

## **The complaint**

Mr J is unhappy with My Community Bank ('MyCB'), 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 MyCB throughout this decision.

Mr J complains MyCB lent to him irresponsibly and didn't carry out sufficient affordability checks at the time he took out his personal loan.

## **What happened**

In April 2019 Mr J applied for, and was given a personal loan for £20,450, which was repayable over a period of 60 months. The repayments were around £504 a month, and in total Mr J agreed to pay back just over £30,225 over the five years, once interest was added.

The purpose of the loan was debt consolidation and Mr J intended to consolidate a loan in his name with c.£6,000 owing and a monthly repayment of £147. He also intended to consolidate four loans and two credit cards in his wife's name totalling c.£14,450, with monthly repayments totalling £428.

Mr J complains MyCB shouldn't have given him the loan because it wasn't affordable. He says that the lender should have seen from his credit file that that he was in financial difficulty, and that his indebtedness had become unsustainable. Mr J has said that he was struggling financially in 2019 and he doesn't think MyCB completed an income and expenditure assessment.

MyCB considered Mr J's complaint and did not uphold it. It thought it completed appropriate checks before it approved the loan to Mr J and these showed the borrowing was affordable. It says it completed a search of Mr J's credit file, confirmed Mr J's identity, completed an affordability check obtaining his previous three months bank statements and payslips as verification, and requested a breakdown of the debts Mr J intended to repay.

In December 2020, Mr J contacted a debt charity because he was struggling to meet all his financial commitments – his wife had entered an Individual Voluntary Arrangement (IVA) the previous month. In March 2021, Mr J entered a debt management plan via the debt charity. Believing his MyCB loan had been included in the debt management plan, Mr J stopped making payments direct to the lender the same month. However, owing to a mistake, Mr J's MyCB loan wasn't included in the debt management plan and by August 2021, MyCB issued a demand for the full repayment of the debt after marking the account in default. MyCB then placed Mr J's account with its debt collection agents for recovery of the debt.

Mr J continued to make token payments to the account and approached a new provider to arrange a revised debt management plan. Mr J complained to MyCB in December 2022, unhappy at how the lender was managing his account given his financial difficulties, and because he thinks the lender acted irresponsibly in agreeing the loan at the outset. Unhappy with the response Mr J got from MyCB, he brought his complaint to this service. MyCB disagrees that it lent irresponsibly and confirmed that its debt collection agents still

intended to take Mr J to court to recover the debt and/or securitise it against his property. But as yet, this hasn't happened.

Mr J wants MyCB to stop its litigation action and agree to work with his debt management plan provider. Our investigator considered the complaint. He concluded that with reasonable and proportionate checks, MyCB would have considered Mr J able to sustainably afford this loan.

Mr J disagreed with the investigator and because an agreement couldn't be reached, the case was passed to me to decide. I issued a provisional decision on 24 November 2023. In summary, I provisionally found MyCB's agreement to lend to Mr J was irresponsible. I thought that with reasonable and proportionate checks, MyCB ought to have seen Mr J was in financial difficulties and not in a position to repay this loan sustainably.

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 Mr J's complaint. Having done all of that, I'm not currently persuaded it was reasonable for MyCB to agree to lend – I'll explain my reasons. I only add that the decision is finely balanced and I thank both parties for their patience whilst I've considered this case.'*

*MyCB needed to take reasonable steps to ensure that it didn't lend to Mr J irresponsibly. It should have completed reasonable and proportionate checks to satisfy itself that Mr J 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.*

*MyCB asked for both Mr J's bank statements and his payslips covering the three months leading up to his application to provide manual validation of his income and expenditure before agreeing to the loan, as well as running a search of his credit file. So, given the wealth of information these provided about Mr J's income and expenditure including existing borrowing commitments, I'm satisfied its checks were proportionate as a starting point. It follows, that in this case, I must consider how MyCB engaged with the information it got, whether it ought to have prompted further questions, and, ultimately, whether it made a fair decision to lend.*

*The search by MyCB of Mr J's credit files shows that he had taken out a secured loan seven months earlier, which was held in joint names. He had borrowed £28,745, repayable over 15 years with monthly repayments of £373, and these were up to date. Given Mr J was applying to consolidate unsecured debts held by him and his wife and not borrow more, not long after taking out this secured loan, I think MyCB needed to understand the purpose of that loan. I say this because I think Mr J applying to extend the repayment terms of his and his wife's existing unsecured debts over a longer timescale could have been a sign that his/the household's overall indebtedness was becoming unsustainable.*

*I've not seen that MyCB asked Mr J about the secured loan he took out seven months prior to his application. But I can see from MyCB's search of his credit file, five of his accounts were settled between September and October 2018, at around the time the secured loan had started. And had MyCB asked Mr J about the purpose of that loan, I think it would have most likely have learnt that Mr J and Mrs J had taken it out to consolidate five of his personal loans and eight of hers. I do think it is concerning that Mr J was looking to consolidate again, within seven months of taking out the secured loan. I accept there may be arguments to*

counter my concern, for example, there being insufficient equity in Mr and Mrs J's property which may have prevented them from taking a larger secured loan. But it was for MyCB to satisfy itself that Mr J's repeat borrowing wasn't perpetuating a cycle of unsustainable borrowing.

MyCB has submitted a copy of an 'affordability/over indebtedness' report it got from a credit reference agency as part of its checks into Mr J's application. I see that the report doesn't show any signs of repayment difficulties, for example there were no late or missed repayments. But the absence of repayment difficulties doesn't mean Mr J wasn't in financial difficulty – I say this because people may choose to prioritise credit repayment over other non-discretionary spending to preserve their credit record. This said, the report shows Mr J had opened a new credit account in the last three months. I've cross referenced this to his credit file and I see Mr J took out a £3,000 personal loan repayable over seven years in November 2018. So, two months after taking out the joint secured consolidation loan, Mr J needed to borrow more, taking the new borrowing over a lengthy term for the amount advanced. I think this suggests Mr J may have become dependent on credit, needing to borrow more to maintain his other credit commitments.

MyCB has also submitted a copy of bank statements it got from Mr J at time of his application – there are three statements covering January, February and March 2019. The statements show Mr J held the account with his wife, both salaries were credited to the account and show the household expenditure. MyCB also got three payslips – these were dated 22 February 2019, 22 March 2019 and 24 May 2018. I have carefully reviewed the bank statements and I've seen that Mr J's salary was credited in February and March but there wasn't a salary credit in January 2019. I would expect MyCB to question this, as it hadn't got a payslip for January 2019.

I've seen that in February 2019, a standing order payment for £370 left Mr J's account to go towards a housing association. I couldn't see a corresponding payment on the January or March statements. In the knowledge that Mr J was a homeowner with a mortgage, I asked him about the payment to the housing association. Mr J explained he and his wife had bought their property on a shared-ownership basis and paid both a mortgage and rent each month. I asked Mr J about the missing payments on his bank statements and he confirmed that they had fallen into arrears with the rent payments. Mr J has since provided me with a copy of a statement for the rent payments from the housing association. It shows that as at the 1 April 2019, Mr and Mrs J were £726 in arrears with their rent.

Mr J has also provided a copy of his council tax demand for 2019/20 and it shows a £242 balance still owing for the previous year. I've not seen a regular payment showing on Mr J's bank statements towards council tax. I can only see a one-off payment for £250 in March 2019, which was paid before the council tax demand was produced. Again, this ought to have prompted further questions when validating Mr J's expenditure.

Noting Mr J's salary was at least three times higher than Mrs J's, I think it is reasonable to say he would be responsible for the lion's share of the household expenditure. With this in mind, our investigator asked MyCB (on my behalf) for a copy of its income and expenditure assessment. Despite several chasers, it's disappointing to note MyCB has been unable to submit this information, particularly as part of Mr J's complaint was that MyCB failed to carry out an income and expenditure assessment before agreeing the loan. I am curious to know how MyCB attributed joint commitments to Mr J's expenditure – for example utilities and mortgage payments. I wanted to know if it simply split them in half or used values proportionate to Mr and Mrs J's respective incomes. But given the circumstances I've set out above, I am satisfied I can still reach a fair and reasonable outcome without it.

*I've carefully considered whether MyCB's checks were proportionate in the circumstances of Mr J's loan application. But for the reasons I've set out, I think the information it gathered ought to have prompted more questions – for example, the missed salary payment in January 2019 or the payment to the housing association. So, I am not currently persuaded MyCB's checks were reasonable and proportionate in this case. And I am keeping an open mind about how MyCB's checks attributed joint commitments.*

*I've also carefully considered whether, with reasonable and proportionate checks and with getting answers to the questions I think it ought to have asked, it was responsible to lend to Mr J.*

*On the one hand, the loan would reduce the household outgoings by around £70 a month, albeit by increasing Mr J's personal indebtedness in the process. But on the other hand, I think his circumstances show Mr J was in financial difficulties – to recap, he was applying for a second consolidation loan in seven months, having taken out a loan for £3,000 over a seven-year term, three months into the term of his first consolidation loan, and he was in arrears with his rent and with his council tax.*

*The critical question here is whether the £70 reduction in his household monthly outgoings would offer Mr J sufficient relief to his/his households level of indebtedness to justify MyCB's agreement to the loan. Even if I were to set aside any consideration for increasing Mr J's personal indebtedness, taking on his wife's debts and repaying them over longer terms at additional overall cost; I still don't currently think a £70 reduction offered enough relief to make an unsustainable position sustainable.*

*I say this because with Mr J needing to borrow more money only three months into the term of his first consolidation loan, he didn't show any financial resilience to overcome unforeseen expenditure. Instead, I think it shows he had become dependent on credit. I've not seen an improvement in his circumstances and an income shock in January 2019 placed a further strain on the household budget, prompting this further consolidation of debt. I think Mr J's indebtedness was already displaying some key signs of being unsustainable and the £70 reduction in his household monthly outgoings wasn't the solution to his problems. I think it offered too little respite, given the extent of his council tax and rent arrears combined. So all things considered, I'm not persuaded it was responsible for MyCB to lend to Mr J.*

*Finally, I have considered whether MyCB treated Mr J unfairly in other ways. I've noted the difficulties Mr J has experienced after entering a debt management plan and I am aware of his other complaints about the other parties involved, which he also referred to this service. I also note Mr J had asked his wife to represent him on this and his other complaints. I don't think I can reasonably hold MyCB responsible for any errors in the administration of his debt management plan or find it acted unfairly when this stopped Mr J from making payments to the loan. And I've seen from MyCB's contact history, most of the conversations were between the lender and Mrs J. As Mrs J is not the account holder and was only representing Mr J, I am unable to consider what happened between her and the lender, nor consider compensating her for any distress she may have experienced.'*

## Responses

I asked the parties to the complaint to let me have any further representations that they wished me to consider by 8 December 2023.

Mr J confirmed receipt of the provisional decision – after the Investigator had sent a duplicate copy – and asked whether he needed to contact MyCB for the new balance as only five months of the loan term remained. Mr J also asked me to consider telling MyCB to remove the negative information recorded on his credit file with immediate effect.

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

- It completed reasonable and proportionate checks to assess whether Mr J could repay the loan in a sustainable way. It collected bank statements and wage slips to review his income and expenses. There was sufficient disposable income to cover the repayments of the loan. And it does not think it needed to do more.
- It did not increase Mr J's indebtedness. Mr J's unsecured credit commitments were low compared to his annual salary. There were no sign of any financial difficulties. His loan purpose was reviewed in a reasonable manner and the loan was viewed as simplification and replacement of the current debts of his household.
- Mr J's affordability and circumstances at the time of the application were not the cause of his inability to keep up with his payments. Mr J experienced changes in his circumstances in March/April 2020, a year after borrowing this loan. It believes these changes in circumstances were the cause of Mr J's financial difficulties.
- The reference to Mr J taking out a secured loan seven months prior to the agreement suggests that this should have been reviewed in more detail and questioned at the time of the application. MyCB believe it would not be reasonable, nor proportionate because it was a secured loan, and outside of a reasonable time frame to suggest it should have been questioned.
- Again, questioning the unsecured loan of £3,000 taken 5 months prior to our loan would be excessive and unreasonable because the amount and the timing was not unusual.
- Its income assessment was based on Mr J's payslips which in March (pay period 12) showing a total of £39,966.63 YTD taxable earnings which is in line with his monthly earnings seen on the two payslips from 2019. It believes Mr J provided a payslip from May 2018 in error but supports that he had been in long employment with his current employer. This all suggests that his income was stable at the time of the application. And there was no need to request a payslip for January 2019.

It supports debt consolidation lending as a tool of improving financial resilience for its customers. As a credit union and with regulations, guidance and good industry practice in mind, its specialist sourcebook is the Credit Unions Sourcebook ("CREDS") rather than the Consumer Credit Sourcebook ("CONC"). And its loan agreements are unregulated.

### **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've considered both MyCB and Mr J's submissions carefully, but I'm not persuaded to reach a different outcome to my provisional decision. I'll explain why.

I'll start by explaining that we were set up as an informal and free alternative to the courts. I make decisions on the facts and evidence available in each case. The decision I come to is based on what is fair and reasonable in all the circumstances of the case. MyCB has pointed out that as a credit union, its specialist sourcebook is the Credit Unions Sourcebook ("CREDS") rather than the Consumer Credit Sourcebook ("CONC"). And its loan agreements are unregulated.

I'm required by DISP 3.6.4 R of the Financial Conduct Authority's (FCA) Handbook to take into account the:

'(1) relevant:

- (a) law and regulations;
- (b) regulators' rules, guidance and standards;
- (c) codes of practice; and

(2) ([when] appropriate) what [I consider] to have been good industry practice at the relevant time.'

I explained in my provisional decision that we've set out our approach to complaints about unaffordable and irresponsible lending on our website. The approach encompasses all the matters I am dutybound to consider under DISP 3.6.4 R.

If by saying its specialist sourcebook is CREDs and not CONC, MyCB is suggesting that it need not take reasonable steps to ensure that it lends responsibly, nor does it need to complete reasonable and proportionate checks to satisfy itself lending could be repaid in a sustainable way, then this is clearly at odds with the actual steps it took before agreeing to lend to Mr J.

I think by searching Mr J's credit file, validating his income and expenditure, and calculating his disposable income, MyCB more likely than not intended to adopt good industry practice towards responsible lending. I also think this went as far as satisfying itself of Mr J's ability to repay the loan sustainably – noting its comment about improving financial resilience for its customers. And of course, as a regulated business, MyCB is required to adhere to the FCA principles as well as any regulatory obligations in place in its relevant sector, including PRIN 2.1.1 R (6) which says: '*A firm must pay due regard to the interests of its customers and treat them fairly.*' I have considered this case accordingly.

MyCB responded to say its checks were reasonable and proportionate and showed that Mr J had sufficient disposable income to cover the loan repayments. I agree to an extent that MyCB's checks – searching Mr J's credit file, validating his income and expenditure with payslips and bank statements – were reasonable and proportionate enquiries to make. But in Mr J's case, I think gaps in the information gathered ought to have prompted further checks had MyCB properly engaged with this information. For example, MyCB considers Mr J had provided a payslip from May 2018 in error, when it had expected to see his January 2019 payslip. Yet his bank statement it got covering that month didn't show a salary credit for Mr J. I think this disproves MyCB's assumption that Mr J provided his May 2018 by mistake and further demonstrates shortcomings in its engagement with the information gathered. So, I disagree with MyCB that its checks were reasonable and proportionate.

MyCB says it wouldn't be proportionate to query the secured loan Mr J had taken out seven months prior or the unsecured loan he took three months later. But this is information showing on the search of Mr J's credit file it based its decision on and again is a question of engagement with information gathered. MyCB considers debt consolidation lending as a tool of improving financial resilience. But information from Mr J's credit file shows he had turned once again to credit within months of consolidating his household's debt and his financial resilience was dependent on further borrowing. I think Mr J's pattern of repeat lending over a relative short period time more likely than not shows an unsustainable dependency on credit.

MyCB believes changes in his circumstances were the cause of Mr J's financial difficulties. I accept the changes in his circumstances may have brought matters to the fore. But as I explained in my provisional decision, reasonable and proportionate checks ought to have shown Mr J was in arrears on his council tax and rent to his association at the time of his application, and I think it is fair to say that he was already in financial difficulties.

I've carefully considered all MyCB's submissions but I remain unpersuaded that restructuring Mr J's household debts over a longer term to increase his disposable income by £70 a month offered a sustainable solution to his financial difficulties and over reliance on credit. I think MyCB's agreement to lend to Mr J was irresponsible.

### **Putting things right**

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 Mr J in the position he would now be in if he hadn't been given the loan in question.

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

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

- a) Remove all interest, fees and charges applied to the loan from the outset. The payments Mr J made should then be deducted from the new starting balance. If the payments Mr J has made total more than the amount he was originally lent, then any surplus should be treated as overpayments and refunded to him.
- b) Add 8% simple interest\* calculated on any overpayments made, from the date they were paid by Mr J to the date the complaint is settled.
- c) Agree with Mr J (and/or the administrator of any debt management plan he is still in) an affordable plan to repay any amount left owing.

I asked the parties to respond to my provisional decision if they thought this couldn't be achieved out of court and without the need for litigation or securitisation of the debt, accepting both parties must engage with each other to achieve such a plan. Mr J queried whether he should now contact MyCB or wait for the recalculation of the balance owing. Although MyCB had the opportunity to do so, MyCB did not respond on this point – and so I must assume it agrees in principle to work with Mr J out of court and without the need for litigation or securitisation of the debt.

- d) Remove any adverse information recorded on Mr J's credit file as a result of this loan (once Mr J has repaid any outstanding balance).

Mr J suggested the negative information should be removed immediately. I disagree because removing it after the debt is repaid means any adverse information recorded from here on will also be removed.

\*HM Revenue & Customs may require MyCB to deduct tax from this interest. MyCB should give Mr J a certificate showing how much tax it's deducted.

I again remind MyCB about its obligations to treat Mr J fairly and offer due forbearance should he continue to find himself in financial hardship. And equally, I remind Mr J of the importance of engaging with the lender.

**My final decision**

For the reasons I've explained, I uphold Mr J's complaint and direct Brent Shrine Credit Union Limited, trading as My Community Bank to put things right for him in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 17 January 2024.

Stefan Riedel  
**Ombudsman**