complaint

Miss E complains that Hillingdon Credit Union Limited (HCU) treated her unfairly in the way they sought repayment of a loan.

background

Miss E took out a loan for around £6500 with HCU in July 2015.

She made the agreed monthly repayments until December 2016. After that, she stopped doing so.

Miss E tells us she was out of work between 27 January and 2 March 2017 and – understandably - lost control of her finances.

In January 2018, HCU began county court proceedings to recover the money Miss E still owed them. And a county court judgment (CCJ) was issued against Miss E in May 2018.

Miss E says this was unfair. She thinks HCU could have used other options to recover the debt and needn't have sought a CCJ. She's concerned about the effect the CCJ will have on her credit rating.

Miss E complained to HCU. When they didn't uphold her complaint, she asked us to look into it. Our investigator did so and came to the view that HCU hadn't done anything wrong.

Miss E disagreed and asked for a final decision from an ombudsman.

my findings

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

Miss E accepts she owed money to HCU. And she's not disputing the amount she owed. I understand she paid off the debt in full in May 2018.

There's also no dispute that she stopped making the agreed monthly payments after December 2016, when she found herself in financial difficulty due to being out of work for a time.

What I have to decide is whether – in seeking to recover the debt – HCU acted fairly and reasonably towards Miss E, taking into account what they knew about her financial situation at the relevant times.

Of course, HCU are entitled to seek repayment of debts owed to them. I've seen copies of the loan agreement, which included very clear terms of business. These stated that if the borrower failed to make payments, HCU had the right to demand early repayment of all or part of the loan (on 7 days' notice).

They also said the borrower would be liable for any costs incurred in recovering the debt. And that information about the repayment of the loan would be shared with credit reference agencies.

These terms aren't unusual – or unfair. That said, we would expect lenders to act with a degree of understanding when a consumer appears to be experiencing financial difficulty – and to be fair to them by seeking to agree a way forward that's acceptable to both parties.

The evidence I have from HCU and from Miss E suggests that after the repayments stopped in December 2016, HCU contacted Miss E – on 2 March 2017 – to ask her for the missed payments.

Miss E replied the next day to say she'd been out of work for a short time. She tells us this was between 27 January and 2 March 2017. She said she'd make a payment by 10 March 2017 (I understand this was the date on which she was due to be paid for the first time in her new job).

In fact, the promised payment wasn't made. But on 17 April 2017, Miss E contacted HCU again. She said she knew she was behind on repayment, but that she'd make a payment the following Friday and would be caught up on her repayments by June.

So, if Miss E experienced some unexpected financial difficulty, it was because of the short period she was out of work – which ended in early March 2017.

Because she missed payments – and from her communications with HCU in March and April 2017 - I'd expect them to pick up that Miss E was having some problems. And it would be reasonable to expect the knock-on effects of her 6 weeks or so out of work would carry on for a while after she started her new job.

But I don't think it was unreasonable for them to expect repayments to resume – or to assume this was only a temporary 'blip' in the repayment of the loan – given what Miss E told them at the time – i.e. that she was back in work, would resume repayments and would catch up on those she'd missed.

So, I don't think HCU failed Miss E in any way at this point by not contacting her to agree a way forward with the repayment of the loan. As far as they were concerned, Miss E was telling them that all was well and she was back on an even keel.

HCU had still received no further payments by October 2017. At that point, they wrote to Miss E saying that she needed to contact them to agree a repayment program. They also pointed out they proposed to take legal action if an agreement wasn't reached.

Again, I don't think HCU acted unreasonably or unfairly here. They'd been told in April that Miss E would get back up to speed with repayments. They allowed a more than reasonable time to see evidence of that. And when there were no further repayments, they asked Miss E to contact them to agree a way forward.

I note in particular the wording of HCU's letter in October 2017. This didn't demand immediate repayment – or even the resumption of payments at the same level as before. They said only that Miss E need to contact them to "*agree a repayment program*". That seems to me to indicate very clearly that they were willing to come to some arrangement acceptable to Miss E.

In November 2017, having spoken to a debt advisory service, Miss E contacted HCU to offer to repay £1 per month. HCU replied in December 2017 to say that wasn't sufficient.

Repayments of £1 per month would never have paid off the loan. So it's not unreasonable that HCU took this stance. I think their letter could have done more to encourage Miss E to contact them again to continue the discussion / negotiation. But Miss E – who has an unpaid debt to HCU that she's well aware of - also has a responsibility at this point to contact HCU again to carry on the discussion about what kind of repayment plan might be acceptable.

When there is no further contact, HCU make an application to the county court on 17 January 2018 – and a claim form is issued to Miss E.

I do think HCU's December letter to Miss E might have repeated their request for her to contact them to agree a repayment plan. But on balance, I can't say that the application to the court at this point was unreasonable or unfair, bearing in mind the amount still owed, the time since the last repayment, the contact with Miss E in the meantime and the promises she gave in March and April 2017 to resume repayment.

At this point, of course, the CCJ was still not issued. And there was an opportunity for Miss E and HCU to agree a repayment plan which would satisfy both parties and avert the need for HCU to proceed with the judgment.

Indeed, in February 2018, Miss E agreed to pay a lump sum to HCU and then make monthly repayments until the debt was cleared.

The lump sum was paid – and two full monthly payments were received in March and April 2018.

In May, Miss E paid a smaller amount and asked for a change in the repayment plan, saying she couldn't afford the payments agreed in February. And she repeated a request made earlier (in February) that HCU proceed by way of a Tomlin order – which would stay the court action on the basis of an agreed repayment plan.

HCU agreed to the reduced payments – and to the Tomlin order – although they said Miss E would need to meet the cost of the application (£100). Miss E refused to do so – and so HCU proceeded with the court action. The CCJ (issued 26 May 2018) imposed payments of £200 per month until the debt was cleared.

I can't go behind the decision of the court – and we've made this clear to Miss E. If she wants to get the CCJ overturned, there is a means to address that through the court.

In terms of HCU's actions in the time leading up to the CCJ, I can't say that they acted unfairly or unreasonably. They sought an agreement with Miss E in February to avert the need for the CCJ. At that point, she agreed a repayment plan – which she later said she couldn't keep up.

Miss E said she agreed the repayment plan out of fear for the consequences if she didn't. I can understand that, but I don't think it's unreasonable for HCU to assume that she could pay what she'd agreed to.

When that plan failed, they offered her a reduced repayment plan – and said that they would proceed by way of a Tomlin order as she'd asked. Again this was a reasonable and fair response to Miss E's requests. And I think they were entitled to ask her to pay the £100 additional costs associated with the Tomlin order (see the terms of the loan agreement

referred to above, which are clear that the borrower is liable for any costs HCU incur in recovering the debt).

In summary, I think HCU have responded reasonably to the information they've received at each stage from Miss E. They have tried to reach a mutually acceptable agreement with her for repayment of the debt on a number of occasions. And they are entitled to seek repayment through the court where other options have failed.

One of Miss E's concerns was that the CCJ would affect her credit record. I'm afraid it will, but the information provided by HCU to credit reference agencies is accurate – there *is* a CCJ against her name. And HCU – like other credit providers – do have an obligation to report accurate information to credit reference agencies.

As I've said, I don't think HCU have acted unreasonably in the way they've handled Miss E's debt. But even if they had found a resolution without recourse to the county court, the fact remains that the missed payments and default on the loan would be on Miss E's credit record anyway. So, the fact she hadn't paid off her loan on time would be known to new potential creditors in any case, with or without the CCJ.

Given that Miss E has now paid off the debt in full, the CCJ will be recorded as satisfied.

my final decision

For the reasons set out above, I don't uphold Miss E's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss E to accept or reject my decision before 19 December 2018.

Neil Marshall
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