

## The complaint

Mr P complains that Brent Shrine Credit Union Limited trading as My Community Bank (“BSCU”) irresponsibly gave him a fixed sum loan agreement he couldn’t afford to repay.

## What happened

In November 2022, Mr P applied for a personal loan with BSCU. The credit agreement set out that he borrowed £5,000 which was to be repaid with an initial repayment of £200.66, followed by 58 monthly repayments of £146.49.

In January 2023, Mr P complained to BSCU to say that he should not have been given the loan. He said that his borrowing had significantly increased in the months leading up to this loan application. He said that if appropriate checks had been done, BSCU would have seen he was vulnerable as he was in a cycle of borrowing and he was gambling significant sums each month.

BSCU didn’t think it had acted unfairly. It said that it had completed appropriate affordability checks which showed no concerns and that Mr P likely had sufficient disposable income after taking out the loan.

I sent Mr P and BSCU my provisional decision on 18 December 2023. I explained why I thought the complaint should be upheld. I said:

*We’ve explained our approach to complaints about unaffordable and irresponsible lending on our website. I’ve used this approach to help me decide Mr P’s complaint. Having carefully considered everything, I’m planning to uphold Mr P’s complaint. I’ll explain why.*

*It’s important to note that the fixed sum loan agreement Mr P entered into was unregulated. This means that BSCU’s obligations around responsible lending aren’t exactly the same as those for most regulated lenders. As it is a Credit Union, BSCU’s specialist sourcebook within the regulator’s handbook is the Credit Unions Sourcebook rather than the Consumer Credit Sourcebook. This is because it wasn’t carrying out credit related regulated activities when providing the loan to Mr P.*

*Nonetheless, as it is a firm authorised by the Financial Conduct Authority, I consider it fair and reasonable to expect BSCU to have carried out reasonable enquiries into Mr P’s circumstances to check that he’d be able to make the payments to the loan without difficulty or the need to borrow further. I’d also only expect it to have accepted the loan application in the event that those reasonable enquiries demonstrated that Mr P could make the repayments without difficulty.*

*I’ve therefore looked at what information and evidence BSCU gathered about Mr P’s circumstances prior to lending to him.*

*BSCU says that Mr P declared an annual income of £38,500 on his application. It says it verified this by using data provided by a credit reference agency. Although*

*BSCU haven't provided the results of those checks, I've seen from Mr P's bank statements that this income was broadly accurate.*

*BSCU also used statistical data to estimate Mr P's likely living costs, including his rent. It said these figures came out at around £1,250 per month. Lastly, it completed a credit check which it says showed he had around £14,500 in unsecured credit commitments for which he was paying around £270 per month. It said there was no recent adverse information recorded on his credit file, nor was there any sign of Mr P using payday lending.*

*While the overall summary of Mr P's credit record that BSCU has highlighted isn't necessarily concerning, it doesn't provide the full context of what BSCU could see, nor is some of the information summary it gave accurate. In particular, the data it has provided from the credit check revealed the following:*

- Mr P held four current accounts, all of which were overdrawn. One of those accounts was over its agreed overdraft limit in the month prior to the application. In total he owed over £2,800 across his four overdrafts – which was more than his monthly income. Therefore, BSCU ought to have been on notice that Mr P would effectively be paying the new loan from borrowed money.*
- Two of those overdrafts had been taken out in the previous nine months, accounting for almost half of his overdraft debt.*
- Mr P had taken out a fifth current account three months prior to the loan application, but this account had no overdraft facility.*
- In addition to this, Mr P held five credit card accounts. Once again, he had utilised nearly the full credit limits on each of these accounts, and there was a regular (although not significant) pattern of cash withdrawals across those credit cards.*
- Mr P had two other loans, each with just under £5,000 outstanding. He was repaying £223 per month towards one and £242 per month towards the other.*
- Of his 11 separate credit commitments 7 had been taken out in the 13 months prior to this loan application. His overall usage of the available credit on those products had increased month on month since each application.*

*What BSCU could therefore see was that Mr P had increased his borrowing significantly in a relatively short space of time and was likely relying on borrowing to meet his day to day living expenses. This is evidenced by the sheer number of maxed (or nearly maxed) overdraft facilities and his need to take further borrowing in the form of credit cards and personal loans.*

*I'm also unsure why BSCU suggested that Mr P's monthly credit commitments were only around £270 per month, when just taking his two existing loans into account he was repaying £475 per month. In addition to those loan repayments, he'd also be required to make repayments towards his five credit cards and I would have expected BSCU to incorporate a reasonable repayment figure towards his significant overdraft debt which was almost £3,000.*

*I think BSCU had enough information available to it to demonstrate that Mr P wasn't in a position to be able to sustainably afford repayments towards another loan, let*

*alone one where he'd be required to repay BSCU nearly £9,000 over a five year term.*

*While I accept that Mr P's income still might have been sufficient to service this level of debt, his overdraft borrowing and recent increases in other unsecured lending indicated an over- reliance on credit. Even if this on its own wasn't enough to say BSCU shouldn't have lent to Mr P, at the very least it ought to have done much more to understand Mr P's financial circumstances better.*

*I think any reasonable enquiries into his circumstances would have revealed that Mr P was not managing his finances well – something that was already evident from the credit check BSCU did – and that he wasn't in a position to sustainably repay further borrowing. I therefore think BSCU acted unfairly when it lent to Mr P.*

*It isn't possible to completely undo the lending decision. However, as I think Mr P shouldn't have been given this loan, I think it's fair and reasonable that he shouldn't have to pay any interest and charges (or any costs for borrowing). But, as he has received the loan proceeds, it's fair he pays that back. Once Mr P has paid back the capital amount he borrowed, BSCU should remove any adverse data it has recorded on his credit file in relation to this loan. This is because the adverse markers would only have been applied as a result of being given a loan he should never have received.*

Mr P accepted that outcome, but BSCU didn't. In summary, it said:

- It would not have known about Mr P's gambling on his current accounts.
- Its checks showed overdraft balances of £2,300 not £2,800. It agreed that one account had recently gone over the limit by £20 but this was still marked as not a breach by that lender as it was within the lenders tolerance.
- I had stated two of the overdrafts had been taken out nine months prior to the application. BSCU considers that to be long term and is therefore not a trigger for financial stress or credit risk.
- The checks did not show that Mr P had taken a fifth current account three months prior to the application.
- The credit cards and overdrafts had reasonably low limits and balances compared to Mr P's income, so were not a concern.
- Anything from more than three months prior to the application is not considered recent or a sign of financial stress so anything more historic than that should not be taken into account.
- The loan purpose was for debt consolidation so it follows that Mr P's debt would not be increasing by taking out this loan.

### **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 thought carefully about the additional points BSCU has made, but they don't change my overall conclusion that it acted unfairly in lending to Mr P.

I agree with BSCU that it wouldn't have known about Mr P's gambling, nor do I think further enquiries would necessarily have revealed them either. I didn't suggest this in my provisional decision.

I disagree with BSCU about what its credit checks showed. I maintain it did show overdraft balances of around £2,800 and that a fifth current account was opened shortly before this loan was applied for. However, even if I'm wrong, it makes no material difference to the overall outcome.

I say this because Mr P's monthly income was around £2,400 and even with overdraft balances of £2,300, he was still in a position where almost all of his income was swallowed by overdraft usage. I'm concerned that BSCU has sought to argue that Mr P's historic overdraft usage and accounts he opened in the last 13 months should be excluded from any reasonable assessment of affordability. These accounts were still open and would have given a useful picture of whether Mr P had the ability to repay credit in a sustainable way.

The credit checks BSCU completed showed that for a sustained period of time Mr P had been significantly overdrawn (taking into account the respective limits) on all account he held an overdraft. BSCU has sought to argue that nine months is long term. However, this doesn't help BSCU. Overdrafts by their nature are designed to be for short term borrowing and therefore someone who is borrowing on them long term is therefore likely to be in financial difficulty. So, I disagree with BSCU that there were no signs of financial distress on the credit checks it completed or that looking further back than the previous three months is disproportionate.

As I set out in my provisional decision, Mr P's unsecured borrowing had escalated over the previous 13 months and there were clear signs of reliance on overdraft and credit card borrowing. I accept that individually each limit was relatively modest and even collectively the total unsecured debt wasn't significant on its own when taking into account Mr P's income. However, those aren't the only considerations. There were significant numbers of accounts, all of which were at or close to their limits and there was a pattern of increasing borrowing over a relatively short period of time. As I've said above, the overdraft borrowing appeared to be long term with no signs of improvement and Mr P's income wasn't (or if I'm wrong about the figures, almost wasn't) enough to clear that borrowing.

I do however accept that Mr P had applied for a consolidation loan and there is merit in this argument from BSCU about the impact this might have had on Mr P's overall borrowing situation. While I agree that consolidation loans can improve a consumer's financial circumstances, I'm not persuaded that was the case here or that BSCU acted fairly by concluding that it was.

The interest rate on the agreement was 24.91% with an APR of 27.98%. This was unlikely to be materially lower to the amount of interest Mr P was already paying on his existing credit commitments (except perhaps his overdraft borrowing). Further, the amount Mr P would have to pay back to BSCU was nearly double the amount he was borrowing (he would have to repay around £9,000).

BSCU's credit checks showed that Mr P had taken out two similar sized loans recently (one 13 months before the application and another 11 months before). Yet despite that, Mr P's overdraft usage had increased, as had his reliance on other revolving credit. He'd also taken out further unsecured credit which he had also used up to their respective limits. It ought to have been evident that further borrowing was unlikely to improve Mr P's financial circumstances as he wasn't managing his finances well and was getting further and further indebted and reliant on borrowing. Two previous loans for similar amounts had not improved his situation (it had worsened) so I don't think it was reasonable for BSCU to assume their

loan would achieve what others hadn't. For these reasons, I don't think BSCU made a fair lending decision.

### **My final decision**

For the reasons given above, I uphold this complaint and direct Brent Shrine Credit Union Limited trading as My Community Bank to:

- Refund all interest, fees and charges so that Mr P only has to repay the capital he borrowed.
- If Mr P has already repaid more than the capital he borrowed then BSCU should refund any overpayments to him, adding 8% simple interest per year from the date of each overpayment to the date of settlement.
- Once the capital is repaid, BSCU should remove any adverse information it may have recorded on Mr P's credit file in relation to this loan.

If BSCU considers tax should be deducted from the interest element of my award it should provide Mr P with a certificate showing how much tax it has taken off, so that he can reclaim that amount, if he is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 15 February 2024.

Tero Hiltunen  
**Ombudsman**