

The complaint

Mr H complains that Derry Credit Union ('DCU') used shares that were transferred to him following the death of a family member to repay an outstanding loan balance.

What happened

Mr H's family member had an account with DCU. The family member had nominated Mr H to receive shares from their account up to the maximum limit in the event of their death. When the family member died in September 2020, Mr H expected the value of the shares to be paid to him in its entirety. The maximum limit at that time was £10,000.

DCU transferred £10,000 to Mr H, but said he owed it £7,819.74 in respect of a loan he had taken out in November 2000, DCU paid him £2,180.26 and used the rest to clear what it said was Mr H's outstanding loan balance.

Mr H complained to DCU. He disputed the loan balance and said the loan would have been cleared with a payment protection insurance ('PPI') policy because he had a long-term illness. He said DCU had not made any attempts to collect the debt it alleged he owed and Mr H considered it to be statute barred. Mr H told DCU that he was unable to distribute the £10,000 in shares to others, which was what his family member wanted him to do.

DCU rejected the complaint. It said Mr H had made a PPI claim, but the claim had been rejected by the insurer. It did not accept the loan was statute barred. DCU said that when Mr H took the loan out in November 2002, he agreed that all shares he held in DCU then or in the future could be used as security to repay the loan.

DCU said it had contacted Mr H by letter and telephone on 15 and 25 occasions respectively to chase payments. It also passed the matter to a debt collection agency, but the agency had returned the debt.

Mr H then complained to this service. Our investigator didn't think the complaint should be upheld. He didn't think DCU had broken any rules and that it was fair for shares to be used to clear the loan balance.

Mr H did not accept our adjudicator's view. He did not accept the evidence DCU had provided and said it was fabricated. From the information held on file, I can see Mr H has been in correspondence with the PPI insurer. The matter has now been passed to me for a final decision.

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.

I am sorry to hear about the death of Mr H's family member and I can appreciate it has been stressful for Mr H to pursue this complaint in those circumstances. However, after giving the issues he raised some careful thought, I haven't upheld the complaint. I'll explain why below.

I can see Mr H raised several issues in respect of the PPI insurance company. Just to be clear, I cannot consider the actions of the insurer in this complaint about DCU. The insurer is

a separate business and I haven't been made aware of a complaint made by Mr H about the insurer.

I can also see that Mr H believes the alleged outstanding balance to be statute barred. I can't decide whether a debt is legally enforceable – only a court can do that. The overarching question for me is whether DCU acted fairly in how it dealt with the situation here.

The first thing I have considered is whether I can rely on the information DCU gave us. Mr H says it was fabricated.

Having considered the evidence before me, I am satisfied it is not fabricated. A number of the documents DCU provided to us were from the time Mr H took the loan out, such as the loan agreement and the promissory note. The information DCU provided is also consistent with the information Mr H gave us, in particular the letter of 11 June 2002 that he provided showing an outstanding loan balance. The references to the PPI claim in DCU's notes are also consistent with what Mr H told us about the timing of that claim.

I know Mr H feels strongly that DCU did not contact him about the outstanding debt, but I have seen evidence of multiple calls and letters in which DCU tried to contact him and of the specific resulting telephone conversations. So I think the evidence here shows that there was an outstanding amount and that DCU had actively pursued Mr H about this and expected him to pay back what was outstanding. It follows that I think the information DCU provided to us is reliable.

Mr H told us that as DCU had used some of the transferred shares to clear his loan, he was not able to share the £10,000 with others as his family member had wanted. I have seen a copy of the nomination form the family member completed on 30 April 2019. I can see that Mr H was nominated to receive the shares personally up to the maximum limit. I understand that the limit at the relevant time was £10,000. There was an option for other nominees to be added, but I haven't seen any evidence to suggest that they were.

With that in mind, I am satisfied that in transferring the shares up the maximum value to Mr H, DCU acted in accordance with the instructions it was given by the family member.

As the shares were appropriately transferred to Mr H, I've next looked at whether DCU treated him fairly in using the shares to repay the outstanding loan balance. Mr H disputed a number of issues around the loan, which I have considered.

Having done so, I have concluded that Mr H took a loan with DCU out on 2 November 2000 for £9,840.46. Some of the borrowing was used to repay an existing DCU loan and pay for the PPI policy. It looks as though £1,000 was paid to Mr H directly. He made two loan repayments of £330 and £400 respectively. I haven't seen evidence of any other payments made by Mr H. Mr H provided a letter to us showing that DCU wrote to him on 11 June 2002 to say the outstanding loan balance was £7,981.26.

With that in mind, I think Mr H would have known he hadn't made all of the contractual repayments. So, he would have been aware there was an outstanding amount left to pay DCU despite the length of time that had passed since he applied for the loan.

DCU provided us with a promissory note, which was completed and signed by Mr H around the time he applied for the loan. That document states that Mr H agreed that all his shares and future shares could be used by DCU as security for his loan. This is in bold type and I think Mr H would have seen it at the relevant time and been aware that shares he acquired later could be used to repay the loan.

I know that Mr H says he had a medical condition and thinks that the loan should have been repaid by the PPI policy. But Mr H also told us the claim was unsuccessful. Although I appreciate he is now in correspondence with the insurer, I can't say DCU shouldn't take steps to recover the outstanding loan when the PPI claim had failed.

I said above that I cannot decide whether a debt is legally enforceable. But I have considered the length of time that's passed between Mr H taking the loan out and DCU's decision to use his shares to repay the outstanding balance.

I've said the shares were correctly transferred to Mr H. I said above that DCU did try and contact Mr H about the outstanding balance and that he would have known about it. Despite the time that's passed, I can't say it was unfair for DCU to use Mr H's shares to repay the loan he had borrowed but had not paid back.

Putting all of this together then, the shares from the family member were left to Mr H personally and DCU followed the family member's instructions to transfer those shares to him. Mr H had an outstanding loan balance with DCU that he would have known about. Although he made a PPI claim, he was aware no payments had been made in respect of that policy. When Mr H took the loan out, DCU made him aware that if he acquired shares in the credit union at a future date, they could be used as security for the loan. That's ultimately what happened here, so it follows that I think DCU acted fairly.

I know Mr H feels strongly that DCU should not have used the shares to repay the outstanding balance on his loan. But for the reasons set out above, I think that DCU did act fairly and so I don't uphold the complaint.

My final decision

I don't uphold Mr H's complaint about Derry Credit Union.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 6 September 2022.

Nicola Bowes
Ombudsman