DRN-4732486

The complaint

Mrs M complains that NHS (Scotland and North England) Credit Union Limited trading as NHS Credit Union ("NHSCU") irresponsibly agreed loans for her.

What happened

NHSCU agreed two loans for Mrs M. The first was taken out in May 2021, the second in November 2021. The first loan was for debt consolidation and the second for a holiday. I've summarised some of the information NHSCU provided about the loans in the following table.

Loan number	Start date	Amount borrowed	Monthly payments*	Total owed	Term (months)
1	25/05/2021	£12,500	£328	£19,135	60
2	15/11/2021	£6,000	£107	£8,054	84

**These included an amount of £10 paid into a savings account*

I understand that Mrs M met her loan repayments until March 2022. She said that her debts had become unmanageable and she entered into an individual voluntary arrangement (IVA) on advice from a debt management company. Mrs M said that the credit union didn't accept her IVA proposal and so she borrowed money from her family to clear the loan balances in April 2022 and entered into a debt management plan with her other creditors.

Mrs M complained to the credit union in May and again July 2022 that it had been irresponsible when it lent to her. She said that the loans were unaffordable and she was in a position of borrowing continuously to meet her living expenses when they were agreed.

NHSCU sent Mrs M a final response to her complaint in June 2023. It said it carried out affordability assessments before lending to Mrs M and found that the loans would be affordable for her. NHSCU didn't agree it had been irresponsible to lend to her.

Mrs M referred her complaint to us. One of our investigators looked into it and recommended that it be upheld. They found that the loans were unaffordable for Mrs M and that NHSCU should have declined to lend to her. They recommended that the credit union refund any payments Mrs M made above the capital she borrowed and remove any adverse information about the loans from her credit file.

NHSCU didn't accept this recommendation and asked for the complaint to come to an ombudsman to decide and it came to me. I sent out an initial provisional decision on 6 November 2023 and a second on 13 March 2024 explaining why I thought Mrs M's complaint should succeed. In my decision sent in March, I explained how I'd reached my conclusion and shared the information I'd relied on with both parties. I allowed time for either party to comment on what I'd said or provide new information for me to consider when making my final decision on the complaint.

Mrs M accepted my provisional decision but NHSCU did not and provided further comments for me to consider. This is my final decision on this complaint and will be legally binding on both parties should Mrs M chose to accept it.

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 looked at everything again and considered what NHSCU said in response to both of my provisional decisions, I remain of the view that Mrs M's complaint should succeed. I appreciate that this will be very disappointing for the credit union and I hope the following clearly explains how I've reached my final decision. I'll set out the text of my second provisional decision in full and then address NHSCU's response. I've clarified some aspects of the reasoning in my provisional decision in square brackets where I think this is helpful to Mrs M and NHSCU.

In my provisional decision of 13 March 2024 I said:

"…in considering what is fair and reasonable in all the circumstances of this case, I've taken into account relevant law, regulations and the regulator's rules, guidance and standards and good industry practice[1].

NHSCU is a credit union regulated by the Financial Conduct Authority (FCA). The FCA's Credit Unions Sourcebook (CREDS) sets out the FCA's regulatory rules and guidance which apply to credit unions[2]. Credit unions are registered under the Co-operative and Community Benefit Societies Act 2014 and operate under the Credit Unions Act 1979. Generally speaking, their loan agreements are exempt from the application of the UK's general consumer credit regime[3] and do not constitute "regulated credit agreements".[4] Save in exceptional circumstances, their lending activities do not fall within the FCA's definition of a "credit-related regulated activity"[5] and so these activities are not subject to any of the rules and guidance in the FCA's Consumer Credit sourcebook (CONC) including rules and guidance on responsible lending.

In its response to my provisional decision [sent 6 November 2023] NHSCU said that the loan agreements in question were exempt and not subject to the rules and guidance set out in CONC. I want to reassure NHSCU that I agree and hope the above has made that clear. I have focussed on the rules and guidance which do apply in this case and the credit union's own lending policy and lending commitments.

CREDS 7 deals with lending to a credit union's members and states that "this chapter seeks to protect the interests of credit unions' members in respect of loans to members under section 11 of the Credit Unions Act 1979 or article 28 of the Credit Unions (Northern Ireland) Order 1985. Principle 4 requires credit unions to maintain adequate financial resources."

CREDS 7.2.1AR states that "A credit union must establish, maintain and implement an up-to-date lending policy statement approved by the governing body that is prudent and appropriate to the scale and nature of its business." CREDS 7.2.6G states that: "The lending policy should consider the conditions for and amounts of loans to members, individual mandates, and the handling of loan applications."

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[1] Reference DISP 3.6.4R: https://www.handbook.fca.org.uk/handbook/DISP/3/6.html
[2] Reference CREDS 1 to 9 and other parts of the FCA Handbook listed in CREDS 10.1.3 https://www.handbook.fca.org.uk/handbook/CREDS/10/1.html
[3] As set out in (1) the Consumer Credit Act 1974 and related secondary legislation, (2) the Financial Services and Markets Act 2000 and related secondary legislation, and (3) the FCA Handbook, including the Consumer Credit sourcebook (CONC).
[4] Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, article 60B(3).
[5] FCA Handbook, Glossary.

I have taken into account NHSCU's lending policy as a whole when reaching my decision but I have noted, in particular, that "*member ability to repay (disposable income)*" and "*regularity and dependability of income source(s) including reference to other linked members of households*" are amongst the factors which it must have regard to when it is assessing loan applications. I have also taken into account that the FCA requires that its lending policy (including these factors) should be prudent, and should also be interpreted and applied in a manner which protects NHSCU's members as a whole.[6]

NHSCU's loan documentation also states that "We will lend responsibly and aim to provide a product that is affordable for you" and "We will treat you fairly and reasonably at all times…"

So, in summary, NHSCU was required to have a lending policy that was prudent and appropriate to the nature of its business, and it needed to apply its policy in individual applications (including Mrs M's loan applications) in a way which protected its members' interests. Under its lending policy, NHSCU had to consider Mrs M's ability to repay and provide Mrs M with a loan that was affordable for her.

NHSCU only accepts loan applications in sole names under its lending policy. In a loan application based on a dual household income, a factor that might clearly affect "member ability to repay" would be the "regularity and dependability of income source(s)" which formed part of that dual household income (and, of course, the net amounts of those income source(s)). If NHSCU was taking into account any sources of repayment besides Mrs M's own income, it needed to assess both her ability to repay and the regularity and dependability of those income source(s) that she was relying on. This seems to me to be the appropriate application of NHSCU's lending policy given CREDS 7.

If NHSCU's information suggested that a loan applied for would not be affordable for an applicant, then in principle under its lending policy it should refuse to make that loan. In other words, in the light of CREDS 7 and its lending policy, NHSCU needed at least to lend responsibly in the ways I've outlined.

In the circumstances, it's also my view that it's fair and reasonable to expect NHSCU to comply with the terms of its loans' documentation, which formed the basis of its agreements with Mrs M, to treat Mrs M fairly and reasonably at all times including when it was assessing her loan applications.

NHSCU carried out an affordability assessment when Mrs M applied for each loan. I've started by reviewing the information it relied on to make its lending decisions. This included what Mrs M said about her circumstances in her loan applications, copies of her and her partner's wage slips, copies of her credit file report, statements for Mrs M's sole bank account and the account she shared with her partner and the credit union's income and expenditure calculations.

<u>Did NHSCU lend responsibly and provide Mrs M with a loan in May 2021 that was affordable for her?</u>

NHSCU said it assessed the affordability of the loan based on the household income and expenditure figures.

Mrs M told NHSCU that she was on maternity leave when she applied for her first loan and that she wanted to consolidate some of her existing debt. Mrs M said she was likely to be returning to work and full pay within a month. NHSCU estimated the household income as

[6] Including reference CREDS 7.2.1AR and CREDS 7.1.2G.

£3,417 made up of Mrs M's maternity pay of around £1,300, her partner's income of around £1,700 and state benefits. It verified the salary figures using payslips from Mrs M and her partner.

NHSCU estimated a household expenditure of £3,359 including the loan repayment of £328. This also included payments of £264 towards debts which were to be consolidated with the loan, so the expenditure figure would reduce to £3,095 going forwards. This left an estimated £322 surplus and NHSCU concluded that the loan would be affordable for Mrs M.

NHSCU said that its application process requires applicants' recent bank statements. It states "We require recent bank statements, verifying your income and ALL household expenditure which must show the most recent payment to council tax and rent/mortgage. If your expenditure comes from multiple accounts, we will require a copy of each statement detailing the expenditure." NHSCU used Mrs M's sole and joint bank statements to verify the household expenses. It said that Mrs M's expenditure and that of her partner were assessed as household expenditure and it relied on Mrs M being honest and declaring all expenditure.

NHSCU also checked Mrs M's credit file for her existing debts. These amounted to £62,460: £11,522 across three credit cards; £1,701 on a mail order account; £12,064 outstanding on a car hire purchase and £37,173 on an unsecured bank loan. Mrs M confirmed that these debts were in her sole name. I understand that the proceeds of this loan were paid directly to Mrs M's credit card and mail order account providers in order to clear her balances on these accounts.

NHSCU said that when an application for credit included a partner's income it required sight of the partner's most recent payslips and may require their open banking details. NHSCU said "For clarity our application process states to members that we "may require access to open banking" when members consent to partner's income being included. This is used to risk assess any additional concerns the underwriter may have found in the credit file. Partner's open banking access is an added check in an assessment when required. For example, we would add this check, if we found any credit file concerns related to the member or associated person living at the same address".

NHSCU said that the credit checks showed all the financially associated accounts held at Mrs M's home address and it raised no concerns relating to Mrs M or an associated person such as multiple debts, bankruptcy etc. NHSCU said it didn't go on to consider Mrs M's partner's bank account transactions as there was no need to in circumstances where no concerns had arisen from the credit checks.

I'm not able to say that NHSCU's checks were fair and reasonable and appropriate for Mrs M given her particular circumstances.

NHSCU said it had a number of conversations with Mrs M before lending to her which covered her partner's income (bonuses and savings), her maternity leave duration, and the joint disposable income. NHSCU said that Mrs M requested it consider all sources of joint income, that she also said that her partner's savings from his work bonuses would cover any shortfall in income and at no point did she say that her partner's full income was not to be included in the affordability checks.

If Mrs M's partner's income was available to her to meet her loan repayments, and where she had asked for her application to be assessed on a dual income basis, then it is appropriate under NHSCU's lending policy, and it seems fair and reasonable to me to include this income in any assessment - it makes sense to include funds that are clearly earmarked by the applicant to make loan repayments. But in circumstances where there was no indication, or any reasonable basis for concluding, that partner income would be available in this way, I can't see how it is fair and reasonable to Mrs M or in the interests of credit union members to make such an assumption simply because these funds might exist. And without at least also considering what other calls he might have on his income which would inevitably reduce what Mrs M would have available to repay her loans to NHSCU.

NHSCU considered that Mrs M's partner's full income and savings were available to her to meet the loan repayments. In order to meet the estimated expenses figure of over £3,000 Mrs M would need to have access to most of her partner's income. While NHSCU verified Mrs M's partner's income through his payslips I can't see that it verified any savings amounts of Mrs M's partner, considered what other calls he might have on his income or how much of these funds Mrs M actually had access to each month.

The joint bank statements NHSCU saw evidenced that Mrs M's partner regularly paid £360 a month towards the household expenses. The statements don't show his wages being deposited but a regular transfer of £360 referenced 'bills'. There were irregular payments from him into Mrs M's sole bank account and [most of] these were referenced 'money I owe you'. Mrs M confirmed that these were repayments of money he'd borrowed from her for his personal expenses. I haven't seen anything which makes me think Mrs M had [regular] access to more than the contributions shown on the joint bank statements and I think it's more likely than not that this was the extent of it.

While NHSCU concluded that the credit check didn't raise any concerns relating to Mrs M or an associated person living at the same address, it doesn't evidence that Mrs M's partner had no other calls on his income such as personal expenses or existing financial commitments where adverse information was not being reported or, more importantly, that they [Mrs M's partner's wages] would be used towards the repayments for this loan. Given Mrs M's partner's wages weren't paid into either of the accounts used in the assessment and that NHSCU hadn't checked transactions on any other bank accounts, I don't think it could reasonably conclude that all of Mrs M's partner's income was available to her when assessing the affordability of the loan.

If Mrs M had her own savings or held joint savings with her partner and she clearly intended to use these to meet her repayments, then it seems to me it would be fair and reasonable to include these as part of an affordability assessment.

Mrs M confirmed she didn't have any joint savings or assets with her partner though he was awarded work bonuses by way of company shares. Her partner could sell these to raise extra money but the value (and her access to any funds) wasn't guaranteed. I don't know what the sale value of these shares was or whether Mrs M benefited from any previous sales and I haven't seen any figures relating to savings in NHSCU's assessments. Altogether, I don't think NHSCU could reasonably consider that there was any additional money saved that was available to Mrs M to repay her sole debts.

Turning to the household expenses, NHSCU said that that Mrs M had a responsibility to give a full and honest account of all her committed household expenditure in her application and that it could not include undeclared expenditure in its assessments. It said that Mrs M's honesty was a key factor in its assessment.

I appreciate that as a credit union, NHSCU lends to its members and so is likely to be lending within the context of an existing relationship. However, I also think NHSCU accepts that a level of verification is necessary in carrying out its assessments as shown by its request for bank statements and payslips and its credit file checking. NHSCU said that it might ask for further information from applicants, for example it might ask for a partner's open banking details if a credit check revealed adverse information. I am not suggesting that NHSCU needed to step outside its usual process here (or apply standards and analysis that didn't apply to its lending) but that it stopped short of a more comprehensive check, which its process allows for, in this instance when it would have been appropriate and prudent under its lending policy to carry out.

NHSCU said that Mrs M's IVA proposal in April 2022 evidenced much more spending than it had included in its affordability assessments. It gave examples of this amounting to around £1,500, including sums specific to Mrs M's partner. NHSCU might have uncovered this undeclared spending before entering into the agreement, had it gone further in its affordability assessment.

In summary, I've concluded that NHSCU didn't provide a product that was affordable for Mrs M based on what it knew of her circumstances at the time. I don't think further checks on her circumstances would have shown the loan to be affordable. I can't say that NHSCU lent responsibly on this occasion.

Did NHSCU treat Mrs M fairly and reasonably when it agreed her first loan?

As mentioned above, Mrs M owed over £50,000 of unsecured debt excluding her car finance and her usual, full salary was £31,365 according to her payslip, or around £2,000 a month net. Mrs M and her partner also held a joint mortgage which meant she was independently liable for the payments. I think it's fair to say that Mrs M was overindebted when she applied for the loan. Mrs M shared with us that she and her partner ended up in a revolving cycle of debt which was very hard to get out of. She said that they ended up borrowing money to cover minimum payments for debt, including borrowing from family.

Mrs M's monthly repayments for her large loan were £609 and her car finance was £274, both of which were ongoing after the loan was agreed. Agreeing this loan for Mrs M with a repayment of £318 potentially committed her to paying most of her current wages (of £1,300) on repaying debt, or over 60% of her full-time wages. I think NHSCU should have realised from the information it had that Mrs M's debts were so significant compared to her means, it wasn't likely that she would be able to meet her repayments for the loan without borrowing again from elsewhere.

Mrs M didn't close the accounts whose balances were consolidated with this loan. She continued to rely on the revolving credit accounts she had repaid and increased the balances again within the year. I understand that Mrs M eventually came to an arrangement with these creditors to manage her debts but was unable to reach agreement with NHSCU and borrowed to repay this loan.

NHSCU said it was upsetting to receive Mrs M's complaint and it believed that it helped her by consolidating her debts with its first loan. Let me say at this point that I appreciate the credit union's strength of feeling about this. NHSCU said it looked at Mrs M's creditor account statements and calculated that she would make a saving each month by paying less towards some of her debts and that she was likely to pay less interest overall when paying down these debts.

I haven't seen the creditor statements or the detail of NHSCU's savings calculation, but I can accept that by consolidating some of her debt Mrs M may potentially have reduced her monthly repayments. However, as I've explained above, the loan was unaffordable for Mrs M even taking this expected reduction into account and she wasn't likely to be able to meet the repayments without borrowing again given her ongoing level of debt. I'm afraid I cannot accept that NHSCU treated Mrs M fairly and reasonably when making this lending decision.

Did NHSCU lend responsibly and provide Mrs M with an affordable loan in November 2021 and did it treat her fairly and reasonably when it entered into the agreement?

NHSCU carried out similar checks when Mrs M applied for another loan around six months later. It hasn't provided a copy of Mrs M's payslip from the time but said it confirmed her income through this and her bank statements. I've checked the bank statements for the three months prior to this loan and it doesn't seem to me that Mrs M's income had increased, though she was to have returned to work full-time by then.

With this second loan application NHSCU not only had access to the same level of information as before but also had the benefit of seeing whether Mrs M's finances had improved. Her credit file information showed that her total debts were now £63,576 and, excluding her NHSCU loan, comprised £10,479 on her credit cards and mail order account; £6,948 on her car finance and £33,576 on her large bank loan. She'd also taken out a short term loan of £437. Mrs M told us that her car finance debt had reduced because she'd changed her car during the year.

I think NHSCU ought to have been very concerned to see that the debts Mrs M consolidated with its first loan were now almost back to the same level and that she was borrowing from high cost short term lenders. I note that the reasons it gave for rejecting Mrs M's IVA application were because it wanted more of a return on its lending and because it had approved a debt consolidation loan to repay some of the debts now included in the IVA.

This second loan wasn't for consolidation but further spending. For the same reasons as before, I don't think this new loan was affordable for Mrs M and so I don't think NHSCU lent responsibly here. I also don't think NHSCU treated Mrs M fairly by agreeing new credit for her given how quickly she'd built up her revolving credit debt again and given her ongoing debt levels – particularly when the indications were that this was going to increase the amount she owed as there was no intention to consolidate her existing commitments. From the information it had by November 2021, NHSCU should have seen that Mrs M was spending beyond her means and it was highly likely that she would have difficulty meeting her repayments for this loan and it should have refused to lend.

As mentioned above, Mrs M met her repayments for her loans until early 2022. She repaid the balances in full and entered into an IVA for her other debts. I think Mrs M lost out by paying interest on these loans, which I've found were irresponsibly agreed, and her credit file may have been adversely impacted. NHSCU needs to put things right for her."

Response to my second provisional decision

NHSCU responded to my second provisional decision in detail. I want to reassure the credit union that I have carefully considered everything it said about the merits of the case and have summarised some of its points below. If I haven't referred to specific points it is not because I haven't considered them but rather that I've highlighted those I consider most salient.

NHSCU said that:

- It considered that I'd determined Mrs M's complaint by reference to a regulatory framework that doesn't apply to credit unions, namely the FCA's Consumer Credit Sourcebook, CONC.
- It believed its affordability checks were compliant with credit union legislation, CREDS and its lending policy.
- It not only considered Mrs M's partner's income but also the household expenditure in its assessment. It said that I judged its assessment by reference to CONC when I said that it should have considered whether Mrs M had access to all of her partner's income and savings and whether or not her partner had any other calls on his

income. It also queried whether I'd only taken into account Mrs M's sole income when I had considered whether the loans were affordable.

- As Mrs M's partner was not a member of the credit union, NHSCU's household expenditure assessment was undertaken through Mrs M. NHSCU said it requested all bank statements that included household expenditure transactions and it assumed that all of these had been supplied and that Mrs M had been honest in her application regarding all household expenditure. It considered that this was an appropriate approach and to say otherwise is to judge the assessment by CONC standards.
- In its view, Mrs M presented as a confident character who dealt with matters expediently, and NHSCU reported that in her dealings with it she took control, and appeared to be using purposeful money management skills. NHSCU noted that Mrs M was confident and assertive in her opinions and choices. NHSCU believed that in my second provisional decision I had wrongly assumed that Mrs M was unable to make good decisions in her own best interest and it considered that I was implicitly advocating for Mrs M.
- Mrs M didn't lose out through its actions, rather she lost out by her own misrepresentations of the facts in her applications and by not contacting NHSCU to receive help.
- It considered that I had attached too little weight to the way in which its loans benefitted Mrs M, specifically that they reduced her monthly outgoings through lower interest rates, they increased her financial resilience through a monthly savings condition, they did not include any fees or penalties, and came with the additional benefit of £15,000 free payment protection.
- More generally, it had reservations about what it thought was a lack of transparency and probity on Mrs M's part. It noted in particular that her application for an IVA in April 2022 appeared to include various additional household expenditure which was not included in either of her loan applications. NHSCU didn't think that I had given sufficient weight to any such lack of transparency or probity in my determination, and it also suggested that I should not have accepted what Mrs M said about events without evidence, for example, that Mrs M borrowed from family to repay her credit union loans.
- It also considered that my second provisional decision contained some factual inaccuracies.

NHSCU indicated it would be helpful if I clarified the part of my second provisional decision where I said *"I don't think further checks on her circumstances would have shown the loan to be affordable."*

In reaching my decision, I've adopted the reasoning in my second provisional decision, except where I've said otherwise. I've also clarified some aspects of the reasoning in my second provisional decision where I think this is helpful to Mrs M and NHSCU. I've responded to the points which NHSCU raised below.

I said in my second provisional decision that our rules allowed me to determine complaints by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case, taking into account relevant law, regulations and the regulator's rules, guidance and standards and good industry practice as per DISP 3.6.4R. I set out the relevant legislation and regulations I'd relied on and quoted from the credit union's lending policy and its loan documentation. I explained that this framework obligated NHSCU to provide Mrs M with affordable loans and treat her fairly and reasonably. I considered the complaint with reference to this framework, which didn't include CONC.

Specifically, I considered whether the assessment NHSCU carried out was appropriate and sufficient to allow the credit union to meet its obligations. To do this, I reviewed what NHSCU did and what it might have omitted in its affordability assessments. NHSCU relied on what Mrs M said and the information she provided about the household income and expenditure. I found that NHSCU's assessment wasn't appropriate or sufficient to support an affordable lending decision in this case, not because it fell short of standards outside the reference framework but because it didn't go as far as its framework allowed and the circumstances of the case indicated that it should have.

As I indicated in my second provisional decision, if Mrs M would be reliant on her partner's income to meet her loan repayments to NHSCU (as Mrs M had requested and as the assessment indicated), it was incumbent on NHSCU to consider how much of her partner's income would be available to her. This didn't just involve assessing whether Mrs M's partner was in secure employment, but whether Mrs M could count on a sufficient part of his income being paid to her (or Mrs M otherwise having access to a sufficient part of his income) on a regular and dependable basis to enable her to afford the repayments.

It also involved NHSCU gaining an understanding of whether Mrs M's partner had other calls on his income (including, by way of clarification, ones which Mrs M herself might not have been aware of). NHSCU's request for bank statements covering household expenditure didn't include Mrs M's partner's own bank statements and NHSCU told us that it didn't ask for these. It's still my view that although Mrs M's partner wasn't an applicant for either of the loans, NHSCU could still have asked to see these in the same way that, under the reference framework, it had asked for permission to see Mrs M's partner's credit reference file and took it into account as part of its assessment.

I concluded that NHSCU erred in its lending decisions and offered Mrs M unaffordable credit which had an adverse impact on her finances. It doesn't follow that I considered that Mrs M lacked capacity or that she lacked agency when she chose to enter into the agreements. Rather, I concluded that she would not have entered into the agreements but for NHSCU's errors. This is because, if everything had gone as it should have, NHSCU would likely have declined to lend to her on both occasions.

I have considered what NHSCU has said about what it saw as Mrs M's lack of transparency. I have weighed what Mrs M has told us and considered it in the light of a range of other evidence concerning her financial position and loan applications. Although NHSCU said that it trusted Mrs M to make full disclosure in response to its various requests for financial information, it also asked to see evidence to back up what Mrs M said about her household income and expenditure. It remains my view that NHSCU might have uncovered undeclared spending before entering into the loan agreements, had it gone further in its affordability assessment in the way I have described.

I mentioned in my second provisional decision, NHSCU had calculated that Mrs M would make a saving each month by paying less towards some of her existing debts and that she was likely to pay less interest overall when paying down these debts. I have also taken into account what it's said about the other ways Mrs M benefitted from the loans it made to her. But it remains my view that these benefits did not justify NHSCU making loans which (even taking account of the reduction in monthly repayments) were unaffordable for Mrs M.

Mrs M told us that she borrowed from family to repay her loan. It is true to say I have no evidence of this borrowing, although NHSCU told us its recent communications with Mrs M confirm that she hasn't entered into an IVA to date and that she had borrowed from colleagues, friends and family. Where evidence is lacking or incomplete, I'll come to a decision on the balance of probabilities. In this case, given what was known about Mrs M's financial circumstances – that she planned to enter into an IVA – it seemed more likely to me that Mrs M had to borrow to repay her loans than she had a sum of money available to her to do so.

I said in my second provisional decision that *"Mrs M didn't close the accounts whose balances were consolidated with this loan. She continued to rely on the revolving credit accounts she had repaid and increased the balances again within the year. I understand that Mrs M eventually came to an arrangement with these creditors to manage her debts but was unable to reach agreement with NHSCU and borrowed to repay this loan."*

NHSCU said that Mrs M had been a member of the credit union for nine months before she applied for her second loan, and that she applied for this within six months of receiving her first loan. It also said that Mrs M notified NHSCU she was entering a voluntary IVA, two months after receiving a second loan, and that prior to this, she had not attempted to contact NHSCU to seek help or assistance with her financial difficulties. It said that Mrs M did not attempt to come to an agreement to repay loans with NHSCU at the time she was intending to enter a voluntary IVA. NHSCU said it rejected Mrs M's application for an IVA but that it did offer a counter proposal to her, although she rejected this and went on to pay off her loans entirely.

As I'd set out earlier in my second provisional decision, Mrs M's revolving credit balances amounted to over £13,000 in May 2021. Most of the first loan was used to clear these. By November 2021 the balances had risen to £10,479. It is correct to say that Mrs M had increased the balances on these accounts within the year. It is also correct to say that Mrs M was unable to reach an agreement with NHSCU to manage her debts.

I said in my second provisional decision that *"NHSCU carried out similar checks when Mrs M applied for another loan around six months later. It hasn't provided a copy of Mrs M's payslip from the time but said it confirmed her income through this and her bank statements. I've checked the bank statements for the three months prior to this loan and it doesn't seem to me that Mrs M's income had increased, though she was to have returned to work full-time by then."*

NHSCU said it verified Mrs M and her partner's income through payslips and bank statements available at the time and that their incomes had increased. It also said that credit checks at the time showed an improved score and that no defaults with creditors had been reported.

I noted, however, that Mrs M's May 2021 payslip showed an income of £1,236 and her average pay for the three months prior (February, March and April) as per the bank statements came to £1,393. I haven't been provided with a payslip for Mrs M from the time of the second loan, but the bank statements for the three months prior (August, September, October) showed an average of £1,389. It is correct to say that Mrs M's income hadn't increased by the time of her second application.

Finally, where I'd said in my second provisional decision that *"I don't think further checks on her circumstances would have shown the loan to be affordable*" I wanted to say that if further checks had been made, for example, of Mrs M's partner's bank statements as I've mentioned above, I didn't think that this would show that a sufficient amount of Mrs M's partner's income would be available to her on a regular and dependable basis for it to mean that the loans would have been affordable for her. Therefore, if NHSCU had carried out these further checks, I don't believe it would have decided to go ahead with lending to Mrs M – or, if it did decide to go ahead, I don't believe that that would have been a responsible lending decision in those circumstances.

<u>In conclusion</u>

Having considered everything again, including what NHSCU said in response to my second provisional decision, I've concluded that the credit union was irresponsible to lend to Mrs M in May and November 2021.

Putting things right

Following our usual approach in these sorts of complaints I think it's fair that Mrs M repays the money she borrowed as she's had the use of it but I don't think she should have to pay any interest or charges associated with her loans.

In summary, NHSCU should:

- Refund all interest and charges that Mrs M paid towards her loans;
- Add 8% simple interest per annum* to these refunds from the date they were paid to the date this complaint is settled;
- Remove any adverse information about these loans from Mrs M's credit file.

*HM Revenue & Customs requires NHSCU to take off tax from this interest. NHSCU must give Mrs M a certificate showing how much tax it's taken off if she asks for one.

My final decision

For the reasons set out above, I am upholding Mrs M's complaint about NHS (Scotland and North England) Credit Union Limited trading as NHS Credit Union. It should now take the above steps to put things right for her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 2 July 2024.

Michelle Boundy
Ombudsman