

Complaint

Miss C has complained about loans Brent Shrine Credit Union Limited (trading as My Community Bank ("MCB")) provided to her. She says the loans were unaffordable and shouldn't have been provided to her.

Background

MCB provided Miss C with a total of two loans.

Loan 1 was for £4,000.00 in November 2019. This loan had an APR of 36.9% and a 60-month term. This meant that the total amount to be repaid of £8,044.44, which included interest, fees and charges of £4,044.44, was due to be repaid in a first monthly instalment of £133.91 followed by 59 monthly instalments of £133.92. It's my understanding that Miss C repaid this loan early in January 2021.

In July 2021, MCB provided Miss C with her second loan. This loan was for £3,500.00 had an APR of 18.81% and a 60-month term. This meant that the total amount to be repaid of £5,374.96, which included interest, fees and charges of £1,874.96, was due to be repaid in 59 monthly instalments of £87.66 followed by final repayment of whatever remained on the account.

One of our investigators reviewed what Miss C and MCB had told us. She thought that MCB hadn't done anything wrong or treated Miss C unfairly when providing loan 1. However, she also thought that MCB ought to have realised that it shouldn't have provided loan 2 to Miss C. So the investigator recommended that Miss C's complaint be partially upheld and MCB refund all the interest, fees and that were paid on loan 2.

Miss C accepted our investigator's conclusions. But MCB disagreed and asked for an ombudsman to look at this complaint.

As the parties are in agreement with the investigator's outcome on loan 1, this decision is solely considering whether MCB acted fairly and reasonably towards Miss C when providing loan 2.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

We've explained how we handle complaints about unaffordable and irresponsible lending on our website. And I've used this approach to help me decide Miss C's complaint.

Having carefully considered everything, I've decided to uphold Miss C's complaint. I'll explain why in a little more detail.

Miss C's loans and MCB's status

It's important to note that Miss C's agreements were unregulated and so MCB's obligations aren't exactly the same as those for most lenders. In particular, as it is a Credit Union, MCB's specialist sourcebook is the Credit Unions sourcebook ("CREDS") rather than the Consumer Credit Sourcebook ("CONC") given it wasn't carrying out a credit-related regulated activity when providing this loan to Miss C.

Nonetheless, as it is a firm authorised by the Financial Conduct Authority ("FCA"), I consider it fair and reasonable to expect MCB to have carried out reasonable enquiries into Miss C's circumstances to check that she'd be able to make the payments to before providing any loans. I'd also only expect it to have proceeded in the event that those reasonable enquiries demonstrated that Miss C could make the payments.

MCB checks before its decisions to lend

MCB says it agreed to Miss C's applications after she provided details of her income. It says it also carried out a credit check to assess Miss C's existing indebtedness and relied on statistical data to get an idea of Miss C's regular living expenses. In its view, all of this information showed Miss C could afford to make the repayments she was committing to.

On the other hand, Miss C has said that the payments to loan 2 were unaffordable and she should not have been accepted for this loan.

I've carefully thought about what Miss C and MCB have said.

Were MCB's checks providing loan 2 fair and reasonable?

The first thing for me to say is that this was not Miss C's first loan with MCB. So I don't think that it was fair and reasonable for MCB to have treated this application in isolation and it needed to keep in mind what it learned as a result of loan 1. This is an important fact that I've kept in mind throughout my determination of this complaint.

MCB says that Miss C declared receiving an annual income of £40,175.00. On its own and in isolation there wasn't anything to indicate that Miss C may not have been earning this amount. However, this was almost £10,000.00 more than she declared she was earning at the time of loan 1. I don't think that it was impossible for Miss C to have had an increase in income of this level. But it was less than two years since her previous application and declaration.

Furthermore, the credit check that MCB carried out showed that Miss C had approximately £35,000.00 in unsecured debt. This was more than three times the amount that she owed at the time of loan 1. And importantly this was despite the fact that Miss C said that she now earned around £10,000.00 a year more.

I note that there has been some back and forth between MCB and our investigator over Miss C's unsecured debt to income ratio. But even if I were to go with the higher income figure declared, which MCB used in its calculations, at best, MCB would have known that the amount Miss C owed would still have stood at in excess of 80% of her annual salary.

While this is not in excess of Miss C's annual income, a debt to income ratio of more than 80% is still high by any metric. And considering that Miss C was asked for her gross annual income, rather than the nett amount, I think that MCB ought to have been concerned about Miss C to make her payments going forward. This was particularly as this was a second loan that it was providing to her and she was now a repeat borrower.

I accept that MCB may have been prepared to accept the credit risk of this transaction. But I'm not looking at whether the credit risk it accepted was reasonable. Ultimately, the level of credit risk MCB takes is a matter for its prudential regulator. What I am considering in this case is whether MCB did enough such that it was fair and reasonable for it to conclude that Miss C would be able to affordably make the repayments to this loan, as and when they fell due.

In my view, there were a number of inconsistencies in the information that MCB had across the applications, that were difficult to reconcile and hard to explain. Namely, how and why was it that Miss C's indebtedness had dramatically increased (and it now stood at a significant proportion of her income) in the 20 months or so since it agreed to loan 1, despite the fact that her income had purportedly increased by almost £10,000.00 a year too.

I think that MCB needed to get a better understanding of Miss C's position, including her non-credit related expenditure, in order to answer the questions posed by the inconsistency in the rest of the information and to fairly and reasonably assess whether she would be able to make the loan payments she was committing to. In my view, even though I accept that this loan involved a low monthly repayment (and sometimes a low monthly payment will mean a lower level of check was reasonable), the overall circumstances of this application did not justify the use of statistical data.

So as well as asking Miss C about the details of her income and expenditure, I think that MCB needed to take steps to verify what it was being told by Miss C. It could have done this by asking for information such as bank statements, copies of bills, or even proof of Miss C's income. But given the significant discrepancies between the information MCB had before loan 1 and what it was presented with at the time of loan 2, I think it's fair and reasonable to have taken these further steps before lending. I can't see that MCB took these further steps before providing loan 2.

So I'm satisfied that MCB didn't carry out fair and reasonable affordability checks before it agreed to provide Miss C with loan 2.

What would fair and reasonable affordability checks more likely than not have shown MCB about Miss C's ability to repay loan 2?

As MCB didn't carry out fair and reasonable affordability checks before providing loan 2 to Miss C, I can't say for sure what MCB carrying out such checks is likely to have shown. So I need to decide what I think that a fair and reasonable affordability check is likely to have shown and more importantly whether it is more likely than not that such a check would have shown MCB that Miss C would have been unable to make her loan payments.

Miss C has provided us with evidence of her financial circumstances at the time she applied for loan 2. I accept that different checks might show different things. And just because something shows up in the information Miss C has provided, it doesn't mean it would have shown up in any further checks MCB might've carried out.

But in the absence of anything else from MCB showing what a fair and reasonable affordability check would have shown, I think that it is perfectly fair and reasonable to place considerable weight on the information Miss C has provided, as an indication of what her financial circumstances were likely to have been like at the time.

I also want to make it clear that I'm not considering the bank statements Miss C has provided because I think that MCB was required to obtain these as part of its affordability checks before lending to Miss C. I am considering the bank statements Miss C has provided because I now need to recreate what a fair and reasonable check would more likely than not

have looked like, some three years after the loan was provided and bank statements have most, if not all, of the information I require to do this.

As I've explained, there has been some debate and a significant amount of back and forth between MCB and our investigator about Miss C's debt to income ratio. But given the significant spike in Miss C's indebtedness since loan 1 was provided and the drastically higher income declaration provided at the time of this application, I think that MCB needed to take steps to verify Miss C's income rather than cross-check what she received in her bank account. I think that if MCB had verified Miss C's income here, it would have seen that she was not earning as much as it thought she was.

Furthermore, from the information provided it's clear to me that Miss C was struggling to manage her existing credit commitments – particularly her overdraft - and the struggle managing these commitments was, in part at least, responsible for the increase in her indebtedness.

It's also worth noting that as well as Miss C's indebtedness increasing by over 300% in the 20-month period between the application for loan 1 and the application for loan 2 she had also pretty much used up the £14,000.00 in savings, which Miss C having at the time of loan 1 was the primary reason the investigator didn't uphold that complaint. Having considered the information provided, I have my suspicions as to why this was the case.

But in any event, bearing in mind Miss C's position and what MCB knew about her circumstances at the times of loan 1 and loan 2, I'm satisfied that fair and reasonable checks would more likely than not have shown MCB that Miss C could not afford the repayments to loan 2. And as MCB provided Miss C with loan 2 in these circumstances, I'm satisfied that it failed to act fairly and reasonably towards her.

As Miss C had to pay interest and charges on a loan she should never have been provided with, I'm satisfied that she lost out as a result of MCB failing to act fairly and reasonably towards her when providing loan 2.

In reaching my conclusions I've also considered whether the lending relationship between MCB and Miss C might have been unfair to Miss C under section 140A of the Consumer Credit Act 1974.

However, I'm satisfied that my direction in the section below results in fair compensation for Miss C given the overall circumstances of her complaint. I'm also satisfied that, based on what I've seen, no additional award is appropriate in this case.

Fair compensation – what MCB needs to do to put things right for Miss C

Having thought about everything, I'm satisfied that it would be fair and reasonable for MCB to put things right for Miss C by:

- refunding all interest, fees and charges Miss C paid on loan 2;
- adding interest at 8% per year simple on any refunded amounts from the date they were paid by Miss C to the date of settlement†
- removing any adverse information recorded on Miss C's credit file as a result of loan 2.

† HM Revenue & Customs requires MCB to take off tax from this interest. MCB must give Miss C a certificate showing how much tax it has taken off if she asks for one.

My final decision

For the reasons I've explained, I'm upholding Miss C's complaint Brent Shrine Credit Union Limited should put things right in the way I've directed it to do so above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 10 September 2024.

Jeshen Narayanan
Ombudsman