

The complaint

Mr C complains that Brent Shrine Credit Union Limited lent irresponsibly when it approved a top up loan in December 2021.

What happened

The background to this complaint and my initial conclusions were set out in my provisional decision. I said:

Mr C had an existing loan with Brent and has told us that in early December 2021 it contacted him to advise he'd been pre-approved to borrow up to £11,000 as a top up loan. Mr C made an application to Brent which was reviewed and approved. The funds were released to Mr C on 7 December 2022.

Last year, Mr C complained that Brent had lent irresponsibly when it approved his top up loan application. Mr C has explained that he had opened multiple new credit commitments in the six months before Brent invited him to apply for the top up loan and feels it should've been clear he was borrowing beyond his means.

Brent issued a final response but didn't agree it had lent irresponsibly. Brent said it had carried out a full affordability check before approving the loan and checked Mr C's credit file. Brent also noted Mr C had maintained payments to his existing loan without issue since July 2021. Brent's final response noted Mr C experienced difficulties maintaining payments when he lost his job in the summer of 2022.

Mr C referred his complaint to this service and it was passed to an investigator. They asked Brent for a copy of its case file. Brent sent copies of Mr C's loan agreements and statements. But no record of how it had reached its lending decision in December 2021 was supplied. As a result, the investigator wasn't able to say whether Brent had carried out reasonable and proportionate checks or not.

The investigator looked at Mr C's credit file and bank statements for the months preceding his top up loan application. The investigator noted that Mr C's outgoings on existing credit was high at the time but felt his bank statements showed he had sufficient surplus income remaining each month to afford a further loan from Brent. The investigator wasn't persuaded Brent had lent irresponsibly and didn't uphold Mr C's complaint.

Mr C asked to appeal and said his credit file showed he had 12 active unsecured loans at the time of his application with a monthly repayment figure of around £2,200. Mr C also said he'd opened at least four of those loans in the preceding three months before applying to Brent. Mr C said the level of borrowing showed he'd become reliant on credit and that the new Brent loan payment wasn't sustainable in the long term. As Mr C asked to appeal, his complaint has been passed to me to make a decision.

What I've provisionally 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.

Before agreeing to lend by increasing the credit limit, the rules say Brent had to complete reasonable and proportionate checks to ensure Mr C could afford to repay the debt in a sustainable way. These affordability checks needed to be focused on the borrower's circumstances. The nature of what's considered reasonable and proportionate will vary depending on various factors like:

- The amount of credit;*
- The total sum repayable and the size of regular repayments;*
- The duration of the agreement;*
- The costs of the credit; and*
- The consumer's individual circumstances.*

That means there's no set list of checks a lender must complete. But lenders are required to consider the above points when deciding what's reasonable and proportionate. Lenders may choose to verify a borrower's income or obtain a more detailed picture of their circumstance by reviewing bank statements for example. More information about how we consider irresponsible lending complaints can be found on our website.

As the investigator said in their findings, Brent hasn't sent us a copy of the lending assessment it completed when assessing Mr C's top up loan application. So I can't say with any certainty what checks it completed or whether they were reasonable and proportionate. What I will say is that Mr C already owed Brent around £7,500 as he'd taken out a loan with it around six months earlier. And Mr C was applying for a further £11,000 in December 2021 which meant the increase in borrowing with Brent was substantial. I'd have expected Brent to be confident Mr C could sustainably afford repayments.

Mr C's pointed out that he owed a substantial sum at the point of applying to Brent for the top up loan and that he had very large monthly repayments. Mr C has sent us a copy of his credit file and I can see he did have a significant amount of credit in his name, much of it very new. In my view, the size of the loan and level of debt found on Mr C's credit file along with the monthly cost of servicing it ought to have caused Brent to complete comprehensive checks before approving the application. As noted above, there's no set checks a lender has to complete. But Brent had options, like reviewing Mr C's bank statements to get a better picture of his circumstances, in terms of the checks it could carry out.

Mr C has sent us his bank statements for the months preceding his loan application. Our investigator noted that Mr C's income was around £5,100 net each month. And the investigator accepted that Mr C was making a high level of payments to service his debts each month. But the investigator thought that Mr C had sufficient surplus income to maintain further loan payments. I've reached a different view. Whilst I agree Mr C's bank statements appear to show a surplus income, they also show a level of borrowing that I think would've caused Brent to reconsider whether to proceed, had it reviewed them. I'll explain why.

Specifically looking at the November 2021 statement, which would've been available to Brent at the time of Mr C's application, I can see a very significant increase in the level of unsecured borrowing. Mr C obtained new borrowing of £7,500, £5,000 and £10,000 within a single week in November 2021. Given that Mr C had opened new loans totalling £22,500 less than a month before his application to Brent to borrow an additional £11,000, I think a review of his bank statements would've shown Brent Mr C was borrowing at an unsustainable rate.

I also think a review of Mr C's bank statements would've shown that his regular outgoings included mortgage costs but also a monthly payment of £1,650 to a business that appears to provide residential services. As this is a regular outgoing, I'd have expected Brent to have factored it into any lending assessment it made.

Overall, I think a more comprehensive level of checks would've identified to Brent that Mr C was borrowing at an unsustainable level and that he was unlikely to be in a position to sustainably maintain further repayments for a top up loan of £11,000. Based on the information I've seen so far, I agree with Mr C that Brent lent irresponsibly when it approved his top up loan application in December 2021. As a result, I intend to uphold Mr C's complaint and direct Brent to refund all interest, fees and charges applied since inception.

I invited both parties to respond with any comments or information they wanted me to consider before I made my final decision. Mr C responded to confirm he was willing to accept. We didn't hear back from Brent.

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.

As neither party has supplied new information for me to consider, I see no reason to change the conclusions I reached in my provisional decision. I still think Mr C's complaint should be upheld, for the same reasons.

My final decision

My decision is that I uphold Mr C's complaint and direct Brent Shrine Credit Union to settle as follows:

- Rework the top up loan removing all interest, fees, charges and insurances (not already refunded) that have been applied since inception
- If the rework results in a credit balance, this should be refunded to Mr C along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement. Brent should also remove all adverse information from Mr C credit file
- Or, if after the rework there is still an outstanding balance, Brent should arrange an affordable repayment plan with Mr C for the remaining amount (if it hasn't done so already). Once Mr C has cleared the balance, any adverse information should be removed from his credit file

*HM Revenue & Customs requires Brent to deduct tax from any award of interest. It must give Mr C a certificate showing how much tax has been taken off if he asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 23 April 2024.

Marco Manente
Ombudsman