

The complaint

Mr C says North Edinburgh and Castle Credit Union Limited, trading as Castle Community Bank ("CCB"), failed to carry proportionate affordability checks before it lent to him.

Mr C has also said, the cycle of debt he has found himself in has impacted his mental health. Finally, he said his health at the time impacted his decision making when he applied for the loan.

What happened

Mr C took out a personal loan from CCB through a credit immediately for £25,000 over 60 months in August 2023. The monthly repayments were £680.70 with a total to repay of £41,655.17. Mr C has had some problems repaying the loan and he is currently making payments through a debt advice charity at the rate of £9.41 per month.

CCB wrote to Mr C after he had complained, and it explained that before the loan was approved, it had carried out proportionate checks including a credit search and gaining information through Open Banking. Having carried out these checks it was satisfied Mr C could afford the loan. It also explained that when the loan was granted, it had no reason to doubt Mr C's "...cognitive abilities...."

Unhappy with this response, Mr C referred the complaint to the Financial Ombudsman where it was reviewed by an Investigator. They concluded CCB had conducted proportionate checks which showed Mr C would likely be able to afford the loan. He also concluded, that CCB wasn't aware of Mr C's mental health problems at the time the loan was approved but it is aware of them now and they need to be considered.

Mr C disagreed with the assessment, and I've summarised his response below.

- Mr C provided a breakdown of his monthly credit commitments at the time, which included payments and this information was reflected in the budget document Mr C provided.
- CCB's credit search results were not comprehensive because reviewing past behaviour doesn't reflect Mr C's actual monthly commitments at the time the loan was approved.
- Mr C said no authority was given to CCB to access his bank statements through Open Banking.
- CCB was aware of the £30,000 loan he had taken in May 2023 but he had also taken on other borrowing from other lenders.
- This high level of borrowing ought to have been of concern to CCB and ought to have prompted further checks which would've showed that Mr C was spending more than his income each month.
- Mr C disclosed to CCB when he complained about the nature of his health conditions and the impact it has on his decision making and once disclosed CCB ought to have considered it.

- Since the loan was granted, Mr C's financial situation has changed, and the level of debt has exacerbated his mental health problems.
- Mr C provided an outcome that he considered fair, which would be to write off the loan balances and refund the interest, fees and charges he has paid.

These comments didn't change the investigator's mind about the outcome they had reached and so the case was passed to me. I then issued a provisional decision explaining the reasons why I was intended to not uphold Mr C's complaint but I provided some further details.

Both parties were asked to provide any further submissions as soon as possible, but in any event no later than 27 September 2024.

Neither Mr C nor CCB provided any further submissions. A copy of the provisional findings follows this in smaller font and forms part of this final decision.

What I said in my provisional decision:

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

CCB 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.

Of particular relevance is CREDS 7.2.1R 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 CCB's lending policy should be prudent and should be applied in a manner which protects CCB's members as a whole. To decide this complaint, I have therefore looked at the checks CCB carried out, assessed whether these allowed it to meet its obligations and considered, if not, what adequate checks would have most likely shown.

CCB carried out an affordability assessment and creditworthiness check when Mr C applied for his loan and I've reviewed the information it relied on to make its lending decision. It asked Mr C for his annual income of (£75,000) and its says that this income was checked through Open Banking – and the results it says showed that the income Mr C received was stable and matched the income Mr C had declared.

CCB also calculated that Mr C housing costs of £600 per month, living costs of £939.21 and then further credit commitments (including the repayment to CCB) of £1,175 per month. So total outgoings of around £2,714 per month. Based on these checks the loan appeared affordable.

CCB also carried out a credit search and the results didn't suggest that Mr C was, or likely to be, having financial difficulties. It knew that there was one default on the credit file but that

had been recorded 49 months before the loan was taken and so I don't think would've caused CCB any concern. There was also no bankruptcy, or any other form of insolvency recorded and so there wasn't anything apart from the notice of correction, which I come on to below, to have prompted CCB to have declined the application.

It seems that ordinarily, an application is run through an automated process to determine whether it ought to be approved or not. But in this case, following CCB's credit search, it determined the loan needed to be manually underwritten due to a notice of correction being reported on the credit file. This does appear to have been a prudent step to have taken.

Mr C is clear that he didn't provide CCB with any authority to check his details through open banking. CCB has now provided a copy of the open banking report, and this could've only been generated following a connection between the report provider and Mr C's bank account. CCB says this consent was provided on 5 August 2023. I'm satisfied, that on balance, by making the connection to CCB's open banking report Mr C did provide the necessary authority.

Having looked at the open banking information, it was a report that attempted to consider whether the loan was affordable, based on the incoming and outgoings of the account. While the report covers a 12-month period, it's only six pages long and so clearly doesn't contain all of the details about all of Mr C's transactions but appears to be a high-level overview – based on the information contained within the bank statements.

But, as I've said above, CCB used opening banking as part of its underwriting process. It has already accepted that it was aware of an existing £30,000 loan that was taken in May 2023. But it says, this loan was found in the credit file as well and the cost of servicing this loan was factored into the affordability assessment. This is what I would've expected it to have done.

But, having reviewed Mr C's open banking report which has been provided by CCB it shows that at the end of 2022, Mr C was advanced around £8,000 through two personal loans. It also shows a marked increase in borrowing in 2023. So, CCB was aware of the £30,000 loan that was advanced in May 2023 – and what it said it knew about and considered. But the open banking report also showed a further £10,000 loan advanced at the start of April 2023 and a further £5,000 loan was advanced on the same day that the open banking report was generated.

In total, CCB was aware that in a little over the four months before this loan was advanced Mr C had already been granted £45,000 of new lending. Although, the affordability report and/or the open banking report doesn't exactly show how much it was costing Mr C to repay these loans each month.

Given that CCB knew about these other loans I do think it needed to try and understand how much Mr C was committed to pay each month towards them because he had already taken on a sizeable amount of debt, and I think CCB ought to have tried to establish whether Mr C could afford to take further borrowing.

So, at the very least it needed to make further enquires with Mr C. I've, therefore, reviewed his bank statements and the other complaints he has at the Financial Ombudsman and I can see those three other loans were already costing Mr C nearly £1,100 per month. Of course, on top of this he was being granted a CCB loan and so his total monthly outgoings – just to loan providers was likely to be nearly £1,700 per month.

This does suggest that the figure used by CCB to work out the monthly credit commitments wasn't likely to be accurate. Given the limitations I've seen in the open banking report, along with the fact that Mr C had already taken a significant amount of recent new lending as well as the term and monthly commitment he had to make to CCB I do think CCB needed to have undertaken a more thorough assessment of Mr C's finances.

So, I think it needed to complete a fuller review of Mr C's actual incomings and

nondiscretionary outgoings to be sure that he could afford this loan. In cases like this we look at bank statements from the three months prior to application. I am not saying CCB had to do exactly this, but it is a reliable way for me to understand what better checks would most likely have shown.

The open banking report shows that the annual income Mr C declared was broadly accurate, and so I don't think it was wrong of it to have used this figure when assessing his affordability. I've thought about what CCB says about Mr C having a healthy account balance when it granted the loan, but this only seems to be the case because he had recently taken out loans which had inflated the account balance and so wasn't an accurate reflection of Mr C's finances.

I also can't ignore that Mr C told CCB that he had taken this loan for the purposes of home improvement and a review of his bank statements do show that at the time he was making significant purchases at retailers that you'd expect to see if home improvements were being conducted as well as paying what appear to be associated costs to builders or traders. I therefore think that had CCB reviewed a copy of his bank statements it would've likely been confident that Mr C was using the loan for the stated purpose in the application.

This also means that I have to strip out the costs Mr B had for these home improvements because these were being funded by other lending. It seems at the start of every month there are a number of payments that Mr C makes – these are visible throughout the statements so although I can't be sure exactly what these payments were for, the fact these are paid each month indicates these are regularly commitments. These payments come to around £1,113. On top of this, there was a payment to a credit card, a buy now pay later loan as well as the lending outlined above.

To me it seems that Mr C's living costs were around £1,200 per month, the mortgage figure of £600 seems reasonable given a payment isn't shown in the bank statement Mr C has provided show and on top of that he had existing loan payments of £1,100. These costs came to £2,900. So had CCB conducted a more thorough review of his bank statements it would've seen with an income of at least £3,800 per month the loan would've appeared affordable.

As I've said, I do accept the bank statements show significantly more expenditure than what I've highlighted above, but many of these transactions appear related to building and renovation work – so it's not right to include those when the purpose of the loan was to cover these costs.

In addition, I can see through the months of bank statements Mr C has provided that he has transferred sums to another account and this was usually around £1,500 per month – and this appears to be a savings account given the name of the mandate in the bank account statements. We've asked for the statements to see what the balance was and or to see how that other account as being managed. Without these statements, it wouldn't be possible to come to a fair outcome when there appears to be another account with potentially significant sums in.

Overall, based on what I've seen I am intending to not uphold Mr C's complaint.

Other considerations

I am sorry to hear Mr C has struggled financially and that this impacted his mental health. I can see CCB has accepted a repayment plan through a well-known debt advice charity following a breathing space scheme and based on the statement of account the interest has also been frozen on the balance. The last date interest was added was 12 December 2023. I consider this action to be reasonable given what the debt advice charity proposed and what I consider to be reasonable in the circumstances.

As part of Mr C's complaint, he has provided a Debt and Mental Health (DMH) evidence form, I won't add anything further to protect Mr C's privacy. But I want to reassure Mr C that

I've carefully considered what the document says, and I am sorry to see that Mr C is having to deal with this in his life. Mr C says his diagnosis has an impact on his decision making and impaired his ability to manage his finances.

The DMH Mr C has provided us is dated December 2023 and I acknowledge it post-dates the loan CCB granted to Mr C. But I have no reason to doubt Mr C when he says that these issues have been long term and were there at the point he applied for the loan.

My review of the mental capacity element of Mr C's complaint has led me to consider the statutes relating to mental capacity and the Code of Practice linked with that legislation. In relation to a complaint against a lender for irresponsible lending, then the Financial Conduct Authority (FCA) CONC Guidelines chapter 2.10 on Mental Capacity Guidance is the relevant set of provisions. I have considered whether CCB had complied with it. And reviewing these, together with the evidence I have been sent by CCB, I do not have enough to be able to make a provisional finding that there was a breach.

The starting point is set out in CONC 2.10.4 of the Guidance which states:

"A firm should assume a customer has mental capacity at the time the decision has to be made, unless the firm knows, or is told by a person it reasonably believes should know, or reasonably suspects, that the customer lacks capacity."

The FCA Guide lists some behavioural indicators which, if the lender observes any, may lead to the firm having reasonable grounds to suspect that a customer may have some form of 'mental capacity limitation'. These are in CONC 2.10.8 and are a guide list. They are too numerous to set out here. Having reviewed the sorts of flags and behavioural indicators the FCA has listed in CONC 2.10.8 then I have no evidence to indicate that CCB knew, or reasonably suspected, that Mr C lacked capacity.

And even if it did have any grounds, CONC 2.10.7 guidance states "...this does not necessarily mean that the customer does not have the mental capacity to make an informed borrowing decision."

As I have outlined earlier, I do not have enough to be able to make a provisional finding that there was a breach. So, on current evidence I do not uphold this part of Mr C's complaint but I am satisfied that it was the right course of action for CCB to agree the repayment plan.

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.

As neither party has provided a further submission, I see no reason to depart from the findings that I reached in the provisional decision, and which can be found above.

I do think CCB needed to gain a greater understanding of Mr C's expenditure especially the use of the other lending it was aware of. But had CCB done that it would've reached the same decision, the loan looked affordable. I am therefore not upholding the complaint.

I've also considered whether the relationship might have been unfair under Section 140A of the Consumer Credit Act 1974. However, for the reasons I've already given, I don't think CCB lent irresponsibly to Mr C or otherwise treated him unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here.

My final decision

For the reasons explained above and in the provisional decision I am not upholding Mr C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 31 October 2024.

Robert Walker
Ombudsman