

The complaint

Mrs S is unhappy with My Community Bank ('MCB'), who is a trading name of Brent Shrine Credit Union Limited. Although Brent Shrine Credit Union Limited is responsible for the actions of My Community Bank, for ease, I have referred to MCB throughout this decision.

Mrs S complains MCB lent to her irresponsibly.

What happened

Mrs S fell victim to an investment scam in early 2022. As part of the scam, Mrs S was led to believe she needed to pay fees and charges to withdraw funds from her investment. She didn't have the funds to meet these costs and so, over a space of three weeks, Mrs S and her husband applied to borrow £156,450 over 11 loans with several different lenders.

In April 2022 Mrs S applied to MCB for, and was given a loan for £19,000, which was repayable over a period of 60 months. The repayments were around £442 a month, and in total Mrs S agreed to pay back about £26,986 over the five years, after interest was added.

Mrs S says she was groomed and coached by the scammers on how to apply for the loans. Mrs S thinks MCB should have checked her circumstances more thoroughly before agreeing to lend because with better checks, MCB ought to have seen she could not afford this loan.

MCB says it completed appropriate checks before it approved lending to Mrs S and these showed the borrowing was affordable. It also ran checks to verify Mrs S' details including her name, address and bank details and these didn't lead it to believe the loan application wasn't made by Mrs S.

MCB didn't uphold Mrs S' complaint but in an act of forbearance given her predicament, it agreed a reduced repayment plan whilst her banks continue to look into the matter and should Mrs S need more time to seek debt advice.

Unhappy with the response Mrs S got from MCB, she brought her complaint to this service. Mrs S wants MCB to forgo collecting on the loan altogether. Our investigator considered the complaint. He concluded that with reasonable and proportionate checks, MCB would have considered Mrs S able to sustainably afford this loan.

Mrs S disagreed with the investigator and because an agreement couldn't be reached, the case has been passed to me to decide.

Mrs S' loan with MCB is last in the chain of nine accepted loan applications and this decision is looking only at this one loan agreement. I am aware Mrs S (and her husband) have referred other cases concerning some of the other loan applications and these have been/shall be looked at under separate case references.

In my provisional decision I explained that:

“We’ve set out our approach to complaints about unaffordable and irresponsible lending on our website. I’ve taken this into account in deciding Mrs S’ complaint. Having done all of that, I’m not currently persuaded it was reasonable for MCB to agree to lend – I’ll explain my reasons.

MCB needed to take reasonable steps to ensure that it didn’t lend to Mrs S irresponsibly. It should have completed reasonable and proportionate checks to satisfy itself that Mrs S would be able to pay the loan in a sustainable way. There is no set list of what reasonable and proportionate checks should look like. Generally, we think it’s reasonable for a lender’s checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship. But we might think it needed to do more if, for example, a borrower’s income was low or the amount lent was high.

MCB did complete some checks to see if the loan was affordable. MCB has said Mrs S would not have been offered the loan if she had not passed its checking criteria. In summary, it explained that part of its checks involved reviewing Mrs S’ credit profile to assess her income and expenditure, and it also used information from Mrs S’ active credit file.

At this point, I do think it’s important for me to set out that MCB was required to establish whether Mrs S could sustainably make her loan repayments – not just whether the loan payments were technically affordable on a strict pounds and pence calculation.

Mrs S was borrowing a reasonably large amount - £19,000 – over a significant term. Mrs S was in permanent employment on a good salary – she had declared she earned £52,000 a year when applying for the loan. MCB used an automated check of her current account turnover to validate the declared income. I have some concerns about MCB only relying on a credit reference agency data tool to analyse Mrs S’ current account turnover data and validate the income she had declared. I say this because her current account was held jointly with her husband, his salary was credited to the same account and I cannot see how its checks would differentiate between Mr’s and Mrs’ salary credits.

MCB calculated that Mrs S paid £840 towards her share of the mortgage and £912 towards other credit commitments each month. It also allowed £800 towards other expenses, which brought Mrs S’ total monthly expenditure to £2,552. MCB hasn’t shown us the figure it used to assess Mrs S’ monthly income and whether she could afford the loan she was applying for. In the absence of this information, I’m not convinced MCB’s checks went far enough.

The Investigator suggested Mrs S’ gross annual income equated to £3,236 a month, which presumably allowed for income tax and national insurance deductions. But, noting Mrs S’ public sector employment, I think it would be reasonable to expect further deductions – for example towards an occupational pension. I think, considering the significant commitment posed by the monthly repayments to the loan, MCB ought to have got a more reliable understanding of Mrs S’ take home pay, for example by reviewing her payslips or bank statements.

Mrs S has provided us with bank statements to show her financial circumstances at the time she applied for the loan. In the absence of anything else from MCB showing what its information would have shown, I think it’s perfectly fair, reasonable and proportionate to place considerable weight on what this information says as an indication of what Mrs S’ take home pay would more likely than not to have been at the time of her application. Mrs S’ current account statements show that her average take home pay between January and March 2022 had been around £2,885 a month.

So with better checks, I think MCB ought to have seen that Mrs S didn't have enough free income to afford the £443 monthly repayment to the loan she was applying for. I'm therefore satisfied that reasonable and proportionate checks would more likely than not have shown MCB that it shouldn't have provided this loan to Mrs S.

Finally, I've considered whether MCB ought to have identified Mrs S' application was in connection to the investment scam she had fallen victim to. But the evidence from the time does not support the application being less than genuine – for example, the funds were released to a bank account which MCB had confirmed as belonging to Mrs S. MCB understood the purpose Mrs S intended to put the loan monies towards was paying for home improvements, so I can't fairly say it could have prevented Mrs S' investment in the scam."

Responses

I asked the parties to the complaint to let me have any further representations that they wished me to consider by 21 June 2023, which I agreed to extend until 28 June 2023 at the request of both parties.

MCB disagreed with my provisional findings and in summary, it said:

- It didn't obtain pay slips or bank statements because Mrs S didn't meet its policy requirements on when to do so.
- The credit reference agency MCB employed to verify Mrs S' income didn't flag that her income was paid into a joint account.
- The credit reference agency verifies net income.
- Mrs S' bank account is not a joint account – the statements she gave the lender don't name a second account holder but do show her husband's salary credit.
- Mrs S' application followed its own internal policies and procedures.

Mrs S replied and in summary, she said:

- MCB lent irresponsibly and ought to have asked whether she had applied for other loans.
- I should not assume she would not have disclosed the other loans she taken out if asked.
- The provisional decision fails to resolve her situation nor prevent lenders from continuing to lend irresponsibly.
- Mrs M provided details of an online article about investment fraud.
- Mrs M asked that I reconsider how MCB should put right its shortcomings, taking account of the impact the scam has had on her and her family's lives, and tell MCB to write off the debt.

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.

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I've considered both MCB and Mrs S' submissions carefully, but I'm not persuaded to reach a different outcome to my provisional decision. I'll explain why.

It may also help if I explain for Mrs S that this service was set up to consider individual complaints, so it's not the role of the Financial Ombudsman Service to make findings about a

business's wider practices or processes – that is something for the regulator, the Financial Conduct Authority (FCA) to do, and they have the power to fine and punish businesses where appropriate.

Mrs S suggests MCB ought to have asked whether she had applied for other loans and I should not assume she would not have disclosed the other loans she taken out if asked. As I explained in my provisional decision, there is no set list of what reasonable and proportionate checks should look like. In Mrs S' case, I already think MCB's checks didn't go far enough and so whether MCB ought to have asked whether she had applied for other loans isn't material to the outcome I have reached.

MCB says Mrs S' bank account is not a joint account after reviewing the statements she sent it as part of her claim to the lender. These duplicate statements did not name the account holder(s) but only the person requesting the duplicate statement, in this case Mrs S. As I mentioned in my provisional decision, this service is also considering Mrs S' complaint about her claim for reimbursement from her bank and as a result, I can be quite certain of the fact that Mrs S' account is held jointly with her husband. As for the credit reference agency not flagging to MCB that her income was paid into a joint account, that is matter between MCB and the credit reference agency. But it doesn't lessen MCB's obligation to ensure Mrs M could repay any new lending sustainably – and a good starting point, given the size and length of the commitment, would be to get a thorough understanding of her income and expenditure.

I still think that with better checks, MCB ought to have seen that Mrs S didn't have enough free income to afford the £443 monthly repayment to the loan she was applying for. I'm therefore satisfied that reasonable and proportionate checks would more likely than not have shown MCB that it shouldn't have provided this loan to Mrs S.

Putting things right

I'm sorry to hear of the devastating impact this matter has had, and is having on, Mrs S and her family. I don't wish to cause them any further distress – but I must give my decision based on what I consider to be fair and reasonable, taking into account all of the evidence in the circumstances relating to this individual case.

When I find that a business has done something wrong, I'd normally direct that business – as far as it's reasonably practicable – to put the complainant in the position they *would be in now* if the mistakes it made hadn't happened.

In this case, that would mean putting Mrs S in the position she would now be in if she hadn't been given the loan in question.

However, this isn't straightforward when the complaint is about unaffordable lending. Mrs S was given the loan and she used the money. In these circumstances, I can't undo what's already been done. So, it isn't possible to put Mrs S back in the position she would be in if she hadn't been given the loan in the first place.

I note Mrs S wants MCB to forgo collecting on the loan altogether. But given I don't find that MCB ought to have taken more action to prevent Mrs S from investing in the scam, I don't think that is a fair way of putting things right. Mrs S says she did not benefit from the loan because the funds were lost to an investment scam. As I explained in the above, it was not foreseeable to MCB how Mrs S intended to use the loan funds. Mrs S did have the benefit of the loan funds insofar as they were paid to her bank account, albeit she then transferred and lost the money to the scam. Mr and Mrs S have approached their banks to seek the return of those transferred funds and their responses are under separate consideration by this

service. In the circumstances, I cannot reasonably hold MCB responsible for all or part of Mrs S' loss to the scam or tell it to write-off the loan.

I must consider another way of putting things right fairly and reasonably given the circumstances of this complaint. Having done so, I think MCB Limited should:

- a) Remove all interest, fees and charges applied to the loan from the outset. The payments Mrs S made should then be deducted from the new starting balance. If the payments Mrs S has made total more than the amount she was originally lent, then any surplus should be treated as overpayments and refunded to her.
- b) Add 8% simple interest* calculated on any overpayments made, from the date they were paid by Mrs S to the date the complaint is settled.
- c) Agree with Mrs S an affordable plan to repay any amount left owing.
- d) Remove any adverse information recorded on Mrs S' credit file as a result of this loan (once Mrs S has repaid any outstanding balance).

*HM Revenue & Customs may require MCB to deduct tax from this interest. MCB should give Mrs S a certificate showing how much tax it's deducted.

I would only remind MCB about its obligations to treat Mrs S fairly and offer due forbearance should she now find herself in financial hardship.

My final decision

For the reasons I've explained, I uphold Mrs S' complaint. Brent Shrine Credit Union Limited, trading as My Community Bank should put things right for her in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 1 August 2023.

Stefan Riedel
Ombudsman