

The complaint

Miss L has complained that Secure Trust Bank Plc lent to her irresponsibly.

What happened

In 2015, Miss L took out an unsecured loan with Secure Trust for a total of approximately £8,200 over 36 months. In 2016, she rolled it into a new Secure Trust unsecured loan for a total of around £6,200 over 24 months. She paid off the 2016 loan in full in the end.

Secure Trust has since sold the loans to another company. The loans are being serviced by a business I'll call "T", who originally answered the complaint. Secure Trust has now accepted liability for lending these loans.

Miss L complained that these loans were lent irresponsibly. She was already heavily indebted, and had gambling debts. She explained she had to use other credit – including payday loans and her overdraft – in order to keep up with the repayments.

Our investigator looked into things independently and upheld the complaint. At that stage, they were only looking at the 2016 loan. They explained that proportionate checks would've shown that the 2016 loan was not affordable, since Miss L's existing commitments already left her without enough to reasonably pay her living costs. They said the interest Miss L paid should be refunded.

T didn't agree. It said the 2016 loan was for consolidation, so it would've been used to clear some of her existing debts. It said Miss L didn't tell them the loan was unaffordable during the term, and she only made six late payments. It argued that she confirmed on her agreement that she could afford the loan, and she should've cancelled it within the cooling-off period if she couldn't afford it. It felt it was unreasonable to refund the interest.

T asked for an ombudsman to review the case afresh, so the complaint was passed to me.

Since then, Secure Trust accepted ownership of the complaint, and asked for the 2015 loan to also be included in this case rather than be dealt with as a separate case.

I sent Secure Trust and Miss L a provisional decision on 20 August 2021, to explain why I thought the complaint should be upheld. In that decision, I said:

Based on what I've seen so far, I think both of these loans were lent irresponsibly – I'll explain why.

Secure Trust was required to take reasonable steps to ensure that it lent responsibly. In practice, that means that it should have carried out proportionate checks to make sure Miss L could repay each loan in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts, the consumer's income and expenditure, their other debts, and so on.

I need to be clear that Secure Trust was required to establish whether Miss L could repay her loans sustainably – and not just whether the repayments were affordable on a strict pounds and pence calculation. The Consumer Credit Sourcebook (CONC) defines “sustainable” as being without undue difficulties. In particular, Miss L should have been able to make payments on time, while meeting other reasonable commitments; as well as without having to borrow to meet the repayments. And it follows that a lender should realise – or it ought fairly and reasonably to realise – that a borrower won't be able to make their repayments sustainably if they're unlikely to be able to make their repayments without borrowing further or falling behind on other commitments.

Here, Miss L has described the great difficulties she went through in order to keep up her repayments. So while I understand that she made most payments on time and paid off the 2016 loan in full, I don't think that shows the loans were sustainable for her.

It's not clear what checks Secure Trust did to establish whether these loans were sustainably affordable for Miss L. But I think that given the size and length of these loans, proportionate checks would have at least involved checking her income and expenditure and checking her debt situation.

Had Secure Trust carried out such proportionate checks, I think it would have become clear at each point of sale that these loans did not constitute sustainable lending.

For example, from what I can see of Miss L's historic credit file, she already had unsecured debts worth well over 100% of her annual take-home pay. This included – amongst other things – doorstep loans, hire purchase debt, credit cards that were at or even over their limits, a number of different phone contracts, and cash advances. On top of all that, Miss L had significant additional secured debt on top of the mortgage. So in both 2015 and 2016, she was already quite severely in debt before taking on these Secure Trust loans in addition to all her existing commitments.

And those are just the accounts that still remain on her credit file now – it's worth bearing in mind that because of the time that's passed, there may well have been other historic debts or negative information on Miss L's file which has since fallen off. Indeed, given the nature of the information I can still see now, I think it's very likely there would have been even more cause for concern at the time.

Further, Miss L's existing debt commitments meant she had very little money left over to actually pay her living costs, let alone to service additional debt. Her repayments already took up well over 80% of her take-home pay each month. And that's only if we look at the minimum repayments – and not if we look at the sort of payments it would have taken Miss L to actually make significant inroads into clearing her debts. Miss L was only left with a few hundred pounds each month to cover all her living costs – food, electricity, water, travel, clothes, and so on. Even before taking out the Secure Trust loans, I can see her budget was far too stretched. So the Secure Trust loans were clearly not sustainable.

Miss L sent us bank statements from the time. And I can see that, as she said, she did indeed have to live out of her overdraft. She also had very significant spending on gambling – which Secure Trust would have seen had it looked at her expenditure, and which then should have been a serious cause of concern for it. I can also see from her credit history that, as Miss L explained, she had to take out further credit to stay afloat – including short-term lending.

Taking everything into account, I am currently satisfied that Secure Trust lent these two loans irresponsibly.

T argued that the loans may have been for consolidation, and so could have helped clear some of Miss L's existing debt. But it looks like these loans cleared little of her other debt – they seem to have been used to refinance existing Secure Trust lending. They also seem to have done little to bring her costs down, and appear to have actually made things worse. For example, the 2016 loan was for a principle amount of £5,100 – and £4,800 of that was to clear the 2015 loan. The extra £300 does not appear to have been earmarked to clear any other debt, and would have been insignificant anyway when compared to Miss L's existing debt level. Secure Trust then added over £1,000 interest on top. In all, it increased Miss L's repayments from £228 per month on the 2015 loan – which already appears to have been unsustainable – to £257 per month for the 2016 loan. So it looks like Secure Trust just made things even more unaffordable for her.

T argued that Miss L had only made six late payments on the 2016 loan. But as I said above, it looks like that's only because she used other credit in order to keep up her payments. It does not mean the debt was sustainable.

T said Miss L signed an agreement to confirm the debt was affordable, didn't cancel it within the cooling-off period, and didn't tell them it was unaffordable. But I'm afraid that's not really relevant. The onus was on Secure Trust to lend responsibly and to make sure the loans were sustainably affordable for Miss L. The onus was not on Miss L to do Secure Trust's checks for it, or to notice that Secure Trust had done something wrong and cancel the agreements after the fact. And Miss L's agreements did not in any way nullify Secure Trust's responsibilities as a regulated business.

Lastly, T disagreed with our investigator's suggestion to refund the interest Miss L was charged. But that's the fair thing to do. When a business has done something wrong, we aim to put the customer in the position they would've been in had things not gone wrong. Of course, with irresponsible lending we can't undo everything – and we wouldn't tell Secure Trust to refund the principle of these loans, since Miss L had the use of that money. But since Secure Trust should not have lent Miss L these loans, it should not have charged her any interest or fees. So it's fair that those are refunded, along with simple interest added on top – to compensate Miss L for the time she's been without her money. This is our normal approach for these sorts of situations.

I said I'd consider anything else anyone wanted to give me – so long as I received it by 17 September 2021. But neither Miss L nor Secure Trust sent me anything new to consider.

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.

Neither side have sent me any new evidence or arguments. So having reconsidered the case, I've come to the same conclusion as before – that I think both of these loans were lent irresponsibly.

Putting things right

I direct Secure Trust Bank Plc to:

- Refund all the interest and charges that Miss L paid on these loans;
- Pay her simple interest at the rate of 8% simple a year on all refunded interest and charges – calculated from the date she paid them until the date of settlement[†]; and-
- Remove any negative information about these loans from her credit file.

[†] HM Revenue & Customs (HMRC) requires businesses to take off tax from this interest. Secure Trust must give Miss L a certificate showing how much tax it's taken off if she asks for one. Miss L can claim back the tax from HMRC if she doesn't pay tax.

My final decision

I uphold Miss L's complaint, and direct Secure Trust Bank Plc to put things right in the way I set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 19 October 2021.

Adam Charles
Ombudsman