

The complaint

Mrs W complains that Medway Credit Union misled her about the interest that would be applied to her loan and then after the loan term had ended, they withdrew funds from her savings without her consent to pay off the outstanding balance of the loan which she hadn't been made aware of.

What happened

Mrs W took out a loan from Medway in August 2016 for £2000. She already owed Medway £719.34 so the consolidated loan was £2719.34. The loan agreement was for repayments of £92 per month for 35 months, with a final repayment of £92.39. The interest rate was 23.14% APR.

Medway didn't receive any repayments from Mrs W, and in March 2017 they chased her. They sent a further letter in May 2017.

Mrs W replied that she didn't realise that Medway hadn't received any payments and asked what to do. Medway replied that she needed to pay £92 and provided her with a standing order form.

Medway then sent Mrs W a "renegotiated loan agreement" for 42 instalment payments of £92 with a final payment of £90.14, at an interest rate of 23.14%

Mrs W started to make payments in May and made 42 successful monthly payments until 26 November 2020 in line with the agreement. Mrs W thought that this had redeemed her whole loan. She heard nothing further from Medway.

In August 2021, Medway took £1079.07 from Mrs W's savings account which they said was to fully repay the balance on the loan. They said that they were recovering the interest that had accrued in the period that no payments were being made.

Mrs W complained to Medway and they responded in November 2021. Mrs W was unhappy with their response and brought her complaint to us.

One of our investigators looked into Mrs W's complaint. He thought that Medway hadn't acted fairly and asked them to refund the savings plus 8% interest.

Medway didn't agree, and so the case has come to me to review.

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'm upholding Mrs W's complaint and I'll explain why.

Was Mrs W made aware that the payments weren't being made?

Mrs W is a long-term member of the credit union and has previously borrowed money from them. At the time that she took out the new loan, she was already repaying a loan at £37 per month regularly with no issues.

It's not clear why after receiving the additional £2000 loan Mrs W's payments stopped but it appears to have been an error.

Whilst I accept that it was Mrs W's responsibility to make the payments, I would have expected Medway to notify her as soon as a payment was missed, and then in every subsequent month that no payment was received. They didn't make any contact with Mrs W for 7 months after the loan agreement was signed, and then shortly after that they threatened her with county court action.

As soon as that contact was made, Mrs W advised that she didn't realise the payments weren't being made and she set up a payment immediately. I have no reason to believe that Mrs W was aware.

Mrs W was then sent the "renegotiated loan agreement" – starting May 2017, which extended the repayment period of the loan by 7 payments and increased the total amount she was to repay by over £600. I think it was entirely reasonable in those circumstances for Mrs W to have assumed that any additional interest was therefore included in the new agreement and that upon completion of the 42 payments, she would have discharged her loan. The sum now being repaid was £3954.14. There is nothing in that agreement which suggests that additional interest is due beyond what has been agreed, and Medway should have included the whole debt in that agreement.

It's not clear why Mrs W didn't make the final smaller payment of £90.14, but again Medway didn't make any attempt to make contact with Mrs W about this missing last payment between November 2020 and August 2021, and then simply took this sum, plus the additional amount they claim is owed from Mrs W's savings account.

Using Mrs W's savings to pay the balance of the loan

In the loan agreement it says that:

"while my loan balance exceeds the value of my shares (savings) in my account, I understand that my savings may not be withdrawn, and may be used to repay all or part of the loan if I miss any payments"

It also says: *"Medway Credit Union reserves the right to transfer money from my shares to my loan account for any missed repayments and may be used to repay all or part of the loan if I miss payments."*

And so, under the terms of the loan agreement, Medway do have the right to withdraw missed repayments from Mrs W's savings.

However, as far as I can see, there is only one missed contractual repayment – which is the last payment of £90.14, and so whilst I agree that they would have been entitled to take this, I can see no evidence of a contractual basis for taking the other £988.93, as it is not a missed payment.

Medway say that Mrs W was advised verbally when she started to resume payments that interest had accrued on her account. However, I haven't seen any evidence of this, and I would have expected any interest that had accrued to be included in the amount of the renegotiated loan agreement.

Medway have further said that it was Mrs W's responsibility to ensure that payments were made, and that chasing her for the payments was difficult as the period in question was during lockdown and they were unable to contact or chase any overdue payments.

However, I can't see that any contact was made with Mrs W between November 2020 and the August 2021 when the withdrawal was taken from her savings. I appreciate that for some of that time we were in lockdown, and I also understand that Credit Unions are staffed part time. However, I don't accept that this is sufficient reason for no attempt at contact regarding any arrears to be made for 9 months, and then for the withdrawal to be simply made without warning.

And so, in light of the above, I don't think that Medway have acted fairly or in line with the terms of the agreement in taking the funds from Mrs W's savings account, and I will be directing that they refund them.

I note that following the investigator issuing his view on this case, Medway have disputed that they should pay 8% interest on the repayment of the funds as they say that Mrs C wouldn't have been paid any interest on her savings in the Credit Union account.

While I accept that this is the case, Mrs W could have withdrawn those funds at any point from August 2021 and invested them elsewhere. So, I agree with the investigator that Mrs W has lost the use of those funds and so the 8% interest should be paid.

Putting things right

For the reasons I've explained above I agree with the investigator, and I think that to put things right Medway should:

- Refund £988.93 to Mrs W's savings account, which is the £1079.07 Medway took from Mrs W's savings minus the final payment of £90.14.
- Pay 8% simple interest per year to the £988.93 refund from the date it was taken (21 August 2021) to the date of settlement – to reflect the fact that Mrs W has been unfairly deprived of that money.

My final decision

I'm upholding Mrs W's complaint about Medway Credit Union and direct that they put things right as above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 17 November 2022.

Joanne Ward
Ombudsman