

The complaint

Ms B complains about London Community Credit Union Limited's ("LCCU") handling of a loan.

What happened

In summary: Ms B complains that she took out a loan with LCCU under duress and didn't receive all of the loan funds.

In 2019, Ms B says she was reliant on a third party, who I'll refer to as G, to help her. Ms B says English isn't her first language and she didn't understand the UK banking system and relied on G to help her in setting up accounts and making arrangements.

Ms B says she was taken into an LCCU branch by G and told to sign a loan agreement. She says that after signing the loan agreement she realised what was happening and called LCCU, asking them not to proceed with the loan. However, Ms B says LCCU paid out the loan anyway.

Ms B's loan statement shows that a loan for £9,000 was approved and paid out by LCCU in June 2019. It's unclear what happened to the proceeds of the loan. Ms B has provided a bank statement from another bank (who I'll refer to as D) whom she has an account with, which shows a credit for £3,000 which Ms B says was loan proceeds.

While the complaint has been with our service

LCCU were asked for their business file and evidence in response to the complaint raised by Ms B. But we didn't receive a business file until a provisional decision was issued.

An investigator reviewed the case and initially upheld the case saying there was no evidence that Ms B took out the loan – as they hadn't been provided with a business file. The investigator asked LCCU to write off any outstanding balance, refund all the loan payments and pay 8% interest on that refund.

Ms B accepted the investigator's recommendation, however LCCU didn't and asked for time to complete an investigation. When LCCU didn't respond within the agreed timeframe, the case was put forward for an ombudsman to review.

Having initially reviewed the case and the evidence provided by Ms B, I wasn't satisfied that Ms B hadn't received at least some benefit from the loan funds. Also, Ms B had raised some new points in recent emails to our service. Because of this, I asked the investigator to obtain further information from Ms B and revisit their recommendation based on the new information and points Ms B had raised.

Having reviewed additional bank statements provided by Ms B, as well as considering the new points she had raised, the investigator changed their opinion on her complaint. They explained to Ms B that it appeared she had received at least partial benefit from the loan funds. Also, that it was unclear if Ms B had an agreement with the third-party G which had

not gone to plan, rather than Ms B taking the loan out under duress. Ms B had also referenced a separate bank account that she held (in addition to the one with D) and it appeared some of the funds may've gone into that account. As Ms B didn't provide bank statements on that account, it was unclear whether loan funds had been paid into that account that she'd used.

Ms B responded disagreeing with the investigator's opinion. She sent us a police reference number which she says relates to the report she made against G and the fraud committed against her. She also raised some additional points around the amount of interest she'd had to repay in relation to the loan.

As the case couldn't be resolved, it was passed back to me to review.

I contacted LCCU and asked them for specific information to help me assess Ms B's complaint. LCCU asked for an extension to the deadline I'd given, which I agreed. However, I didn't receive the evidence they told us they would provide. I did receive further emails from Ms B though and directly addressed some points she's raised.

For clarity, these are the complaint points that Ms B raised which I'll be addressing in this decision:

- LCCU should not have paid out the loan based on Ms B's call to them.
- The loan was for £10,000 but Ms B says she only received £6,000 - she wants the £4,000 refunded.
- Someone went into an LCCU branch and withdrew the remaining balance of the loan in cash.
- The loan funds paid to her bank account held at D were withdrawn as cash when G took Ms B to a branch and forced her to make the withdrawals.
- Ms B has made all the payments on the loan including interest and has paid back more than £10,000.
- £5,600 was taken out of her LCCU current account without her knowledge.

My provisional decision

On 15 May 2023, I issued a provisional decision explaining I was intending to reach a different outcome than the investigator and wanted to give both parties a chance to respond before I issue a final decision. It's important to note that at this point I hadn't received a business file or any evidence from LCCU in relation to this complaint.

In my provisional decision I said:

Reaching an answer based on the information I have

Under the Dispute Resolution Rules, which can be found on the Financial Conduct Authority's website, an ombudsman has the power to proceed with a case where the business has failed to provide information requested.

DISP 3.5.14 R says: if a respondent (in this case LCCU) fails to comply with a time limit, the ombudsman may proceed with consideration of the case and include provision for any material distress or material inconvenience caused by that failure in any award which he decides to make.

In this case, LCCU had failed to provide any of the information that has been requested by our service. They had been contacted at multiple points throughout the case investigation including:

- 2 August 2022 – email sent to LCCU asking them to provide their business file in respect of Ms B's complaint.
- 9 September 2022 – email sent to LCCU referring to our previous email and again requesting their business file.
- 30 September 2022 – opinion issued by investigator and emailed to LCCU and Ms B, asking for both parties to respond.
- 28 October 2022 – email sent to LCCU letting them know Ms B didn't accept the investigator's opinion, so the case would be reviewed by an ombudsman. The email asked LCCU to provide any information they would like the ombudsman to consider.
- 28 October 2022 – email from LCCU saying they haven't finished their investigation into Ms B's complaint and asking for an extension until 4 November 2022, which was agreed.
- 16 November 2022 – email sent to LCCU, asking for their response to emails dated 30 September and 28 October.

In April 2023, I wrote to LCCU clarifying the complaint points that Ms B was raising as these had shifted slightly from those addressed in the investigator's opinion. I explained what information we needed from LCCU in order to consider the case and asked them to provide this information by 2 May 2023.

LCCU said they would provide their business file by close of business on 10 May 2023. This was not received.

Due to the amount of time that LCCU had been given to provide their business file and information relating to the complaint, I've issued a decision based on the information we have on file.

I appreciate there have been extensive delays in the case while we obtained information from Ms B, however it's important to note that Ms B is vulnerable and further evidence and clarification has been needed in order to get to the heart of her complaint so we can reach a fair outcome.

Why I can't ask LCCU to cancel the loan

Ms B has given us a bank account statement from LCCU which shows transactions on her current account as well as some transactions on her LCCU loan. It says that the loan Ms B was given was for £9,000. Based on what I've seen, I think it's more likely than not that Ms B's loan was for £9,000, not £10,000 as she believes. So, I've taken that into consideration when looking at the rest of her complaint points.

Ms B says she took out the loan under duress and was taken into the branch to sign the documents by G. However, based on what Ms B has told us I'm not satisfied that I can fairly conclude that LCCU would've been aware of this or that they acted unreasonably in proceeding with the loan. Especially as based on Ms B's testimony, she acknowledges that she signed the loan agreement.

Ms B says that she called LCCU and asked them not to proceed with the loan, however it's not clear at what point this happened and whether it was prior to the loan being paid out or

after it had happened. I think it's possible that after the loan was paid out and G took some or all of the money, that Ms B may've contacted LCCU. However, I'm not satisfied that based on the information I have, I can safely conclude that LCCU were asked to cancel the loan prior to the loan draw down.

Based on the points Ms B has raised and the evidence I've seen, I'm not satisfied that I can safely say LCCU shouldn't have given Ms B the loan in the first place or paid out the funds in disbursement. Therefore, I can't fairly ask them to write off the loan.

However, I have gone to consider whether Ms B is entitled to any refund of the loan funds.

Should Ms B be refunded any of the loan funds?

We have evidence that some of the funds from the loan were paid to an account Ms B held at D. Our service considered a separate complaint set up against D about the cash Ms B withdrew, so I won't be commenting on that in this decision. However, I can and have considered the overall disbursement of the loan funds later in this decision.

Ms B has told us about another account she holds with a second financial institution and says loan payments were made from that account. However, despite being asked for statements on that account, Ms B hasn't provided them. Based on the LCCU statement I've seen, someone did make regular monthly payments to Ms B's loan. Having considered everything Ms B has told us, I think it's most likely that Ms B made the payments towards the loan, as she hasn't asked for those repayments to be refunded and has only asked for the loan funds which she says she can't account for - £4,000. So, I'm satisfied that I don't need to reach any further conclusion in relation to the loan repayments.

Based on what Ms B has told us, she received £6,000 from the loan. I appreciate that she says this money was taken by G under duress, but it's been difficult to identify exactly where the £6,000 was paid to as only £3,000 was evidenced by the statements Ms B gave us. This means we don't know how the remaining £3,000 was spent or what it was spent on.

It's possible that the money was spent by Ms B and not given to G, also it's possible that the funds went to another account Ms B holds at another financial institution. As I can't say how the other £3,000 was spent, unfortunately I can't safely conclude that Ms B hasn't had the benefit or use of those funds. And, as Ms B acknowledges that she received these funds, I haven't seen enough that persuades me I can fairly ask LCCU to refund them.

Ms B says she can't account for £4,000 of the loan proceeds. However, this figure was based on Ms B believing her loan was for £10,000. As I've already explained I think it's most likely the loan was for £9,000, which having dealt with the £6,000 above, only leaves £3,000 unaccounted for.

Ms B says that these funds were withdrawn as cash from an LCCU branch by someone other than herself without her knowledge. Because there also isn't any evidence from LCCU about the loan disbursement, it's impossible to know what happened to those remaining funds.

However, having very carefully considered the evidence we do have including Ms B's testimony, the change in complaint points that Ms B has raised, and the lack of evidence from LCCU in relation to the loan or its disbursement – I think it's fair to ask LCCU to refund Ms B the £3,000 which appears to be unaccounted for. I also intend to ask LCCU to pay interest on that refund at 8% simple calculated from the date the loan was paid out to the date of the refund being paid.

Ms B has raised a point about having made all the loan payments and having repaid more to LCCU than she borrowed. But she's not disputing that she was required to pay interest on the loan and the interest rate on the loan is set out on the LCCU loan statement that Ms B gave us. So, I think it's more likely than not that Ms B was aware when she took out the loan that she would have to pay interest on the loan. And, while Ms B may not have realised how much that meant she would repay in total, I'm not satisfied that I can fairly say that LCCU have acted unreasonably in charging interest on the loan or fairly ask them to remove the interest charged on the loan or refund it.

The £5,600 that was removed from Ms B's LCCU current account

Ms B says that someone withdrew £5,600 from her LCCU current account, after she made a cash deposit. Based on the LCCU statements she has given us, £5,000 was moved from her current account to her loan and used to reduce the outstanding balance on her loan – with the remaining £600 left in the current account until at least a year later. As I've already made a finding that LCCU acted fairly in issuing the loan, Ms B has had the benefit of the £5,000 as it reduced the amount she was asked to repay in relation to her loan. And, as I can't see any cash withdrawals on Ms B's account for the amount she is disputing, I can't agree that someone withdrew this money or fairly ask LCCU to refund her.

An award for distress and inconvenience

I'm conscious that there have been a number of delays in this case, due to us requesting additional information from Ms B or needing to clarify new information or points she has raised on her complaint. However, there has been significant delay caused by LCCU not providing information as requested, which would've helped us address a number of Ms B's points at an earlier stage. Ms B is vulnerable and I'm satisfied that she has experienced increased distress due to LCCU's failure to provide the information our service has asked for. I asked LCCU to pay Ms B £500 in compensation for that distress and inconvenience.

To put things right I recommended that London Community Credit Union Limited should:

- Refund Ms B £3,000.
- Pay interest at 8% simple on that refund from the date the loan was paid out to the date the refund is paid to Ms B.
- Pay Ms B £500 in compensation for her distress and inconvenience.

Responses to my provisional decision

In response to the provisional decision LCCU provided their business file and explained they disagreed with the answer I'd reached for the following reasons:

- The loan of £9,000 was paid into Ms B's LCCU account. £3,000 was transferred to an account in Ms B's name held with another bank (D), £3,000 was withdrawn from Ms B's LCCU account in cash withdrawals, the balance of the funds were held in Ms B's LCCU account and later were repaid to the loan.
- They have no record of Ms B asking them not to proceed with the loan. However, a system note was added after Ms B had a meeting with branch staff the day prior to the loan being paid out - which says:

"Member has language barrier. Due to her language issue one of her friend has been helping her with finance related and housing issue however friend (X) been demanding money from her. Member has already given her £1,000 just for helping with completing some paperwork and now asking to lend her £3,000 from her loan of

£9,000. Member has requested not to disclose any information from her account to her friend. I have informed member to bring her passport with her all the time”.

- Due to Ms B’s language barrier, a member of staff who speaks Ms B’s preferred language was made available to talk to her.
- The loan contract provided a grace period of 14 days in which the loan could be cancelled. If Ms B had asked for the loan to be cancelled it would’ve been.
- Funds in Ms B’s LCCU account were used to offset the loan as no repayments were made, and this prevented Ms B’s credit report being negatively impacted and stopped her from falling into arrears on the loan.
- The cash withdrawals of £3,000 were all signed for by Ms B and were only allowed with Ms B’s passport being present.

LCCU say based on the conversation Ms B had with their staff, they put a safety mechanism in place to protect Ms B. They feel it is unfair to be asked to refund Ms B for any of the loan funds as she’s had the benefit of the money.

Ms B also disagreed with the answer I’d reached and raised the following points:

- She was taken advantage of and should be returned all of the money from the loan.
- She only took the loan out because G used her, and if she had known that G was stealing from her, she wouldn’t have taken the loan out.
- Ms B wants £2,000 in compensation.

Ms B provided us with the contact information for the police in relation to the crime she reported against G, as well as contact information for her doctor in relation to her ill health.

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 very sorry to hear about the serious ill health that Ms B has experienced. I think it’s important to emphasise that I don’t doubt what Ms B has told us about people taking advantage of her and taking money from her.

But being a victim of crime doesn’t necessarily mean that I can hold LCCU responsible or fairly ask them to refund all the money that Ms B says was stolen from her.

I have to take into account what information LCCU had available at the time Ms B took out the loan, and ultimately whether I think they’ve acted reasonably and taken appropriate steps to try and protect Ms B based on what they knew.

The £3,000 cash withdrawals made from Ms B’s LCCU account

Based on what I’ve seen I’m still satisfied that LCCU should refund Ms B the £3,000 that was withdrawn from her LCCU account as part of the loan funds.

I say this because LCCU were on notice that Ms B was receiving pressure from a third party to give them proceeds of the loan. LCCU have put steps in place to protect Ms B’s account, but these steps seem more appropriate to stopping a third party from accessing Ms B’s account without her knowledge. Requiring a passport to be presented with any withdrawals,

ensures that it's Ms B who is making the withdrawals, but doesn't take any steps to ensure that she isn't being pressured into withdrawing the money to give to a third party. I think based on what Ms B had told them that LCCU should've asked questions to satisfy themselves about the purpose of the withdrawals and that Ms B wasn't making them under duress.

On that basis, LCCU should refund Ms B for the three withdrawals (which total £3,000) and pay interest on that refund at 8% simple per year calculated from the date of the withdrawals until the date of settlement.

The funds transferred to an account Ms B held with another bank

While I think LCCU should refund the cash withdrawals, I think they acted reasonably in allowing Ms B to transfer £3,000 to her account held at D.

The funds were being paid to an account in Ms B's name, and I wouldn't have expected LCCU to take further precautionary steps before making the transfer.

If the funds were being paid to an account held in someone else's name, I would've expected them to ask Ms B questions about the purpose of the payments and to have satisfied themselves as to the intended recipient of the funds. However, I'm not satisfied that I can fairly say LCCU should've refused to make the transfers or intervened before processing the transfers to Ms B's account held at D.

Also, as I explained in my provisional decision, Ms B raised a separate complaint against D about G forcing her to withdraw funds from the account she held with them. In this complaint against LCCU, I can't consider actions taken by another bank or hold LCCU liable for D's actions.

Having carefully considered everything, I'm not satisfied that I can fairly say LCCU acted unreasonably in allowing the transfers to Ms B's account held with D. Therefore, I can't ask LCCU to refund Ms B for those funds.

The funds in Ms B's LCCU account that were used to reduce her loan balance

Ms B remains unhappy that LCCU moved money from her LCCU account to reduce the balance owing on her loan.

Ms B says that she made the monthly payments on the loan but hasn't provided any evidence of this. The statements she's given us only show failed loan payment attempts. As Ms B hasn't evidenced that she made the loan payments, I can't fairly say that LCCU acted unreasonably in applying funds from her account to her loan to reduce the balance owing. And, as Ms B has benefitted from having a lower loan balance to repay, I can't fairly ask LCCU to refund her for the money moved to her loan.

The distress and inconvenience Ms B has experienced

I've carefully considered the points Ms B has raised regarding her ill health and the danger she says she faced in reporting G's crime to the police. However, in deciding what is fair compensation, I can't hold LCCU responsible for the fact Ms B felt she had to report someone to the police for committing a crime against her. Also, I can't make an award based on the time and energy Ms B has spent in bringing a complaint to our service.

But I can and have considered the impact of LCCU's actions based on what they knew at the time Ms B took out the loan and whether I think they should've done more to protect Ms B's

money. Also, I've taken into consideration the impact on Ms B of LCCU failing to provide information to our service when requested which caused delays in our investigation of Ms B's case.

I appreciate that Ms B wants £2,000 compensation but having taken everything into account I'm satisfied that the £500 I awarded in my provisional decision is reasonable in these circumstances.

Putting things right

To put things right London Community Credit Union Limited should:

- Refund Ms B £3,000.
- Pay interest at 8% simple per year on that refund from the date of the withdrawals to the date the refund is paid to Ms B.
- Pay Ms B £500 in compensation for her distress and inconvenience.

My final decision

My final decision is that I uphold this complaint against London Community Credit Union Limited and require them to compensate Ms B as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 5 July 2023.

Lisa Lowe
Ombudsman