

The complaint

Mr G is complaining about Brent Shrine Credit Union Limited trading as My Community Bank (MCB) because he says it lent irresponsibly by providing a loan he couldn't afford.

What happened

In February 2023, Mr G took a loan with MCB for £5,5000 over a term of five years. The monthly repayments were £144, based on an interest rate of 21.62% APR.

Our investigator concluded the complaint should be upheld. He felt the evidence showed Mr G had become reliant on credit and was unlikely to be able to afford further repayments. So he concluded MCB shouldn't have approved the loan.

MCB didn't accept the investigator's assessment and made the following key points:

- Mr G's recent borrowing wasn't a sign he was dependent on credit.
 - Of the three loans he'd taken in the previous six months, only one was taken in the previous three months. And the balance of that loan was only 19% of his annual income.
 - Mr G had a very low indebtedness score, which was a good indicator of his borrowing and repayment ability.
 - The fact his current account was overdrawn and he'd exceeded the credit limit on one of his credit cards wasn't a factor as he was up to date with payments on both accounts and there were no arrears.
- The loan repayments were affordable.
 - Based on the income of £32,000 he declared in his application, Mr G would have had a monthly income of £2,200.
 - His mortgage was in joint names and it was reasonable to assume he was responsible for half of the monthly payment.
 - The loan repayment was less than the net disposable income it calculated Mr G had available.

Mr G responded to the investigator's assessment to say that he paid the full mortgage cost and provided copies of bank statements to demonstrate this.

The complaint has now been referred to me for review.

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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't

believe it's affected what I think is the right outcome. In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and what I consider was good industry practice at the time.

MCB is a credit union regulated by the Financial Conduct Authority (FCA). The FCA's Credit Unions Sourcebook (CREDS) sets out the regulatory rules and guidance that apply to credit unions. Generally speaking, a credit union's loan agreements are exempt from the application of the UK's general consumer credit regime and do not constitute "*regulated credit agreements*". And, aside from exceptional circumstances, their lending activities do not fall within the FCA's definition of a "*credit-related regulated activity*" meaning these activities aren't subject to the rules and guidance in the FCA's Consumer Credit sourcebook (CONC).

CREDS 7 deals with lending to a credit union's members and states that "*this chapter seeks to protect the interests of credit unions' members in respect of loans to members under section 11 of the Credit Unions Act 1979 or article 28 of the Credit Unions (Northern Ireland) Order 1985. Principle 4 requires credit unions to maintain adequate financial resources.*" CREDS 7.2.1A states that "*A credit union must establish, maintain and implement an up-to-date lending policy statement approved by the governing body that is prudent and appropriate to the scale and nature of its business*". CREDS 7.2.6 states that: "*The lending policy should consider the conditions for and amounts of loans to members, individual mandates, and the handling of loan applications*".

In respect of this case, I interpret this to mean MCB was required to have a lending policy that was prudent and appropriate to the nature of its business, and it needed to apply its policy in individual applications in a way which protected its members' interests. In other words, it needed to lend responsibly.

Before lending to Mr G, MCB was required to take reasonable steps to ensure the loan repayments would be affordable and sustainable. To decide whether this requirement was met, the key questions I need to consider are:

- Did MCB complete appropriate checks to establish Mr G would be able to repay the loan in a sustainable way?
- If so, was the decision to lend fair and reasonable?
- If not, what would appropriate checks have discovered, and would the decision to lend have been fair and reasonable in light of that information?

The affordability assessment and associated checks had to be appropriate for the specific circumstances. What constitutes appropriate checks depends on a number of factors including, but not limited to, the particular circumstances of the consumer (for example their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount, type and cost of the credit being considered. Even for the same customer, an appropriate check could be different for different applications.

MCB has described the information it gathered to assess whether Mr G's loan was affordable before it was approved. This included:

- information contained in his application, including residential status, employment status and his income, which was separately verified;
- information obtained from a credit reference agency (CRA), giving details of his existing credit arrangements and any past issues with credit; and

- an expenditure assessment using a combination of modelled data for key expenses, along with actual data from the CRA about the cost of his existing credit arrangements.

MCB maintains its affordability assessment was appropriate for the loan being given and demonstrated it was affordable.

After carefully reviewing the information MCB obtained, I think there were factors that should have combined to prompt it to decline further borrowing for Mr G. In particular, its credit check showed:

- Mr G already had non-mortgage debt of over £22,500. This is high compared to his declared income of £32,000. It also showed his outstanding mortgage of £278,000 was comparatively high.
- Mr G had taken three loans in the previous six months. None of these had been repaid and they had a combined outstanding balance of over £20,000 and monthly repayments totalling nearly £400.
- His current account was overdrawn by more than £700 and he'd exceeded the limit on one of his credit cards.

Further, there's nothing to indicate Mr G told MCB he planned to use the money he was borrowing to repay any of his existing debt. I have noted MCB's comments on the above points but, on balance, I think the information it collected showed signs of potential financial difficulty and a reliance on credit that meant it was irresponsible to lend a further large amount at that time. This is the reason I'm upholding this complaint.

The above notwithstanding, I'm conscious MCB carried out an affordability assessment based partly on modelled statistical data. For the sake of completeness, I've considered what MCB would have discovered if it had decided to carry out a more detailed affordability assessment based on Mr G's actual income and expenditure. To do this I've referred to bank statements for his current accounts covering the three-month period before the loan was approved.

The statements show the following information:

- Mr G's income from employment was around £1,600. This is considerably less than the £2,200 MCB used in its calculation of his net disposable income.
- Mr G appears to have been making the full mortgage payment as he's said he was.
- His main current account continually had a negative balance and he appears to have been living in his overdraft. Each month he was between £1,000 and £1,200 overdrawn immediately before he was paid and the account returned to being overdrawn within a few days of that.

In my view, these are further signs of financial difficulty and that Mr G wasn't in control of his finances. If MCB had seen this information, it's my view that it shouldn't have lent to him.

In summary, I think the information MCB did obtain should have led it to conclude the loan wasn't affordable for Mr G and to decline to lend, and I'm upholding the complaint on this basis. Even if MCB had decided to obtain further information so it could carry out an affordability assessment based on Mr G's actual circumstances, I think it's clear the

evidence provided shows this should have led it to the same decision.

Putting things right

The principal aim of any award I make must be to return Mr G to the position he'd now be in but for the errors or inappropriate actions of MCB. But that's not entirely possible here as the lending provided can't be undone.

Because I don't think MCB should have lent to Mr G, I don't think it's fair for him to pay interest or charges on the amount borrowed. But he has had use of the money that was lent, so I think it's fair he repays the amount borrowed (without the addition of interest or charges).

To put things right, MCB now needs to take the following steps:

- Calculate the total of all Mr G's payments towards the loan, including all interest, fees, charges and insurances (not already refunded).
- If this exceeds the £5,500 borrowed, any excess above £5,500 should be paid to him with simple interest at 8% per year from the date of each overpayment to the date of settlement.

HM Revenue & Customs (HMRC) requires MCB to deduct tax from any interest. It must provide Mr G with a certificate showing how much tax has been deducted if he asks for one. If MCB intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

- If the total of all Mr G's payments doesn't exceed the £5,500 borrowed, MCB should arrange an affordable payment plan with him for the shortfall.
- Remove any adverse information recorded on Mr G's credit file relating to this loan, once any outstanding balance has been repaid.

If MCB no longer owns the debt, it should liaise with whoever does to ensure any payments Mr G has made since moving the account are factored into the calculation of the compensation that's due or the balance that remains outstanding.

In reviewing this complaint, I've also considered whether the relationship might have been unfair under Section 140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I've directed above results in fair compensation for Mr G in the circumstances of his complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

My final decision

For the reasons I've explained, I'm upholding Mr G's complaint. Subject to his acceptance, Brent Shrine Credit Union Limited trading as My Community Bank should now put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 9 September 2024.

James Biles
Ombudsman

