

The complaint

Mrs W says Brent Shrine Credit Union Limited, trading as My Community Bank (MCB), irresponsibly lent to her.

What happened

Mrs W took out a loan for £14,000 over 60 months from MCB on 11 June 2020. The monthly repayments were £348.91, and the total repayable was £21,396.89.

Mrs W says she was already over indebted when she applied for the loan and then had to borrow again to make her repayments. So she thinks the lending was irresponsible.

MCB says it carried out appropriate creditworthiness and affordability checks and these showed the loan would be affordable for Mrs W.

Our investigator upheld Mrs W's complaint saying had MCB carried out proportionate checks it would have seen the loan would not be sustainably affordable. MCB disagreed and asked for an ombudsman's review. It said its checks were industry standard and approved by the regulator.

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.

MCB is a credit union regulated by the Financial Conduct Authority (FCA). The FCA's Credit Unions Sourcebook (CREDS) sets out the FCA's regulatory rules and guidance which apply to credit unions. Credit unions are registered under the Co-operative and Community Benefit Societies Act 2014 and operate under the Credit Unions Act 1979. Generally speaking, their loan agreements are exempt from the application of the UK's general consumer credit regime and are not regulated credit agreements. Save in exceptional circumstances, their lending activities do not fall within the FCA's definition of a "credit-related regulatory activity" and so these activities are not subject to any of the rules and guidance in the FCA's Consumer Credit sourcebook (CONC) including rules and guidance on responsible lending.

So I have solely focussed on the rules and guidance in CREDS which do apply in this case, as well as the credit union's own stated lending policy to treat all customers in a fair and reasonable manner.

Of particular relevance is CREDS 7.2.1AR that states "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." And CREDS 7.2.6G that states "The lending policy should consider the conditions for and amounts of loans to members, individual mandates, and the handling of loan applications."

In other words, the FCA requires that MCB's lending policy should be prudent, and should

be applied in a manner which protects MCB's members as a whole.

To decide this complaint I have therefore looked at the checks MCB carried out, assessed whether these allowed it to meet its obligations and considered, if not, what adequate checks would have most likely shown. MCB has referenced another decision which it feels shows its approach in this case was fair. But I can only comment here on the details of this case. We decide each complaint on its individual merits and generally there are always characteristics of each lending decision that vary, even if this may not seem the case at face value.

MCB carried out an affordability assessment and creditworthiness check when Mrs W applied for her loan. I've reviewed the information it relied on to make its lending decision. It has told us this included Mrs W's income that it verified using Open Banking data. It used estimates for her housing and living costs using national statistics, and the results of a credit check it carried out to understand the monthly cost of her existing credit commitments. I cannot see it asked about the purpose of the loan. From these checks combined MCB concluded Mrs W had sufficient monthly disposable income to afford this loan.

I am not satisfied these checks were adequate. Mrs W was looking to borrow a large amount of money over a five-year term and already had substantial unsecured borrowings of £30,716. So to treat her fairly MCB needed to know she could make her repayments without suffering any financial harm over that extended period of time. And I think this meant it needed to do a fuller financial review based on her actual outgoings. As the investigator highlighted even checking her actual housing/rent cost (as it does for applicants with a mortgage) would have raised a red flag for the lender as it was over double the assumption it had made.

In cases like this we look at bank statements for the three months prior to application. I am not saying MCB had to do exactly this but it is a reliable way for me to understand what better checks would most likely have shown.

And in this case I find it would not, as a responsible lender, have offered a loan to Mrs W. I say this as they show her average monthly income was £2,900 and her total non-discretionary outgoings were around £2,650. This means she had just £250 disposable income which would not cover this loan repayment. It may have been Mrs W intended to use this loan to repay some of her existing debts but I cannot see MCB knew this from the evidence it submitted.

It follows based on the available evidence I think MCB was wrong to give this loan to Mrs W.

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 directed below results in fair compensation for Mrs W in the circumstances of her complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

Putting things right

As I don't think MCB should have arranged this loan, I don't think it's fair for Mrs W to pay any interest or charges for the borrowing. However, Mrs W did have the use of the funds she was lent, so I think it's fair she repays the capital.

This means to settle Mrs W's complaint MCB must:

- remove all interest, fees and charges from Mrs W's loan account and treat all repayments Mrs W has made as repayments of the capital
- if this results in any overpayments they should be refunded adding 8% simple

interest per year* from the date of each overpayment, if there were any, to the date of settlement

- if this means Mrs W hasn't repaid the capital amount lent then MCB should arrange an affordable payment plan for the shortfall
- remove any adverse information recorded on Mrs W's credit file regarding the agreement, once any outstanding balance has been repaid.

*HM Revenue & Customs requires MCB to take off tax from this interest. MCB must give Mrs W a certificate showing how much tax it's taken off if she asks for one. If it intends to apply any refund due to reduce the capital balance it must do so after deducting the tax.

My final decision

I am upholding Mrs W's complaint. Brent Shrine Credit Union Limited, trading as My Community Bank, must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 30 August 2024.

Rebecca Connelley
Ombudsman