

The complaint

The complaint is that Lurgan Credit Union Limited (LCU) lent irresponsibly to Miss S.

I understand Miss S is now subject to a Bankruptcy Order and the Official Receiver has declared an interest in this complaint.

What happened

Since 2001, Miss S has taken out 28 loans with LCU. In 2020, she asked LCU to use some of her shares to reduce her loan balance to less than £10,000 so she could apply for a debt relief order. She told LCU that over the years, she had used her LCU borrowing to top up her essential expenditure and she was unable to meet her loan repayments. Miss S said she was vulnerable and in receipt of disability benefits because of a long-term health problem.

LCU did not agree to the request to transfer Miss S' shares. In its final response letter, it said it had lent responsibly to Miss S. It said she had an excellent credit history and payment record over a twenty-year period. LCU said it did not suspect Miss S was vulnerable when agreeing the borrowing. It said it had refused a loan application in August 2020 after an affordability assessment.

Through her representative, Miss S complained to this service. She said LCU had not adequately assessed affordability when agreeing to lend to her over the years. She said she was given top up loans to pay off other debts she had only accrued to make her LCU loan repayments. She said she could not afford to repay the outstanding debt. She wanted LCU to consider writing off the outstanding balance in full.

Our investigator considered the matter, but she didn't think the complaint should be upheld.

Miss S disagreed with that view and the matter was passed to me. I issued a decision to clarify the jurisdiction of this service. I said that after applying the rules set by the Financial Conduct Authority, we could consider Miss S's LCU borrowing from 2014 onwards. What that means in practice is that I can consider whether LCU lent responsibly in respect of the loans that Miss S took out from 7 March 2015 onwards.

On 10 December 2022, I issued a provisional decision because I thought the complaint should be upheld. I said:

"There was quite a lot of correspondence between the parties about whether LCU should have transferred Miss S's shares to reduce her loan balance. That ground of complaint was not raised in the complaint form to this service and so I have not considered it further.

In this decision, I have looked at whether LCU lent responsibly to Miss S. In doing so, I have considered whether LCU acted fairly and reasonably in agreeing to lend to Miss S from 15 March 2015 onwards.

When deciding whether to lend to Miss S, LCU had to make a fair and reasonable assessment of whether she could afford to repay the borrowing. In effect, I'd expect LCU to have done enough to understand that Miss S could meet her repayments without difficulty that her credit could be repaid within the life of the credit agreement and repayments could be made out of her income and/or available savings.

I've seen some limited information as to a health condition Miss S has been diagnosed with. And I can see how such a condition could make her vulnerable. LCU said it didn't suspect Miss S had a vulnerability. However, I can see that she was in receipt of disability benefits. LCU was aware of the disability benefits because they were taken into account during the loan affordability assessments. While I don't think that this in itself meant that LCU shouldn't have lent to Miss S, nonetheless I think it would have been fair and reasonable for LCU to take more care to ensure that the credit it provided to Miss S was affordable.

In my jurisdiction decision, I said that we couldn't consider whether LCU lent irresponsibly to Miss S before 2014. But I did say that the pattern of Miss S's borrowing before that time could be relevant to my consideration of whether it was fair and reasonable for LCU to continue to lend to Miss S from that point onwards.

With that in mind, I've given careful thought to the overall pattern of Miss S's borrowing with LCU.

From the borrowing LCU agreed with Miss S, I can see she took out her first loan on 7 July 2001. That loan was repaid some weeks later, on 31 August 2001. Between 5 September 2001 and 24 July 2003, Miss S took six loans out with the LCU. The pattern of this borrowing appears to have been that on the same day as Miss S repaid each of those loans, she applied for and was granted further borrowing each time. There was no break in the chain of loans.

Miss S then applied for further borrowing on 24 July 2003. Between that date and 7 March 2015 (the date of the first borrowing I can consider), Miss S applied for and was granted a further 12 loans. Miss S did not repay any of this borrowing in full. Instead, an outstanding balance from the previous loan was effectively rolled over into the next loan. The amount carried forward was in the region of approximately £1,000 to £2,000 each time.

By the time Miss S came to apply for further borrowing in March 2015, this would have been the 20th loan in a chain that had lasted for more than 13 years. Miss S applied for £2,500 and already had an outstanding balance of £3,629.91. So, Miss S was effectively borrowing £6,129.91 over 58 months. The purpose of the loan was said to have been a holiday.

LCU said it undertook affordability checks, including a credit check and the borrowing appeared to be affordable to Miss S. And looking at the figures provided by LCU, I can see how it could have concluded that the repayments were affordable on a strict pounds and pence calculation.

But by this stage, I think it would have been fair and reasonable for the LCU to have also considered the overall pattern of its lending to Miss S. I think it should have considered whether the previous loans had in fact been repaid as the number and frequency of the loans suggest that Miss S was only really 'repaying' previous loans with the funds she was being provided from new ones and she wasn't ever clearing her indebtedness to LCU.

By now, Miss S had been continuously indebted to LCU since 5 September 2001. At this stage, I think LCU should have reasonably realised that Miss S was most likely borrowing to meet an ongoing need for additional funds. In my provisional view, given that Miss S had not repaid her loans in full for many years, the pattern of her borrowing wasn't of someone who was able to manage her money well.

It follows that further lending and higher repayments would likely leave Miss S in need of further borrowing. And I can see that in August 2015, Miss S did apply for and was granted a further loan. She applied for a 'top up' of £4,000, bringing her outstanding loan balance to £9,670.38. The reason for this loan was said to be a car.

At this point, it appears Miss S had moved to a new home. LCU undertook an income and expenditure calculation, but only took account of her LCU loan and other telephone repayments. Her rent liability was stated to be £0. And no account was taken of Miss S's other essential expenditure, such as gas, electric or rates. Miss S's stated earned income was said to be £200 per week, which did not fit with the payslip she submitted to LCU showing her net income at £104.19 per week. The lower figure was consistent with what LCU knew about Miss S's income through her previous applications.

But in any event, notwithstanding the questions in the information LCU gathered, my provisional view is that again, LCU should have realised that the pattern of Miss S's borrowing indicated that the repayments were not affordable. Although I can see that Miss S was making repayments in line with the credit agreement, the actual capital balance of her loans was not reducing – in fact it was increasing. As I said above, Miss S had rolled over an outstanding balance into every loan from 2003 onwards. In March 2015, that outstanding balance £3,629.91. In October 2015, she was rolling £5,670.38 over into a loan of £9,670.38. The balance had almost tripled in the space of less than a year.

Miss S then borrowed the following further amounts:

- £1,200 in October 2017 for a holiday, bringing her total outstanding loan balance to £6,922.09.
- £1,300 in February 2018 for 'home expenses', bringing the loan balance to £7,613.26.
- £1,500 in June 2018 for a holiday, bringing the outstanding loan balance to £8,484.51.
- £1,500 in August 2018 for vehicle repairs and home expenses, bringing the outstanding balance to £9,784.24.
- £2,500 in January 2019 for home expenses, bringing the outstanding loan balance to £11,438.58.
- £3,500 in August 2019 for vehicle repairs, bringing the outstanding loan balance to £13,591.79.
- £5,000 in February 2020 for home expenses bringing the outstanding loan balance to £17,244.54.

In just over two years, LCU had lent to Miss S £16,500 for two holidays, vehicle repairs and home expenses. In respect of home expenses alone, she had borrowed over £10,000. I think it should have been clear to LCU that if Miss S was having to regularly borrow fairly significant sums to cover her home expenses, that the loan repayments were unlikely to be sustainably affordable. By February 2020, her loan repayments were £80 a week, which was almost all of her stated earned income of £99 per week.

I cannot see that questions were asked by LCU as to why Miss S had such regular and significant home expenses that could not be met out of her regular income, or what those expenses actually constituted. I think it would have been fair and reasonable for LCU to have asked more questions on this point, particularly considering what I said above about the apparent vulnerability of Miss S. The pattern and brief reasons given for her increased borrowing suggests that she may have been taking out further loans to fill a hole in her finances.

Miss S owed £3,629.91 in March 2015 and after applying for a further eight loans, her outstanding balance stood at £17,244.55 in February 2020. The borrowing had

increased almost five-fold and stood at more than three times her gross annual earned income. And significantly more than her total net annual income, even when including her salary and state benefits.

With the exception of the loan taken out in October 2017 - which was taken out two years after the previous borrowing where LCU had noted in October 2015 that Miss S should not be provided with a further loan until her balance had reduced by £2,000 – the outstanding balance on Miss S's existing borrowing was more each time a new loan was agreed. Miss S wasn't making any inroads into repaying the capital she was borrowing. In my provisional view, this simply isn't a sustainable as a repayment strategy and I think that LCU ought to have realised that Miss S was having problems managing her money.

I appreciate LCU said it undertook full affordability assessments and that it most likely agreed to lend to Miss S to try and help her. But after considering all of the information in front of me, my provisional view is that by March 2015, LCU should have realised that the pattern of Miss S's borrowing indicated that further lending was not sustainable.

With all of this in mind, I intend to require LCU to take action to put things right for Miss S.

Miss S suggested that LCU ought to write off the outstanding balance. I don't intend to tell LCU to take that course of action, because I think it's fair that Miss S should pay back money that she's had the use of. But I do intend to tell it to put things right as I have set out below."

I asked the parties to provide me with any further information or evidence they wanted me to consider before I issued a final decision.

LCU did not agree with my provisional findings. It said it thoroughly assessed affordability each time Miss S applied for a loan. It said that she was able to make her repayments and also save through LCU. It said if Miss S had declared her rent as £0 when that was not this case, that was an error made by Miss S and not by the LCU.

As to vulnerability, LCU said Miss S had not disclosed a health condition and it had no access to a diagnosis to suggest Miss S was vulnerable. LCU asked me to enquire as to whether Miss S had undertaken any further borrowing with any third-party lenders and if she had, whether a vulnerability had been disclosed. LCU also asked me to suggest to Miss S that she should not be borrowing again without fully disclosing her income.

Through her representative, Miss S told us that she accepted my provisional findings. However, she informed this service that she had '*declared herself bankrupt*' and that if any redress were due, it would need to be paid to the Official Receiver. I understand a Bankruptcy Order has now been made.

There has been some delay from the issue of my provisional decision and this final decision because this service had to seek authorisation from the Official Receiver for the complaint to continue. That authorisation was received on 21 March 2023 and the Official Receiver indicated that they have an interest in any redress or compensation arising from this complaint. That means it will now be for the Official Receiver to decide whether to accept or reject my 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.

Having done so, I'm not persuaded to depart from my provisional findings.

I appreciate that LCU feels strongly that the loans were affordable. I said in my provisional decision that I accepted they could well have shown as affordable on a strict pounds and pence basis. However, the issue in this case is the pattern of Miss S's borrowing. By March 2015, she had been continuously indebted to LCU for over 13 years. My view remains that it should have been clear by that stage that further lending and indebtedness was likely to lead to further borrowing – and it did. LCU did not express a view as to why what I said about the pattern of Miss S's borrowing was not correct.

LCU said that if it took account of £0 rental expenditure when Miss S may have had rental liability, that did not constitute a mistake on its part. However, I don't think it would have been unreasonable for LCU to inquire and ask questions as to why declared expenditure may not have been consistent with what it knew about Miss S's circumstances.

I've also thought about what LCU said about vulnerability. As I said in my provisional decision, Miss S was in receipt of disability benefits. It is not at all my view that this should have prevented LCU from lending to Miss S. What I was saying in my provisional decision is that the receipt of disability benefits should have put LCU on notice that Miss S had a disability and could have had a resulting vulnerability. My view remains that it would not have been unreasonable for LCU to have taken account of that to ensure that the lending was affordable.

LCU has suggested that I make a number of enquiries as to Miss S's borrowing after she applied to LCU and the type of information she ought to give to future creditors. It may help if I explain that this service is an independent and informal dispute resolution service. It is my role to determine what I consider to be a fair and reasonable outcome in the circumstances of this individual complaint. It is not within my remit to make enquiries as to Miss S's financial affairs that are beyond the scope of this complaint. Nor is it in my remit to advise or tell Miss S how to manage her affairs in future.

With all of this in mind, for the reasons set out in my provisional decision, I uphold this complaint and require LCU to put things right.

Putting things right

LCU needs to take action to put things right. However, as Miss S is subject to a Bankruptcy Order and the Official Receiver has declared an interest in any compensation arising from this complaint, LCU will need to take this into account if any compensation is due to be paid to Miss S.

I require LCU to:

- a) add up the total amount of money Miss S received as a result of having been given nine loans from 7 March 2015 to date;
- b) deduct the repayments Miss S made from this amount;
- c) if this results in Miss S having paid more than she received, any overpayments should be calculated and refunded, along with 8% simple interest (calculated from the date the overpayments were made until the date of settlement); †
- d) if any capital balance remains outstanding after LCU's calculation set out at paragraphs (a) and (b), LCU must attempt to arrange an affordable and suitable payment plan with Miss S to repay the outstanding amount;
- e) LCU should remove any adverse information recorded on Miss S's credit file in relation to the loans taken out from 7 March 2015, but that will only need to be done once the loans have been repaid.

† HM Revenue & Customs requires LCU to take off tax from this interest. LCU will need to give Miss S a certificate showing how much tax it's taken off if she asks for one.

My final decision

I uphold this complaint about the Lurgan Credit Union Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask the Official Receiver to accept or reject my decision before 26 April 2023.

Nicola Bowes
Ombudsman