

The complaint

Miss S says North Edinburgh and Castle Credit Union Limited, trading as Castle Community Bank (CCB), failed to carry proportionate affordability checks before it lent to her.

What happened

Miss S took out a personal loan through a credit immediately from CCB for £5,000 to be repaid over 24 months in November 2023. The monthly repayments were £264.46 with a total to repay of £6,475.95. Miss S has had some problems repaying the loan and an outstanding balance remains due.

CCB wrote to Miss S after she had complained in March 2024, and it explained it made a reasonable decision to lend. It also confirmed that at the time it was placing a 30 day hold on the account as it had been notified of a change in her circumstances.

Unhappy with this response, Miss S referred the complaint to the Financial Ombudsman where it was reviewed by an Investigator. In their first assessment they concluded CCB ought to have done more before lending given the term of the loan and that it wasn't reasonable to have used statistical data for Miss S's affordability assessment. But had further checks been carried out CCB would've still discovered the loan was affordable.

Miss S disagreed with the assessment, and I've summarised her response below.

- Copy emails between herself and CCB were provided, showing that CCB had some concerns about entering into a repayment plan with Miss S when the income and expenditure form showed a negative disposable. It also seems that it had tried to call Miss S contrary to her instructions and what had been agreed.
- CCB ought to have investigated what debts Miss S was due to repay with this loan.
- CCB ought to have questioned her other credit commitments and why she needed a loan so soon after receiving a large bonus.
- CCB's communication with Miss S has been poor – it doesn't always respond and when it does it provides contradictory information.
- The credit cards Miss S was going to use this loan to repay had a smaller minimum repayment than this loan.

The investigator approached CCB and it agreed to add to this complaint the points Miss S had raised about the lack of help and support provided. The investigator then issued a second assessment. His opinion about the lending decision hadn't changed. But this time, he awarded Miss S £150 compensation for distress and inconvenience caused when it continued to contact her despite it placing a hold on the account until Miss S received her work bonus in August 2024.

Miss S disagreed saying the loan ought to not have been granted and the communication is still ongoing and is still not clear nor concise. She used her bonus to make a payment to CCB but her account is still in arrears.

CCB accepted the findings to pay £150 to Miss S but it said that it would use this payment to pay down the balance on the debt. However, after the investigator asked some further questions, it agreed the payment could be paid directly to Miss S.

These comments didn't change the investigator's mind about the outcome they had reached and so the case has been passed to me to resolve.

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 sorry to hear about the health problems Miss S's has experienced – I do hope things have improved for her.

The lending decision

CCB 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. 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 and are not regulated credit agreements. Save in exceptional circumstances, their lending activities do not fall within the FCA's definition of a "credit-related regulatory activity" 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.

Of particular relevance is CREDS 7.2.1R that states "*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.*" And CREDS 7.2.6G that states "*The lending policy should consider the conditions for and amounts of loans to members, individual mandates, and the handling of loan applications.*"

In other words, the FCA requires that CCB's lending policy should be prudent and should be applied in a manner which protects CCB's members as a whole. To decide this complaint, I have therefore looked at the checks CCB carried out, assessed whether these allowed it to meet its obligations and considered, if not, what adequate checks would have most likely shown.

CCB carried out an affordability assessment and creditworthiness check when Miss S applied for her loan and I've reviewed the information it relied on to make its lending decision.

It asked Miss S for her annual income, and this was declared to be £72,000 per year. But CCB didn't just rely on what it was told, instead it used a well-known tool provided by a credit reference agency to cross reference what it was told. CCB says it was told that Miss S average income over the previous three months was £3,849. For a first loan it was fair and reasonable to have relied on the results from this income check.

There were some suggestions in the final response letter that CCB may have used open banking – but in the circumstances of this case I'm satisfied this wasn't used. CCB says it was able to use the credit search results to cross reference what it needed and so there was no need to look at any further information about Miss S's outgoings.

CCB also calculated that Miss S's housing costs were £500 per month, she had living costs of £942.42 a month and then it discovered existing credit commitments of £1,206.75 per month. So total outgoings of around £2,649 per month. Based on these checks the loan appeared affordable.

CCB also carried out a credit search and the results didn't suggest that Miss S was, or likely to be, having financial difficulties. Miss S had nine active accounts and had only opened one other facility within the three months before this loan was granted – so there wasn't anything here to suggest that Miss S had been actively seeking and being granted new credit.

CCB also knew there were no insolvencies or defaults recorded against her. There had been one missed payment within the last six months but given the rest of the accounts had been managed well I don't think this would've caused too much concern to CCB.

In addition, Miss S says the loan was going to be taken for debt consolidation purposes. So, it wasn't the case that CCB was lending Miss S money to get further into debt – instead she'd use this money to repay existing creditors. Miss S also says CCB ought to have found out more information about what cards she was going to repay it wouldn't have made a difference to the outcome that it received. I can understand why Miss S says that perhaps it should've found out what debts were being repaid, but I don't think that was necessary here.

I do think, given the lack of significant adverse credit file data along with CCB checking Miss S's income that it was entitled to rely on statistical data for her living costs. And so, I'm minded to conclude the checks were reasonable before it lent to her.

However, and for completeness even if CCB had felt the need to check Miss S's living costs only - and had it taken steps in line with what the investigator suggested, I don't think a different outcome would've been reached here.

Any further checks would've purely been to review her non-discretionary living costs – and CCB could've gone about looking at this a number of ways. Bank statements have been provided by Miss S but CCB could've gone about checking this information by for example obtaining copy bills or any other documentation it felt was needed.

But looking at the bank statements provided by Miss S I'm satisfied, for the same reasons as provided by the investigator, that had CCB reviewed and found out more details about Miss S's living costs it would've concluded the loan payments were affordable.

I have noted from the bank statements that Miss S was gambling, but I don't think CCB would've discovered this by carrying out a proportionate check and as such it wouldn't have been in a position to factor that into its affordability assessment.

Having looked at everything, I've concluded it was likely CCB carried out proportionate checks which showed the loan to be affordable. And even if had made further enquires into Miss S's actual living costs it would've likely discovered the loan was till affordable for her.

Forbearance

CCB has already, by accepting the view, agreed that the communication could've been more concise and clearer. I've seen evidence, as the investigator pointed out that it agreed to hold the account until August 2024, but then during that time it contacted Miss S to make payment of the arrears.

Initially Miss S contacted CCB in March 2024 to say there had been a change in circumstances and she was currently off work sick. At this point, Miss S said she would be unlikely to be able to make her March and April 2024 payments and she then wanted to pay back these arrears over a nine month period. In order to assess whether this was a reasonable course of action to take CCB requested further information from Miss S – I don't consider that to have been an unreasonable course of action to have taken.

I can see from the statement of account Miss S made a large payment of over £900 to clear the arrears that had built up on the account – as she said she would do in August 2024. By doing this it also prevented the default from being applied to the account.

However, the direct debit wasn't reinstated – it looks like CCB asked Miss S whether it wanted to do that in an email of 22 August 2024, and while Miss S did respond, to this she didn't respond until the beginning of September 2024, and so the account went back into arrears at this point.

Since then, I can see that a further income and expenditure forms have been completed, and this time CCB worked out that Miss S only had around £3 per month disposable income. But nonetheless, a repayment plan of £60 per month was agreed (in order to clear the arrears) in addition to the monthly contractual payment.

An outstanding balance remains due, and I can understand at times why CCB has been reluctant to agree a payment plan especially when the information it was provided with by Miss S suggested her outgoings were more than her income each month. In those circumstances I can quite understand why CCB took the action it did. But nonetheless there has been short comings in its deals with Miss S – which it has recognised.

However, as I've said CCB has accepted there have been shortcomings in the way it dealt with Miss S and as such it has agreed to pay her £150 for this. Having looked at the emails that have provided and what Miss S has said, I consider this payment to be fair and reasonable.

I understand that CCB initially wanted to use this payment to reduce Miss S's balance but it has since said it would be open to paying the funds directly to Miss S.

Generally speaking, when an award is made for distress and inconvenience that payment would be paid directly to Miss S – rather than going towards the balance. That doesn't mean Miss S can't use the money to pay down the balance but merely it should be her choice to do so. As it stands as CCB has agreed to pay the money directly to Miss S I consider that to be a fair course of action to take.

Moving forward, both parties should as far as practically possible, continue to engage and if anything changes from either side they should contact the other party – a stable and affordable solution needs to be found to enable Miss S to repay her balance. CCB should continue to treat Miss S fairly. If moving forward, Miss S remains unhappy with the way CCB may treat her, she can, subject to jurisdiction rules raise any new concerns directly with CCB.

Finally, I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed below results in fair compensation for Miss S in the circumstances of her complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case. I've set out below what CCB needs to do.

Putting things right

- Pay Miss S directly, £150 for the distress and inconvenience CCB has caused.

My final decision

For the reasons I've outlined above, I have upheld Miss S's complaint in part.

North Edinburgh and Castle Credit Union Limited, trading as Castle Community Bank should put things right for Miss S as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 7 March 2025.

Robert Walker
Ombudsman