

The complaint

Mr B says East Kilbride Credit Union Limited (EKCUC) irresponsibly lent to him.

What happened

Mr B took out a top-up loan for £9,000 over 60 months on 21 March 2019. This increased the loan repayments he was already making to EKCUC by £55 to £455 with a final payment of £448.68 (£78 of his existing £400 repayment was to an EKCUC savings account). It increased the total loan value to £20,388.47. Mr B was an active serving director of EKCUC at the time he applied.

Mr B says the increased borrowing caused his debts to spiral, he was then on a reduced salary due to illness and could not make his repayments. He says EKCUC then started legal proceedings to recover the debt, serving an Earnings Arrestment on his salary and an Inhibition Order on his property. This has caused immense stress. He had made EKCUC aware in 2019 that he was struggling with his mental health. He asks for the loan to be written off if it is found to have been irresponsibly lent, and if not for a correct settlement figure to be provided.

Mr B is also unhappy with the EKCUC's brief final response to his detailed complaint and how it ignored his vulnerabilities when he flagged them. For this he seeks additional compensation.

EKCUC says Mr B confirmed the additional £55 would be affordable. When he told it about his repayment problems it was sympathetic and asked for updated income and expenditure information to allow it to reschedule the debt to reduce Mr B's repayments.

Our investigator did not uphold Mr B's complaint. He said EKCUC's checks were not proportionate but had it done better checks it could reasonably have made the same lending decision and so it was fair. He noted EKCUC's proposal to help Mr B reduce payments, even by covering interest for a period, was reasonable. He explained this service wouldn't comment on the subsequent legal proceedings, or related action(s) - including legal correspondence, as the courts are a higher authority.

Mr B was unhappy with this assessment and asked for an ombudsman's review. He said, in summary, he had not taken out the loan to in part repay a credit card, it was solely for a tax bill so it was not reducing debt elsewhere; his bank statements from the months prior to application generally show spend in excess of income proving he could not afford the extra £55; EKCUC were negligent throughout the sales process; and EKCUC had a duty of care to him when he fell into financial difficulties, and was suffering with poor mental health, that it did not meet.

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 have reviewed all of the comments and questions Mr B sent to both EKCUC and this service that I know he wants answers to. However, and I mean no discourtesy by this, in keeping with our role as an informal dispute resolution service - and as our rules allow - I will focus here on the points I find to be material to the outcome of Mr B's complaint.

Before providing Mr B with the loan, EKCUC needed to make sure that it was affordable for Mr B. Our general approach to complaints about unaffordable or irresponsible lending – including the key rules, guidance and good industry practice – is set out on our website.

The rules don't set out any specific checks which must be completed to assess creditworthiness. But while it is down to the firm to decide what specific checks it wishes to carry out, these should be reasonable and proportionate to the type and amount of credit being provided, the length of the term, the frequency and amount of the repayments, the total cost of the credit, and what it knows about the borrower at the point of application.

EKCUC has explained the checks it undertook before lending to Mr B. It asked Mr B about his income and expenditure and from his declarations it calculated he would have monthly disposable income of £824 if it approved this top up loan. It checked the repayment history on his existing loan - it had been well-managed. And that loan had been for debt consolidation so it says it had no reason to believe he had debts elsewhere. Apart from the one credit card with a £6,600 balance that he had told it he was repaying in part with this loan (£4,500) with the remaining £4,500 for a tax bill. It carried out a limited credit check that showed Mr B had no public records registered against him and no other recent applications for credit.

I am not satisfied these checks were proportionate. Given Mr B's existing loan balance and the fact he had taken out five loans in four years, I think it needed to verify his incomings and outgoings and make sure it understood his existing credit commitments. Mr B has supplied his bank statements from the months prior to his application to allow me to understand what better checks would most likely have shown EKCUC.

His income was broadly as declared (£2,101 versus £2,200) and his fixed expenditure (utilities bills, phone bill, credit card and loan repayments, gym membership, TV licence, insurances and so on) was around £950 a month. From his credit file I can see there also seems to have been a mortgage payment of £279. So I agree with the investigator that Mr B appeared to have sufficient disposable income to cover his other living costs and this loan.

His account was always in credit and there were none of the typical signs of financial difficulties such as the use of payday loans, returned direct debit payments or the reliance on an overdraft facility. Mr B argues his monthly spend was much higher than we have said, but his figures are for his total spend and we would not expect a lender to consider discretionary spend in its affordability assessment. And as the investigator said, as this loan was in part to reduce Mr B's credit card balance that outgoing would also decrease. Mr B challenged this but the email he sent EKCUC on 19 March 2021 confirmed *'This will allow me to pay the tax bill as well as pay approximately £4,500 off the Barclaycard balance'*.

In the round, I think that had EKCUC carried out better checks it could fairly have made the same lending decision.

Mr B is also unhappy with the support EKCUC offered when he had problems keeping up with his repayments, largely it seems due to being on a reduced salary due to ill health. The parties have conflicting views about what happened. I can see Mr B feels he was largely ignored with no consideration given to his mental health. EKCUC says it always responded sympathetically, and that it offered to meet Mr B to discuss ways to reduce his repayments but he did not supply all the information it requested.

Mr B says he did, but that EKCUs proposal to temporarily cover the interest only had the credit union's interests at heart, not his. I accept that is how he felt, but the lender was not obliged to remove interest or amend the loan term as he wanted, rather it had to show forbearance. And it has evidenced it did that. I note it also offered Mr B a reduced settlement in its final response letter.

As the recovery of the debt is now subject to court proceedings this service cannot comment further on that, as the investigator explained. Mr B also asked us to obtain an accurate settlement figure but for the same reason we cannot get involved with this and he would need to contact the parties involved in the legal proceedings.

Finally, Mr B raised his dissatisfaction with how EKCUs responded to his complaint, saying the response was very brief and did not address all the points he raised. But this is not something I can look at. There is a difference between a complaint about a financial service and a complaint about how a firm has handled a complaint. I can only look at the former. Mr B's concerns about how EKCUs responded to his complaint is not a complaint about its provision of or failure to provide a financial service – it's distinctly about complaint handling. And under our rules I cannot consider complaint handling.

In summary, I am not instructing EKCUs to take any action. I am sorry Mr B went on to suffer financial difficulties and that this has impacted his mental health but for the reasons set out above I do not agree that this was the fault of EKCUs. I hope he now has the support he needs.

My final decision

I am not upholding Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 11 January 2024.

Rebecca Connelley
Ombudsman