

The complaint

Ms H complains that Brent Shrine Credit Union Limited trading as My Community Bank ("My Community Bank") is holding her liable for the debt on a loan which she says she neither applied for nor consented to.

What happened

The background to this complaint is well known to both parties, so I won't repeat everything here. In brief summary, in March 2023 a loan was taken out with My Community Bank in Ms H's name for £15,000. Ms H subsequently got in touch with My Community Bank to let it know she hadn't applied for or consented to the loan. My Community Bank investigated things and ultimately couldn't reach agreement with Ms H, so she referred her complaint about My Community Bank to us. As an Investigator here couldn't resolve the matter informally, the case has been passed to me for a decision.

I sent Ms H and My Community Bank my provisional decision last month, explaining why I was minded to uphold this complaint in part. Now both parties have had fair opportunity to respond, I'm now ready to explain my final decision.

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 focused on what I think is the heart of the matter. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

I've reached the same conclusions as in my provisional decision and for materially the same reasons. I've explained my reasons again below, with some further comment, where I have deemed this appropriate, to address the responses to my provisional decision.

First let me clarify exactly what this decision is about. I understand Ms H has explained that in March 2023 she was tricked by scammers resulting in six loans being taken out in her name without her knowledge or consent. Ms H has explained that three of these loans were written off by the respective lenders. But there are still three loans in her name: a £14,500 loan with L, this £15,000 loan with My Community Bank, and a £15,000 loan with A. At the same time as issuing this decision on My Community Bank's involvement, I'm also concurrently issuing decisions on Ms H's linked complaints about L and A.

In this case, My Community Bank acted only as a lender, granting the loan for £15,000 and paying it to Ms H's bank account with S, from where I understand the funds were transferred onto Ms H's bank account with R, before they were transferred on again (from there) ultimately to scammers. This decision concerns only the £15,000 loan with

My Community Bank and whether it's fair for My Community Bank to hold Ms H responsible for this loan bearing in mind how it was taken out and granted.

Ms H has said this loan was taken out as a result of a scam and given the circumstances she's explained she has my sympathy. However, this doesn't automatically mean My Community Bank should be unable to hold her liable for the debt.

Should My Community Bank write off the loan because of how Ms H was scammed?

The first question is: did Ms H enter into this loan agreement, or was it done without her knowledge and/or consent as she alleges?

Having considered this carefully, I think it's most likely the loan was taken out in Ms H's name *without* her knowledge and consent, and she therefore did not enter into the loan agreement. I say this because Ms H has plausibly and persuasively explained how she was tricked into allowing scammers remote access to her devices and enabling them access to the information they needed to apply for the loan. Ms H is adamant she wasn't aware of the loan until *after* the scammers had applied for it, and that she didn't consent to the loan. And having reviewed the evidence around the WhatsApp messages sent between Ms H and the scammers, I'm satisfied this is most likely true.

I understand this loan was applied for and landed in Ms H's bank account with S on 24 March 2023. The WhatsApp messages on that day (and before) don't indicate Ms H was aware this loan application to My Community Bank would be made. And the WhatsApp messages indicate she didn't know about this loan application or consent to it at the time. In particular, I note the message Ms H sent the scammers on 21 March 2023 at 12.47pm about the loan with L: *"Couldn't sleep. I thought your firm was sorting the money not taking out a loan in my name"*. I also note that on 24 March 2023 Ms H messaged the scammers at 3.03pm: *"You are not using my name. I have credit reports pinging my phone and emails asking questions"*. And then at 3.05pm, *"Get those loans out of my name and paid off immediately"*. This was the same day as the My Community Bank loan was taken out. But Ms H receiving notifications about credit searches, and her receiving notification about the loan having been granted after it had been applied for, don't mean Ms H knew about the loan application when it was made, or that she consented to it. And in this case, for the reasons I've explained, I'm satisfied it's more likely than not that Ms H did not consent to this loan.

Since I'm satisfied Ms H most likely didn't apply for or consent to this loan, I don't think it would be fair for My Community Bank to hold her to the terms of the loan agreement she never agreed to. So, My Community Bank shouldn't hold Ms H liable for interest and charges, neither should there be a record of the loan on Ms H's credit file – so if there currently is, this should be removed.

At the same time, I don't think My Community Bank was to know at the time that the application had been made in Ms H's name without her consent. So, it doesn't automatically follow that it would be fair for me to tell My Community Bank that it should not be able to pursue Ms H for any of the loan funds that are still outstanding, or that it should be required to refund to Ms H any repayments to the loan she has already made (if any). I take on board what Ms H has said about how she was scammed. However, I can see that the £15,000 loan funds landed in Ms H's bank account with S clearly marked as from "Brent Shrine Credit Union Limited" (My Community Bank). And I don't think it's unfair to say at this point Ms H wasn't as careful as she reasonably ought to have been. Such that, if she hadn't consented to the loan, I think she ought to have taken reasonable steps at this point (but didn't) to verify the funds weren't from a loan in her name, before allowing or facilitating them to be sent on from her account with S first to her account with R and then to the scammers. In response to

my provisional decision, Ms H has said she didn't receive her bank statements until the sixth of each month so she wasn't immediately aware of the source of the funds; and not only that, she was unwell at the time, and she didn't have the technical capability to disable or remove the remote access software. But I still think it's not unfair to say Ms H wasn't as careful as she should have been. She might reasonably have tried shutting off the remote access software, or at least her devices, and looked into things further before allowing the transfers. This decision isn't about the prevention of those payments or recovery of them (because My Community Bank played no part in that). And based on what I've seen and explained, I'm satisfied Ms H had reasonable use of the funds. I'm sorry she lost them to a scam but I can't reasonably say this was My Community Bank's fault. This means I'm satisfied I can't reasonably tell My Community Bank, on the basis that Ms H was scammed, that it should not be able to pursue Ms H for any of the loan funds that are still outstanding, or that it should be required to refund to Ms H any repayments to the loan she has already made (if any).

Irresponsible lending

Ms H has questioned the affordability of the loan. And I've thought about this really carefully. Our usual approach, if we were to uphold a complaint about unaffordable lending, is that interest and charges should be removed but the consumer should still pay back the principal amount of the loan they had the benefit from. I've already said above this is essentially what I think should happen in this case due to Ms H not consenting to the loan. However, there may be some exceptional cases where we might think appropriate redress extends further than this, and I think this case is one of them.

It's important to note that the fixed sum loan agreement Ms H entered into was unregulated. This means that My Community Bank's obligations around responsible lending aren't exactly the same as those for most regulated lenders. As it is a Credit Union, My Community Bank'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 Ms H.

Nonetheless, as it is a firm authorised by the Financial Conduct Authority, I consider it fair and reasonable to expect My Community Bank to have carried out reasonable enquiries into Ms H's circumstances to check that she'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 Ms H could make the repayments without difficulty.

In this case, I understand the loan was for £15,000, with an interest rate of 17.7% per year, which was repayable over 36 months at £530.62 per month. Ms H presented in the application as being age 63, employed full-time earning £35,000 gross per year, and as being a homeowner with no mention of a mortgage. My Community Bank has said it checked Ms H's income with a credit reference agency; and it used Office for National Statistics ("ONS") data to calculate her expected living costs; and based on this, the loan was deemed affordable.

At the time of this loan application, Ms H had already very recently been accepted for at least one other loan (with L) totalling £14,500 with a monthly repayment, for this loan with L, of £493.06. My Community Bank wouldn't necessarily have known this if Ms H's credit file hadn't yet been updated to show this (although any searches that lender carried out might have shown). But, in any event, irrespective of that, given the amount of the loan being applied for and the size of the repayment that would be payable each month, which would extend past Ms H's state retirement age by almost a year, I would reasonably expect

My Community Bank's reasonable and proportionate checks to have included relatively detailed verification of her income and expenditure, greater than it did.

In this regard, I'm aware that in its response to my provisional decision, My Community Bank has said that Ms H had a good level of income, which it verified, and almost no unsecured debts; there were no credit searches on her file at the time of the application and no record of the new £14,500 loan; and considering all this, it had no reason to think that the repayments of this loan were unaffordable for her, nor a reason to complete further checks. It's also said that whilst repayments may potentially extend past her retirement age, it does not believe it is appropriate to carry out additional checks based solely on an applicant's age. But I don't accept My Community Bank's point that Ms H's age shouldn't be relevant. I would reasonably expect My Community Bank to take into account Ms H's personal circumstances in determining the appropriate level of verification checks. So, whilst in some cases a relatively undetailed check on the applicant's stated income might be appropriate and sufficient, I still think, for the reasons I've already explained, that My Community Bank reasonably ought to have undertaken greater verification of Ms H's income and expenditure.

I can't be sure exactly what evidence and information My Community Bank would have obtained. In the absence of it having done this, I've reviewed copies of Ms H's bank statements from around the time of the lending. I'm not suggesting My Community Bank was required to review bank statements, but I think they give a good indication of what it would most likely have discovered about Ms H's financial circumstances had it completed reasonable and proportionate affordability checks. The statements show that Ms H's essential monthly living costs, including her mortgage, were broadly £1,350 and I think this is likely to be what My Community Bank would have discovered had it sought to verify her expenditure in some way. When including the scheduled monthly loan repayment of £530 for the loan with My Community Bank, this would take this to £1,880.

I understand My Community Bank thought Ms H's net monthly income was £1,910. But if it had sought to appropriately verify this – which I'll say again, as I think it should have – it would have likely found out that this wasn't right. Instead, I think it would have likely discovered her income to be around £1,525 each month. This is less than the outgoings I've outlined above, and therefore I consider My Community Bank lent irresponsibly to Ms H in this case.

So, in this case, I'm satisfied My Community Bank lent irresponsibly. Ms H was scammed. And given her current financial situation, and My Community Bank's failings, I'm satisfied to ask Ms H to repay all of the loan balance (even excluding interest and charges) would be unfairly onerous and unsustainable. It appears there is no reasonable prospect of her being able to pay back the capital amount in the medium to long term. Her financial situation is such that it appears, at best, that she has around £175 available each month (and it may be less than this) to pay towards this loan and two other loans that were taken out in her name as a result of the scam. In total, this would require her to repay just under £45,000 in capital to all three lenders (around a third of which to My Community Bank). With her current financial circumstances, it will likely take her almost 22 years to pay this back and I'm mindful that Ms H is approaching state retirement age, meaning that it is very likely her financial circumstances may drastically change. So, I do think, therefore, we have a case here whereby it would be onerous, and unreasonable, to expect Ms H to reasonably repay the majority of the remaining loan balance with My Community Bank. At the same time, I think she probably has sufficient disposable income each month to at least pay some amount each month to repay some of the principal loan balance. So, taking everything into account, I think in this case that a fair outcome would be for the principal loan balance to be reduced down to £5,000, and for My Community Bank to only pursue Ms H for repayment of this amount. Although, naturally, I'd expect My Community Bank to agree to a reasonable repayment plan with Ms H, and to be sympathetic to any financial constraints that may

materialise. I appreciate that in her response to my provisional decision, Ms H has asked that my direction expressly state that My Community Bank should “offer as much forbearance as possible to ensure a sustainable payment solution”. But I’m satisfied what I’ve already said about this sufficiently addresses this.

I’m aware that in response to my provisional decision, My Community Bank has raised a number of other points, including that it doesn’t think reviewing Ms H’s current circumstances is appropriate, but instead its collections team would be ready to review her affordability and agree on a reasonable repayment plan with her moving forwards. It’s also said it doesn’t agree with the direction for it to write the principal balance down to £5,000. But I’ve explained above why I think it is appropriate to consider Ms H’s circumstances and why I think the outcome I’ve explained is fair and reasonable; and My Community Bank’s points haven’t changed my mind.

My final decision

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

- remove all interest and charges on the loan;
- amend Ms H’s credit file to remove any information about the loan and searches;
- write off the loan down to an amount of £5,000;
- not pursue Ms H from the date of settlement for repayment of more than £5,000.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms H to accept or reject my decision before 30 May 2024.

Neil Bridge
Ombudsman