

The complaint

Mrs S complains that Brent Shrine Credit Union Limited trading as My Community Bank (BSCU) was irresponsible to lend to her.

What happened

BSCU agreed a loan of £12,000 for Mrs S in April 2021. The total amount owed was £16,972 to be repaid at £276 a month over five years plus a final payment to clear all obligations (all figures rounded).

I understand that Mrs S met her payments on time until autumn 2021. She complained to BSCU that it should not have lent to her as she couldn't afford to meet the repayments. BSCU didn't uphold Mrs S's complaint. It said she had passed all the relevant checks in its application process and that the loan had been fairly agreed.

Mrs S referred her complaint to us. Our investigator looked into the complaint and didn't recommend that it be upheld. They found that BSCU should have looked into Mrs S's circumstances further before lending to her but, had it done so, wouldn't have concluded that the loan would be unaffordable.

Mrs S didn't agree with this recommendation and asked for the complaint to come to an ombudsman to review and resolve and it came to me. I issued a provisional decision on 21 March 2023 explaining why I thought Mrs S's complaint should be upheld. Mrs S agreed with my decision but BSCU didn't.

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.

We've set out our general approach to complaints about lending - including all of the relevant rules, guidance and good industry practice - on our website. BSCU needed to treat Mrs S fairly and with due regard to her interests when making its lending decision. I've carefully reconsidered all of the arguments, evidence and information provided in this context and what it means for Mrs S's complaint.

I've also considered what BSCU said in response to my provisional decision. Having done so, I remain of the view that Mrs S's complaint should succeed though I appreciate that will be very disappointing news for BSCU. I'll set out again my reasons why in this final decision, and will refer to BSCU's response where appropriate.

When Mrs S applied for the loan, BSCU carried out an affordability assessment. BSCU says that it verified Mrs S's income using an income verification tool and estimated her expenses based on data from the Office of National Statistics (ONS). It also checked Mrs S's credit file and considered her existing credit commitments, including her mortgage payments. BSCU told us that Mrs S passed all the relevant checks in its processes and so it didn't require any

financial documents from her such as bank statements.

BSCU provided a high level summary of the information it says it considered when making its lending decision and the credit file data it obtained. This included that Mrs S's salary was £37,000. BSCU recorded that Mrs S's monthly mortgage payment was £526 and that she spent £676 on other expenses, about £1,200 in total. It said that Mrs S had a low existing debt to income ratio and estimated that the monthly loan repayment of £276 amounted to 24% of Mrs S's disposable monthly income, taking into account a buffer amount. BSCU concluded that the loan would be affordable for Mrs S.

These checks might be appropriate in some circumstances. However, in this case Mrs S was taking on a debt of almost £17,000 and would need to meet her repayments for five years. I think BSCU ought to have reached a fairly comprehensive level of understanding about Mrs S's actual means in order to make a fair lending decision. I appreciate that it sense-checked what Mrs S said about her income by looking at her account turnover and estimated her expenses with reference to national datasets, but I can't see that it verified this information.

In response to my provisional decision, BSCU said that it assessed Mrs S's credit file before agreeing to lend to her and so verified her mortgage payments and her current credit commitments. It said that the only element of estimation was with the ONS data and it was standard practice in the industry not to request bank statements for every customer. BSCU also said that, as per its processes, it can provide loans of greater value than that given to Mrs S without undertaking manual checks in every instance.

BSCU said that the bank account I'd referred to was a joint account. It couldn't consider Mrs S's partner's personal information when assessing the affordability of the loan for her and that her partner's financial circumstances were irrelevant to its affordability checks. BSCU also said that, as per its processes, it assumed Mrs S and her partner paid an equal share of the mortgage.

I understand from BSCU's response that its checks vary – it doesn't carry out what it calls manual checks on all occasions. As I'd said in my provisional decision, the checks that BSCU carried out might be appropriate in some circumstances but I didn't think they were enough here, given the size of the loan and the length of term. I don't think BSCU treated Mrs S fairly by estimating her expenses and assuming how these might be shared with her partner. Mrs S was independently responsible for her full mortgage payment, for example. Altogether, I remain of the view that BSCU should have gone further in its checks before making its lending decision on this occasion.

I've considered what would have happened if everything had gone as it should have when Mrs S applied for a loan. Our investigator found that further checks wouldn't have shown the loan to be unaffordable for Mrs S and so BSCU would have still agreed the loan. However, I've come to a different conclusion.

Mrs S provided bank statements for the account her income is paid into. To confirm, this account is solely in Mrs S's name. I've reviewed these to understand what BSCU might have found out had it investigated Mrs S's circumstances further before lending to her.

BSCU said in response to my provisional decision that its processes at the time didn't require it to check Mrs S's bank statements. It said it doesn't think it's fair that it should be expected to revise its original lending decision based on information it didn't have at the time of the application. To be clear, I'm not suggesting that this is the information BSCU ought to have considered, but this is the information I have and I think it's reasonable to rely on this to come to a view as to what would likely have happened but for BSCU's actions.

The monthly totals in and out of the account for January to March 2021 show that Mrs S wouldn't have had enough money left to meet her loan repayments. Unusually, the transactions for March show over £18,000 coming in and going out of Mrs S's account, including a £10,000 loan deposit (incurring monthly repayments of over £200). This loan was taken out in Mrs S's name.

Looking in more detail at the transactions - the bank statements confirm that Mrs S's income varied but was usually over £2,000 and she was in receipt of child benefit of £140 a month. Mrs S's usual outgoings, including bills and childcare, came to about £750 a month with food and travel costs around £300. Her mortgage payments from the account were £1,050. I think BSCU would have seen from this information that it wasn't likely Mrs S would be able to meet her repayments for this loan every month and would have declined to lend to her.

I have considered that some of Mrs S's expenses might have been shared with her partner but I don't know anything about their financial circumstances and I understand that BSCU didn't consider these so can't provide any further information. I can see ad-hoc deposits into the account from what I've assumed to be Mrs S's partner but I can also see debt repayments from the account, for example over £700 to a credit card company in January. I can't conclude from what I've seen that Mrs S had recourse to a regular net contribution from her partner.

The bank statements also show that two loans totalling £40,000 were deposited into the account in April before BSCU's loan was taken out. Another loan of £25,000 was deposited on the same day. These loans were in Mrs S's name. It seems all these borrowed funds, including BSCU's loan, were used to buy cryptocurrency.

Taking everything into consideration, I've concluded that BSCU treated Mrs S unfairly and without regard to her interests by lending to her on this occasion. I think a fair and reasonable check of Mrs S's circumstances would have shown that it wasn't likely that she would be able to meet her repayments over the loan term and led to a decline. Any further investigation would have confirmed this.

Putting things right

I think it's fair that Mrs S repays the capital she borrowed as she's had the use of this. But I don't think Mrs S should pay any interest or charges on this loan, which I've found to have been unfairly agreed. In summary BSCU should:

- Cap the amount Mrs S needs to repay at £12,000; and
- Consider all payments, including any fees, that Mrs S has made as payments towards this capital amount; and
- If Mrs S has paid more than the capital then BSCU needs to refund these overpayments to her along with 8% simple interest per annum* from the date of payment to the date of settlement of this complaint. In this case BSCU needs to remove any negative information about this loan from Mrs S's credit file up to the point of settlement of the complaint; or
- If in the event that Mrs S has not yet repaid the capital, then BSCU needs to treat Mrs S fairly and with forbearance and due consideration regarding her outstanding capital balance. This may mean coming to an affordable repayment plan with her.

Once the loan capital has been repaid, then BSCU should remove any negative information about this loan from Mrs S's credit file.

If BSCU has since sold the debt, it needs to either buy it back or liaise with the current debt owner to ensure Mrs S isn't liable for more than the capital she borrowed.

*HMRC requires BSCU to take off tax from this interest. BSCU must give Mrs S a certificate showing how much tax it's taken off if she asks for one.

My final decision

For the reasons I've explained above I am upholding Mrs S's complaint about Brent Shrine Credit Union Limited trading as My Community Bank and it needs to carry out the steps I've outlined to put things right for her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 25 May 2023.

Michelle Boundy
Ombudsman