

The complaint

Mr P complains that London Community Credit Union Limited (“LCCU”) irresponsibly sold him a loan when he was in financial difficulty.

What happened

In April 2019 Mr P applied for a loan with LCCU to the value of £13,000 with the purpose of settling existing credit card debt. But he says he was told LCCU would instead lend him a lower sum of £11,000 on the condition he was able to obtain a guarantor for the loan. He says he told LCCU he was unable to provide a guarantor. LCCU reconsidered its original decision and approved the loan despite the lack of guarantor. Mr P has said at this time his existing debt was around £30,000 and he was in financial difficulty.

In November 2019 Mr P contacted LCCU to say he was in arrears and suffering with mental health issues. He’d been off work and entered a debt management programme as his debts were around £70,000 which he couldn’t afford. Mr P said he’d told LCCU and provided evidence of his time off work to illustrate his situation but it treated him insensitively.

Soon after the loan was agreed, Mr P says he learned an additional £50 needed to be paid each month – bringing the monthly payments he needed to make from £229 to £279. This £50 went into a savings account which he was unable to withdraw from, and he says this made meeting his monthly obligations more difficult and locked his money in when he needed it most. Mr P said LCCU hadn’t made this clear to him at the point of application.

Mr P has since said this loan shouldn’t have been given to him in light of his circumstances. One of our investigators looked into what happened. Despite numerous requests over several months, LCCU didn’t provide us with any information. And looking at the information Mr P had provided alone, she upheld the complaint and asked LCCU to adjust Mr P’s loan and monthly repayments so he would only pay the £11,000 capital, and not any interest or associated fees. She also said LCCU should allow Mr P to access his funds within his savings account, and award him £200 in compensation for the distress he’d been through.

Mr P responded to say he still hadn’t heard from LCCU or ever received any terms and conditions about the loan or savings account. And he said the money from his LCCU savings account (to the sum of around £2,250) had been used by it to reduce the balance of his loan and he wanted this back.

LCCU responded with a copy of Mr P’s loan agreement, and a document detailing his income and outgoings that it has suggested was completed before the loan was approved. This shows Mr P’s outgoings monthly income after bills and other expenses to be around £540 against his loan repayment of £220.

Our investigator reviewed these documents but said it didn’t change anything. She said LCCU had still failed to show proportionate checks had taken place to ensure the loan was affordable, and it hadn’t given any context around requirements of a guarantor or the savings account set up at the same time. So she didn’t change her mind.

LCCU has since said Mr P had provided it with three months bank statements and payslips, and statements of the credit cards he was consolidating. It also said saving with LCCU is part of the terms and conditions of joining the union.

LCCU also said the savings act as security against the loan. It agreed it had initially said a guarantor was necessary, but as Mr P had been unable to obtain one, it instead allowed him the loan on the basis he provided a security (in savings) with LCCU to the sum of £1,500 which he agreed to. So LCCU said it had given the loan fairly in line with its processes.

Our investigator looked again and said from the evidence she'd seen Mr P didn't have £1,500 to put into a savings account so she wanted evidence and context to support this. She also said it seemed Mr P needed to deposit a sum into the savings account regardless of having a guarantor, so it was unclear why this didn't remain a requirement. And she said if LCCU provided a lending criteria and further evidence she'd consider it.

The investigator also said LCCU appeared to acknowledge Mr P had at least £16,000 in credit card debt and a separate monthly loan repayment of over £600 going out each month. So she said taking this into account, coupled with Mr P's purpose of the loan (consolidation of debt) she didn't agree there were no signs of financial difficulty.

The investigator concluded she was still upholding the complaint, but would re-consider the complaint if LCCU was able to provide any further evidence the investigator had asked for, and not been provided with. Several months have passed and we've heard nothing back but LCCU despite chasing it for a response. As a result, the complaint was been passed to me for an ombudsman's decision.

I issued my provisional thoughts on 2 November 2020 and explained why I intended to uphold this complaint. I've included the findings of this decision below.

"As I see it, Mr P's complaint requires me to answer three questions.

- *Did LCCU lend responsibly to Mr P?*
- *Did LCCU make it clear Mr P would have an additional commitment of payments into the separate savings account?*
- *Was LCCU able to fairly setoff his savings against his outstanding debt?*

And if I decide the answer to any of these questions is no, I'll go on to consider the impact on Mr P and what I consider to be a suitable direction or compensation in the circumstances.

Responsible lending

When lending we'd expect LCCU to complete reasonable and proportionate checks to satisfy itself that Mr P would be able to repay any credit in a sustainable way. And as I've outlined above, LCCU has provided very little to support what proportionate checks it completed. So I've assessed this complaint on what I have available.

Having looked at the budget sheet LCCU has provided, it shows Mr P had monthly outgoings of around £1,350, made up of loan and credit card payments. This was against his income of around £2,500. These existing repayments were made up of at least three separate loans Mr P already had. I'd also note that within this document it doesn't seem to account for rent or mortgage payments, council tax, or energy or water bills.

LCCU hasn't provided any details of further enquiries it made about the absence of these common and everyday expenses from Mr P's monthly expenditure. As a minimum I'd have expected it to demonstrate what it did to satisfy itself the details on the form were a true

representation of Mr P's financial position.

This suggests to me that this budget sheet is unlikely to be accurate and not an indication of LCCU carrying out reasonable or proportionate checks. And as our investigator has suggested previously, taking into account Mr P's existing debts and outgoings and purpose of this loan (consolidation), I don't agree with LCCU's comments that Mr P showed no signs of financial difficulty.

I've also thought about the criteria for a guarantor. LCCU has agreed this was initially a requirement. But as our investigator has said and LCCU hasn't disputed, it appears Mr P would've always needed to have provided a deposit to obtain the loan.

So despite LCCU's assurances two of its senior managers discussed this application and made a decision that the deposit would act as security enough in place of the guarantor, it's provided nothing to support this such as a lending criteria or internal notes from the time. As a result, I'm not persuaded LCCU carried out reasonable and proportionate checks when lending to Mr P, and I'm not satisfied it has shown he was able to repay this credit in a sustainable way

Savings account

Mr P has said he was given no information about an additional financial commitment of £50 per month into a savings account. As I've been given nothing about the sales process it's difficult for me to say what would've been discussed at the time. But as I've said above, I'm not satisfied LCCU has shown the loan was affordable for him.

So in turn I think an additional commitment of £50 per month to Mr P would've only negatively added to the pressure he was under and stretching his outgoings further. I've thought about the impact of this below.

Setting off Mr P's savings against the loan

Mr P has said LCCU unfairly setoff £2,250 from his savings account against his outstanding debt. LCCU has provided a copy of its loan application form which Mr P has signed. Underneath the details of the loan sum and monthly repayments there is a security entitled "Security" which says:

"We agree that all monies held with the Credit Union on/our Saver Plus Account now or hereafter is held to secure repayment of the Loan and cannot be withdrawn until the loan is repaid in full. If the outstanding balance of the Loan becomes immediately repayable under Clause 14 or 15, the Credit Union shall be entitled to apply any of the Borrower's or Guarantor's other deposits or savings with the Credit Union towards repayment of the amount due from the Borrower under the Loan Agreement, in exercise of the Credit Union's rights under Clauses 17 and 18."

From this, I'm satisfied the terms allow for LCCU to setoff outstanding debt using funds held in a LCCU savings account. And I'm satisfied he'd have seen this when signing the agreement.

Where applied appropriately, our service would generally take the view that it's reasonable to use the right of set-off. I say this as I understand the sum taken was due and payable, and Mr P held both accounts in the same capacity.

We would also expect a business to use this right only where terms of the account aren't

being met – such as missing loan repayments as Mr P did.

We'd also typically expect a business to give a customer reasonable notice to repay the debt before using the right of set-off – such as arrears letters or repayment options. And we'd expect it to provide information about its right of set-off before it exercises it.

I've not been given anything from LCCU to demonstrate how or when it informed Mr P (if at all) beyond the loan application.

So I've asked myself whether or not this information being given to Mr P would've been likely to change his actions had he been informed LCCU intended to set off these funds. And from what I've seen of Mr P's situation, I'm not persuaded he would've been in a position to do anything differently (if LCCU didn't tell him).

For these reasons I'm not going to ask LCCU to refund any of Mr P's funds from the savings account as I'm satisfied it was fair for it to use these towards his arrears – whether or not it gave him notice of this around the time it was taken.

Overall

Taking into account the above, I'm not satisfied LCCU carried out reasonable and appropriate checks when lending to Mr P, or that he was able to repay this credit in a sustainable way. I also believe the additional commitment to the savings account would've most likely made his position more difficult given the financial challenges he was experiencing at the time."

I concluded that a fair resolution to this complaint would be for LCCU to re-calculate Mr P's loan so he only pays towards the loan's capital, and remove any charges or fees added. I also considered the impact on Mr P's wellbeing and intended to direct LCCU to pay him £350 in compensation accordingly.

LCCU hasn't responded to my decision. Mr P has and disagreed. He said the savings account was opened without his knowledge and he never signed anything to agree to it. He's also mentioned LCCU's lack of engagement with his complaint, and the overall impact of this complaint on his wellbeing.

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'm upholding this complaint along the same lines I proposed within my provisional decision.

Mr P has said he had no knowledge of the savings account being opened, and also that LCCU used his savings towards the loan without his knowledge.

As I've explained above, it's not clear to me how the savings account was presented to Mr P. But I am satisfied Mr P knew he had savings within an account with LCCU, and that the loan agreement he agreed to and signed specifically outlined LCCU's ability to use the funds within the savings account as security should the loan repayments not be met. So these points haven't changed my mind.

I've also considered Mr P's comments about his wellbeing and LCCU's actions. While I'm sympathetic to his situation, I had already taken these points into account when determining what would be a fair resolution to this complaint.

So, I see no reason to depart from my provisional thoughts and I'm upholding this complaint in line with them.

My final decision

I uphold this complaint and London Community Credit Union Limited must:

- re-calculate Mr P's loan so he is only making repayments towards the capital £11,000 (removing any interest previously payable);
- refund any additional fees or interest charged, which LCCU may use to reduce the remaining capital sum; *and*
- pay Mr P £350 in compensation directly (and *not* to be taken by LCCU as a reduction of the remaining loan balance).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 15 December 2020.

Jack Baldry
Ombudsman