DRN-5038144

Financial Ombudsman Service

The complaint

Mr A is complaining about Brent Shrine Credit Union Limited trading as My Community Bank (MCB) because he says it provided him with a loan he couldn't afford.

What happened

In January 2023, Mr A took out a loan for £8,500 with MCB. It was repayable over five years at £188 per month.

After the complaint was referred to me, I issued my provisional decision setting out why I believed it should be upheld. My reasons were as follows:

> *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).*
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> *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".*
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> *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.*
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> *Before lending to Mr A, MCB was required to carry out appropriate checks to ensure the repayments were affordable and sustainable. To decide whether this requirement was met, the key questions I need to consider are:*
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> - *Did MCB complete appropriate checks to establish Mr A 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?*

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

- *information contained in his application, including 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 to the loan being given and demonstrated it was affordable.

After carefully reviewing the information MCB obtained, I think there were factors that should have prompted it to carry out further checks before approving Mr A's loan and I don't agree the affordability assessment based mainly on modelled statistical data, rather than his actual circumstances, was appropriate in this case. In my view, a combination of the following factors should have prompted further investigation:

- *Mr A was applying to borrow a large amount;*

- *MCB's credit check showed he already had non-mortgage debts of nearly £28,000, which is high compared to his declared income;*

- *that he'd taken out a loan of £12,000 in Oct 2022, only three months before he applied to MCB; and*

- *that his current account was overdrawn.*

I understand Mr A also took another loan for £15,000 in December 2022, the month before his loan with MCB. But this doesn't appear to have shown up on MCB's credit check and that's not surprising given the short timeframe between the two loans. But even ignoring that loan, I think the information above suggested Mr A may already have been heavily indebted and over-reliant on credit.

I can't know exactly what further checks MCB might have carried out at the time, but I think a consideration of Mr A's actual income and expenditure would have been reasonable. So we've obtained copies of his bank statements for the three months prior to the lending to establish what information could reasonably have been discovered.

A review of the statements shows Mr A's regular monthly income was around £2,330. MCB calculated his monthly commitments for non-mortgage debt to be £760, which is consistent with information in the credit check it completed. The credit check also showed Mr A had a mortgage commitment of £630. MCB assumed he was responsible for half of this amount, but it's not clear why it did that as there's no mention of anyone else being party to the agreement on the report summary provided. But either way, Mr A says he paid this amount in full himself and his bank statements show this was indeed the case. All of this means Mr A was spending £1,390 on debt repayments alone.

This figure doesn't include the monthly repayments for the loan taken in December 2022. While this might not have shown up on a credit check at the time due to *reporting delays, it does appear on Mr A's bank statement for that month and it's reasonable to think MCB should have been aware of it before lending. The repayments for this loan would have been in addition to the £1,390 figure above.*

MCB estimated Mr A's other expenditure to be £990. If this is added to his debt repayments, the result is that his expenditure exceeded his income each month. I think the information contained in Mr A's bank statements shows this is a fair reflection of the situation. For the period from October to December 2021, the account was consistently overdrawn by up to £800. The only time a positive balance was achieved was following the loan in December 2022, but this was back down to £100 by the end of the month.

If MCB had seen this information, it's my view that it should have concluded Mr A wasn't in a position to afford further debt and declined to lend.

In summary, if MCB had adequately assessed whether the loan repayments were affordable and sustainable, it's my view it shouldn't have lent to Mr A. It's for this reason that that I'm currently proposing to uphold this complaint.

Mr A said he had nothing to add. MCB didn't accept my provisional decision. It disputes that a more detailed affordability assessment was required and responded to my comments about the factors that I said should have prompted further checks as follows:

- The amount being borrowed wasn't large. It's an average loan amount both in the perspective of the unsecured lending sector and in the context of Mr A's financial profile. Mr A stated his gross annual income was £50,000.

- Mr A's non-mortgage debt of nearly £28,000 isn't considered high either. The ratio of his unsecured debt to his gross annual income was around 56% which on its own isn't concerning. Furthermore, the Experian Consumer Indebtedness Score (CIS) for Mr A, which took into account his full financial profile, was "6". This is very low, meaning he had plenty of room for further borrowing and showed no financial stress according to the data available to Experian.

- While Mr A had taken out a loan of £12,000 only three months before he applied to MCB, he was up to date with repayments. Furthermore, the loan was included in the affordability calculation, debt to income calculation, and the Experian CIS.

- Mr A's overdraft is not significant from the perspective of affordability as his income easily covered the overdraft usage. The limit wasn't being breached and the overdraft was considered in the affordability calculation and CIS.

The mortgage payment was halved by MCB's algorithm as Mr A's credit file showed he had a financial associate, meaning it was reasonable to assume his housing costs were shared.

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, my findings haven't changed from those I set out previously. I haven't necessarily commented on every single point raised. I've concentrated instead on the issues I believe are central to the outcome of the complaint. This is consistent with our established role as an informal alternative to the courts. 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.

I've noted MCB's comments about each of the individual factors I outlined, including the size of the proposed loan, existing levels of debt and recent borrowing history. But when these are considered in combination, it remains my view that it wasn't reasonable for MCB to lend Mr A a further £8,500 without a more detailed assessment of his affordability. In the circumstances, I don't think an affordability assessment that assumed he was only responsible for half the mortgage payment and relied on modelled data for his other key expenditure was reasonable and proportionate.

Instead, I think MCB should have made attempts to ascertain Mr A's actual income and expenditure. I've not specifically said that it should have obtained his bank statements, but I think they do provide a good insight into what could reasonably have been discovered if a proportionate affordability assessment had been completed.

Based on the information that MCB could reasonably have discovered from a proportionate affordability assessment, I still believe it should have concluded the loan was likely to be unaffordable and that it wasn't responsible to lend to Mr A.

Putting things right

The principal aim of any award I make must be to return Mr A 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 A, 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 should take the following steps:

- Calculate the total of all Mr A's payments towards the loan, including all interest, fees, charges and insurances (not already refunded).

- If this exceeds the £8,500 borrowed, any excess above £8,500 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 A 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 A's payments doesn't exceed the £8,500 borrowed, MCB should arrange an affordable payment plan with him for the shortfall.

- Remove any adverse information recorded on Mr A'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 A 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 have directed above results in fair compensation for Mr A 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

My final decision is that I uphold this complaint. Subject to Mr A’s 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 A to accept or reject my decision before 21 October 2024.

James Biles
Ombudsman