together wasn't willing to postpone the hearing date as it was satisfied everything had been sent to Miss C and the account, by then, was just under £5,500 in arrears again (after the previous arrears had been cleared just four months earlier on the day before the earlier hearing date). The hearing went ahead on 6 December 2023 with the court granting a possession order for the property.

I don't think Together did anything wrong in moving back to litigation and then not postponing the hearing as no payments had been made to the account since the last hearing had been cancelled. I can only assume the court was satisfied Together hadn't acted prematurely as if it felt the legal action was inappropriate then the court had the option to not grant a possession order.

In the period I'm able to consider, which is 1 July 2023 until 15 January 2024 Miss C didn't make any of her monthly payments due (only clearing the historical arrears on 4 July 2023 to stop the earlier court action) and, from the contact notes I've reviewed, Miss C wasn't engaging with Together to try to find a way forward. Instead it seems the only times Miss C responded to Together's attempts to contact her were at the start of July 2023 to stop the court action at that time, and then at the end of November 2023 to attempt to stop the second lot of court action. The only other contact from Miss C was on 12 January 2024 when she was preparing to refer the matter to our service.

Together is expected to show reasonable forbearance when a borrower is in financial difficulties, but whilst Miss C said she'd been the victim of a scam on her bank accounts, she then didn't meaningfully engage with Together to come up with a way forward. Its calls and letters went unreturned, and no payments were made. For any forbearance measure to be put in place a lender needs a borrower to engage with the process and Miss C wasn't doing that here in the period I'm able to consider.

Having considered everything very carefully I'm satisfied that Together didn't act inappropriately in the action it took between 1 July 2023 and 15 January 2024.

### **My final decision**

I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 25 October 2024.

Julia Meadows  
**Ombudsman**