

complaint

Mrs M complains that Lisburn Credit Union Limited (Lisburn) mis-sold loans to her as it should have done more to assess if they were affordable for her. Mrs M would like the outstanding balance of the loans written off.

background

I issued my provisional decision on 10 January 2018, a copy extract of which is attached and forms part of this final decision.

In my provisional decision, I explained why I was proposing to uphold Mrs M's complaint in part. I've received comments from Mrs M and Lisburn

Lisburn's in agreement with my provisional decision but it's asked me to consider whether the refund I provisionally directed it to pay to Mrs M should instead be set-off from the amount of Mrs M's outstanding loan. I invited Mrs M's views on this.

Mrs M would prefer for a refund of 50% to be paid to her with the remaining 50% set off from the amount she owes to Lisburn. Mrs M's also concerned that my provisional decision didn't mention her medical condition. And she thinks her condition affected her at the time and played a big part in the situation

my findings

I've re-considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'd like to reassure Mrs M that I'm aware of her medical condition but I'm afraid it doesn't change my opinion. I say this because – although I'm sympathetic to Mrs M's condition - I've seen nothing to suggest Mrs M wasn't aware that she was entering into agreements to borrow money. And I've already addressed separately the issue of whether Lisburn should have done more to assess whether the loans it made were affordable.

I've taken into account Mrs M's preference for 50% of the refund to be paid to her and with the remaining 50% to be set off from amounts she owes to Lisburn. But having done so my view is that it's a fair outcome for me to ask Lisburn to make the refund and set it off from Mrs M's outstanding loan. I say this because it means the whole amount of the refund can be used directly to reduce the amount Mrs M owes to Lisburn.

So, after considering the points made by the parties I'm not persuaded to change my findings from those set out in my provisional decision – other than to deal with the way in which the refund should be applied.

my final decision

My final decision is that I uphold Mrs M's complaint in part. To put matters right I direct Lisburn Credit Union Limited to:-

- refund all interest and charges that Mrs M has paid for all loans taken out since the opening balance of £1,530 in January 2015; and

- pay simple interest on the refund above of 8% simple per year from the date on which Mrs M paid the interest (as above) to Lisburn Credit Union Limited to the date of settlement† and
- apply the refunds referred to above to reduce any capital outstanding on the loans taken out by Mrs M since the opening balance of £1530 in January 2015 and pay any balance to Mrs M; and
- remove any adverse information recorded on Mrs M's credit file because of these loans.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 6 April 2018.

Michelle Hayward
ombudsman

Extract from Provisional Decision

complaint

Mrs M complains that Lisburn Credit Union Limited (Lisburn) mis-sold loans to her as it should have done more to assess if they were affordable for her. Mrs M would like the outstanding balance of the loans written off.

background

Mrs M joined Lisburn Credit Union a number of years ago. By January 2015 she had an outstanding loan of £1,530. During 2015 Lisburn granted her further loans of £2,000 in February, £1,500 in April, £1,500 in May, £2,000 in July 2015 and £2,500 in November. Her total borrowing increased to over £8,000.

Mrs M says that Lisburn didn't carry out appropriate affordability checks and this led to her borrowing more than she could afford.

Lisburn said that before granting the November 2015 loan it requested proof of Mrs M's income. It also said that when Mrs M had applied for the loan she'd failed to advise it of several other creditors. And that it only became aware of Mrs M's additional commitments when she advised it of her financial difficulties (when she sent a financial statement completed on her behalf by an external agency). So it didn't think it had been wrong to give Mrs M the loans.

Mrs M wasn't satisfied with Lisburn's response and so she brought her complaint to this service.

Our investigator didn't think Mrs M's complaint should be upheld. Mrs M had provided Lisburn with details of her income and outgoings in October 2015 and November 2015 and provided copies of her bank statements. Lisburn had relied on this information and Mrs M's previous history with it before it approved the lending.

The investigator also noted that Mrs M had not declared all her financial commitments to Lisburn. But Mrs M had maintained her payments to Lisburn without any issue until July 2016. So she thought this was evidence that the loans were affordable.

Mrs M wasn't happy with the investigator's view. She said that although she'd managed to maintain payments to the loans this didn't mean that the loans were affordable. And she maintained that Lisburn didn't do correct checks on each top up.

Mrs M didn't accept the investigator's findings. She's asked for an ombudsman's decision. So the case has come to me.

my provisional findings

I've considered all the available evidence and arguments to provisionally decide what's fair and reasonable in the circumstances of this complaint.

In January 2015 Mrs M already had a debt outstanding with Lisburn. But from what I've seen Mrs M doesn't seem to be complaining about events prior to January 2015. Rather it seems it's the loans (top ups) given during 2015 which she complains about. So, for the sake of clarity I haven't considered any borrowing Mrs M took out with Lisburn before January 2015. But I've taken into account that when Mrs M approached Lisburn for lending in 2015, she already had a balance outstanding.

I asked Lisburn for details of the documents relating to each loan Mrs M took during 2015 –not just from October and November.

Lisburn was required to lend responsibly. It needed to check that Mrs M could afford to repay each loan she applied for sustainably. There is no set list of checks it needed to do, but the checks should have been proportionate to the circumstances of each separate loan/top up. This might include considerations about the amount borrowed and Mrs M's borrowing history including any indications that she might be experiencing (or had experienced) financial difficulty.

Lisburn says it asked Mrs M about hers and her husband's regular income and expenditure on each loan application she made between January and November 2015. The information provided by Mrs M detailed joint combined monthly income of between £2,400 and £2,500 and monthly combined outgoings of between £1,400 and £1,500. And Mrs M's told us that bills were shared equally.

But it seems it wasn't until Lisburn made the sixth loan to Mrs M in November that it asked her to provide confirmation of hers and her husband's income. And this was by way of an extract from their bank accounts and not a full statement.

Lisburn says it relied on the financial information provided by Mrs M in deciding to lend. It said its loan application required Mrs M to declare "*I am not indebted to any other credit union, bank or loan agency either as a borrower or guarantor*". But it says it didn't do a credit check prior to making any of the loans.

So I've given careful thought to all of this. But in the circumstances, I don't think the checks done by Lisburn were proportionate. I say this because at the time Mrs M took the first loan in January 2015 she already had a balance outstanding. And after the January loan, Mrs M borrowed further amounts in quick succession – and before she'd repaid the earlier loans. The amounts borrowed increased from £1,530 to over £8,000 in a very short period of time. So I think Lisburn should've been alerted to the fact that Mrs M might've been becoming dependent on the loans. And I think all of this should've prompted it to do further checks.

Based on this I think it would've been proportionate for Lisburn to do further checks to find out if Mrs M had other financial commitments before it agreed to lend in January and subsequently each time it lent. For example, it could've specifically asked Mrs M for more detailed information about her expenditure or it could've done a credit search or reviewed her full bank statements.

So I've looked at Mr and Mrs M's bank statements to get an understanding of their financial commitments around the time of the loans from Lisburn. These show commitments to lenders in addition to those Mrs M detailed on her application form.

If Lisburn had asked specifically about Mrs M's other commitments, I think it would've discovered she had more financial commitments than she'd detailed on each loan application form. And having done so, I think it would've concluded that Mrs M wouldn't have been able to afford to meet all of her commitments and so wouldn't have approved the loans.

But I don't think it would be fair to ask Lisburn to write off the loans as Mrs M has requested. I say this because Mrs M's had the benefit of the loans. I can see that when Mrs M contacted Lisburn about her financial difficulties it agreed to the financial arrangement proposed by her advisers. In doing so it accepted a greatly reduced monthly amount and agreed to freeze interest. But I don't think this, on its own, is enough.

what Lisburn should do to put things right

To put things right for Mrs M, Lisburn Credit Union Limited should:

- refund all interest and charges that Mrs M has paid for all loans taken out since the opening balance of £1,530 in January 2015; and
- pay simple interest on the refund above of 8% simple per year from the date on which Mrs M paid the interest (as above) to Lisburn Credit Union Limited to the date of settlement†; and
- remove any adverse information recorded on Mrs M's credit file because of these loans.

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

my provisional decision

For the reasons given above, I'm intending to partly uphold Mrs M's complaint.

If either party has anything further to add, they should do so by 24 January 2018. I will then reconsider the complaint before reaching my final decision.

Michelle Hayward
ombudsman