

## **Complaint**

Miss K has complained about a loan Brent Shrine Credit Union Limited trading as My Community Bank ("MCB") provided to her. She says that loan was unaffordable and this led to her relying on her overdraft to manage her finances.

## **Background**

MCB provided Miss K with a loan for £3,000.00 in November 2022. This loan had an APR of 30.16% and had a 48-month term. This meant that the total amount to be repaid of £5,034.16, which included interest, fees and charges of £2,034.16, was due to be repaid in a first monthly payment of £137.63 followed by 46 monthly instalments of £102.24.

One of our investigators reviewed what Miss K and MCB had told us. She thought that MCB hadn't done anything wrong or treated Miss K unfairly. So she didn't uphold Miss K's complaint. Miss K disagreed and asked for an ombudsman to look at her complaint.

## **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 K's complaint.

Having carefully considered everything, I've decided not to uphold Miss K's complaint. I'll explain why in a little more detail.

MCB needed to make sure that it acted fairly and reasonably towards Miss K. As part of this, it needed to take reasonable steps to ensure that the monthly loan payments were affordable for her. In practice, what this means is MCB needed to carry out sufficient enquiries into Miss K's circumstances to be able to have a reasonable understanding of whether she could afford to make her monthly repayments before providing this loan.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So we'd expect a lender to be able to show that it didn't continue to lend to a customer irresponsibly.

MCB says it agreed to Miss K's application after she provided details of her income. It says it also carried out a credit check to assess Miss K's existing indebtedness and used statistical data to get an idea of Miss K's regular living expenses. In its view, this information showed

Miss K could afford to make the repayments she was committing to. Miss K says the repayments were unaffordable and she had to live in her overdraft as a result.

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

The first thing for me to say is that MCB not only asked Miss K for details about her income, it also carried out a credit check to assess Miss K's indebtedness. These searches did show that Miss K had some existing debts. But it's fair to say that these weren't excessive compared to her income. Furthermore, I can't see that Miss K had any significant adverse information – such as defaulted accounts or county court judgments – recorded against her.

It could be argued that the level of Miss K's indebtedness, meant that MCB ought to have found out more about Miss K's actual living costs rather than relying on statistical data. However, I'm not persuaded that doing this would, in any event, have made a difference. I say this because the information Miss K has provided, appears to show that when her identifiable committed regular living expenses are combined with what she was paying to her credit commitments, and then deducted from her income she did have the funds to be able to make the repayments due under this agreement.

Indeed, the copies of the bank statements which she has provided shows that she had ample funds left over at the end of the month to be able to make her payments and this is even when her discretionary and non-committed expenditure is included. So even having considered Miss K's bank statements, which MCB didn't actually have to request or review, given the amount left in her account each month in the lead up to this application and the amount of the monthly payment for this loan, it doesn't seem immediately apparent to me that Miss K would have had to rely on using her overdraft to make her payments.

I need to consider what MCB is likely to have learnt if it had found out more before it decided to lend. And if MCB had done this here, which there is a reasonable argument for saying it didn't need to, I think it's more likely than not that it would have concluded that the monthly payments were affordable for Miss K.

I also think it's worth me pointing out that the recorded purpose of this loan was debt consolidation. And as this was a first application which Miss K was making with MCB and Miss K therefore did not have a history of taking out consolidation loans from MCB and then returning for further funds, MCB was reasonably entitled to believe that it wasn't increasing Miss K's existing indebtedness in a way that was unsustainable or otherwise harmful either.

I accept it's possible Miss K's circumstances may have worsened after she took this loan and I'm sorry to hear what Miss K has said about her difficulty making payments. But the key here is that it's only fair and reasonable for me to uphold a complaint in circumstances where a lender did something wrong. And I don't think that MCB could possibly be expected to have known that the payments to this agreement were unaffordable, bearing in mind that fair and reasonable checks are unlikely to have shown that this was the case.

I've also considered what Miss K has said about having another complaint upheld and she has queried how it is possible for this complaint not to be upheld in these circumstances.

I can understand why Miss K might find it strange that she's received different outcomes on complaints which she perceives to be materially the same. But we consider complaints on an individual basis and looking at the individual circumstances. And what will constitute a reasonable check will very much depend on the particular circumstances of the individual application – a fair and reasonable check – even for the same customer - could look different for different applications.

Furthermore, I think it's also worth me explaining that I'm not bound by the outcomes reached by investigators or even other ombudsmen. Ultimately, I'm required to consider the facts of a case and reach my own conclusion. That said and with a view to providing some clarity and reassurance to Miss K, it might help for me to explain that there are some key differences between this complaint and Miss K's other one.

Firstly, the loan in Miss K's other complaint was taken out a few months after this loan, it was for a much higher amount and had monthly payments that were almost three times as much as the monthly payments on this loan. Equally, the fact that Miss K owed the balance on this loan at the time she was provided with the other loan meant that she owed more at that time.

It is also possible that Miss K's circumstances worsened over the period between the two applications. So while I'm not required to replicate the outcomes reached by other investigators and ombudsmen, I think the differences in the facts and circumstances of the cases leave me satisfied that my answer here is not incompatible or inconsistent with the one Miss K received on her other case, notwithstanding the differing outcomes.

Finally, in reaching my conclusions, I've also considered whether the lending relationship between MCB and Miss K might have been unfair to Miss K under section 140A of the Consumer Credit Act 1974 ("CCA").

However, for the reasons I've explained, I don't think that MCB irresponsibly lent to Miss K or otherwise treated her unfairly in relation to this matter. And I haven't seen anything to suggest that section 140A CCA if applied or anything else would, given the facts of this complaint, lead to a different outcome here.

So I'm not upholding this complaint. I appreciate this will be very disappointing for Miss K - particularly as she feels strongly about this complaint. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

### **My final decision**

For the reasons I've explained, I'm not upholding Miss K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 4 October 2024.

Jeshen Narayanan  
**Ombudsman**