DRN-5382337

The complaint

Mrs R says Brent Shrine Credit Union Limited trading as My Community Bank ("MCB") conducted inadequate affordability checks before it lent to her.

What happened

Mrs R took out a personal loan from MCB through a credit intermediary for £6,000 over 36 months in March 2020. The monthly repayments were £224.14 with a total to repay of £8,072.27. The loan had an APR of 22.4%. Mrs R settled the loan in September 2021.

MCB didn't respond to Mrs R's affordability complaint and so she referred the matter to the Financial Ombudsman Service. The complaint was then reviewed by an Investigator who didn't uphold it. Mrs R disagreed with the assessment saying MCB's credit checks weren't sufficient, she had high debt payments and was gambling.

These comments didn't change the investigator's mind and so the case was passed to me. to resolve. I then issued a provisional decision explaining the reasons why I was intending to uphold Mrs R's complaint.

Both parties were asked to provide any further submissions. Mrs R responded and accepted the findings in the provisional decision. MCB asked for additional time to respond, which was granted. It then said;

- The raw credit file data provided by MCB showed there were multiple joint associations with a third party.
- MCB says that Mrs R wasn't responsible for the debt payments and expenditure appearing on the joint account – and so it's not considered it as part of the affordability assessment.
- The credit file data suggested these weren't solely Mrs R's responsibility and secondly no income and expenditure check was carried out on the other account holder because this was a sole application – in Mrs R's name.

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.

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 as set out in chapter 14a Regulated Credit Agreements 60G (2(b)) of the Financial Services and Markets Act 2000. 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 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 carried out an affordability assessment and creditworthiness check when Mrs R applied for her loan and I've reviewed the information it relied on to make its lending decision. It asked Mrs R for her annual income of (£99,000) and its says that this income was checked by obtaining three months of copy bank statements from Mrs R. A review of Mrs R's bank statements led MCB to conclude her net monthly income was likely to be around £4,410.

MCB then said it went about ensuring the loan was affordable by taking Mrs R's net monthly income, from this it deducted the credit commitments it found about from its credit search, 50% of the mortgage costs (as this was joint), used statistical data for Mrs R's general costs and then it would've applied a further buffer to the figures of anything between £50 to £200. MCB says its calculations – which it hasn't shared with us, showed it that the loan was affordable.

The credit check results received by MCB showed it that Mrs R had two active accounts, a communications account and a credit or store card account. Both accounts had been repaid without any obvious financial difficulties. There were no signs from what MCB received to suggest that the loan was unaffordable or unsustainable for her. I want to add that there was no requirement to carry out a credit search let alone one to a specific standard. MCB was entitled to rely on the information that received unless it knew or ought reasonably to have known the results weren't likely to be accurate.

It seems that ordinarily, an application is run through a semi-automated process to determine whether it ought to be approved or not. But in this case, MCB took the decision to obtain copy bank statements from Mrs R- and it has sent the statements that it received. These cover a period of time from 16 December 2019 until 16 March 2020.

Although MCB says it only obtained these to check Mrs R income – it did nonetheless have access to information that provided an overview of Mrs R's expenditure. So, I've reviewed the statements given to MCB to see whether – having looked at these it should've taken the decision to lend – or not.

In terms of income, Mrs R is correct to say that her income fluctuated she received a slightly different amount in December 2019, January and February 2020. January 2020's income was greater, but Mrs R says that this was a result of a bonus she received. MCB says the average was around £4,400 per month, and that doesn't look to have been an unreasonable conclusion based on the information it could see.

Mrs R says her income was going to be cut at as a result of the COVID-19 pandemic. But that wasn't reflected in the bank statements that MCB had access to nor anything else that I've seen that ought to have led MCB to conclude that her income would be cut – so it's fair and reasonable for it to have relied on the figure that it used from the statements.

However, the statements provided were for a joint account and so it's likely that not all the expenditure that can be seen within the statements related to Mrs R herself. Indeed, what seems to be the case with the bank statements that I've seen is that there was in effect one pot of money for the household. Both salaries were paid into the account along with all the household expenditure. I've *kept this in mind, while reviewing the statements because I think this is something that MCB would've likely become aware of.*

Initially, MCB said that it was entitled to rely on the results of the credit search it received – and initially I would agree with that. But the bank statements provided do show a significantly greater number of committed monthly credit commitments for the household. And so further investigation was needed.

MCB has said that some of these may be the responsibility of the other account holder. I've thought about, because this does, seem a reasonable conclusion to make. We know the account statements were joint and as such there will be expenditure within them that is either Mrs R's or the other account holders. But, when thinking about the other account holder's income, I just don't think it was reasonable to believe that the majority of the other payments were for the joint account holder. The bank statements do suggest the information received from the credit reference agency wasn't complete. This means the figure used by MCB to work out the monthly credit commitments wasn't likely to be accurate – given there were only two active credit accounts recorded for Mrs R yet the bank statements MCB had access to demonstrated there were significantly more. Taking account of the discrepancy in the data provided to MCB, I do think MCB needed to have undertaken a more thorough assessment of Mrs R's finances.

So, I think it needed to complete a fuller review of Mrs R's actual incomings and non- discretionary outgoings to be sure that he could afford this loan which it was able to do as it had access to Mrs R's bank statements.

And had MCB taken steps to check this, it would've seen from the statements as well as Mrs R's own credit file that they mainly relate to Mrs R herself. But even if they were split, the fact is that Mrs R was the main earner and so it's not reasonable to believe that bills were split equally, indeed Mrs R has told us payments were split proportionally. So as the largest earner Mrs R would've made the greater financial contribution.

There are also large transfers into the account, but Mrs R says there was building work being done and these transfers then tend to coincide with payments to builders. So, I've not counted these payments.

I can also see the joint account holder's income – this remains fairly statistic during the course of the bank statement review. However, in saying that I'm satisfied that had MCB solely considered the direct debits and standing orders it would've realised these came to around £5,000 per month. This covers all the credit card, loan, mortgage, utilities, council tax and all other subscriptions and payments that I can see.

Clearly this is more than Mrs R's income but it's not unreasonable to assume that the other account holder was contributing to that. However, that is just the direct debits / standing orders and doesn't take account of the fact there are other costs as well such as travel, petrol and food.

In my view, MCB was given sufficient information to show that Mrs R was unlikely to be able to afford the payments to the loan – and it ought to have concluded that based on the information that it received as part of her application.

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.

I want to reassure both parties that where I haven't commented on a specific issue which has been referred to, or a comment that has been made, it's not because I've failed to take it on board and think about it. The reason I will not have commented on the issue is because I'm satisfied that I don't need to do so in order reach what I consider to be a fair and reasonable outcome. For the sake of completeness, I would add that our complaint handling rules, which I'm required to follow, permit me to adopt such an approach.

I've thought about MCB's further submissions, but I am still of the view that the bank statements it had indicated it would be unlikely that Mrs R could afford to repay this loan in a sustainable manner, and I've explained why below. I've therefore reached the same conclusions I reached before, for the same reasons.

I accept this was a single person application and so MCB was looking to see whether Mrs R would be in a position to afford the loan. However, as part of the application, MCB took the decision that it needed to review bank statements – and Mrs R provided joint statements. And having reviewed those statements MCB just couldn't ignore what they showed.

A review of the statements that were collected would've shown MCB that not only was this a joint account but the other account holder didn't appear to earn as much as Mrs R and it also would've been on notice that all household expenditure was taken from the one account.

And while I'm not suggesting that MCB needed to conduct a full affordability check into the other party – the fact remained that the account showed, in effect one pot of money – from which all of the household expenditure was paid. Given the difference in income between the two account holders – in my view, it wasn't reasonable to try and equally portion each party's income to household bills – that just wasn't how the account or Mrs R's finances operated. I think that MCB ought to have known that from the evidence it collected.

And so it just wasn't plausible or feasible to believe that the majority of the living costs would be split equally – bearing in mind how the account was being used. I think a more logical conclusion to draw from the statements, is that both incomes were received into the account and all of the household expenditure came out of that account – but that the split wouldn't have been equal because of the difference in earnings.

Turning to the credit check, MCB says the further information supplied shows the debt payments weren't Mrs R's responsibility and the income of the third party isn't relevant as it doesn't provide a complete overview of their financial circumstances. MCB says the third party may have had other bank accounts or other sources of income.

I've thought about this, but the statements collected by MCB provide an overview of the living costs that the account holders had – which includes debt payments as well as the mortgage. And we know, that Mrs R's salary and a regular payment from the other account holder was received into the account. Of course, I can't rule out the possibly that there were further accounts, but the evidence that MCB had, in the statements it collected ought to have indicated that the loan wasn't affordable or sustainable.

The credit check results provided by MCB do show that Mrs R only had two accounts in her name – a store / credit card and a communication account. Whereas the bank statements MCB had showed many more payments towards other creditors. Of course, it's possible that these other creditors were in the third party's name. But, given the level of income being received into the account from both Mrs R and the third party it seems these were treated as household expenses. And I would reiterate that the account movements do seem to suggest there being one pot of money.

So, for the same reasons that I laid out in the provisional decision, I'm still of the view that while proportionate checks may have been carried out – MCB had access to bank statements – which it collected, and which ought to have demonstrated to it that Mrs R couldn't afford to take on any further credit and to do so would be unsustainable. I am upholding the complaint.

I’m therefore still upholding the complaint for the same reasons that I’ve set out above and in the provisional decision. I’ve set out below what MCB needs to do in order to put things right for Mrs R.

I’ve also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, I’m satisfied the redress I have directed below results in fair compensation for Mrs R 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

MCB ought to not have lent to Mrs R.

A. MCB should add together the total of the repayments made by Mrs R towards interest, fees and charges on the loan.
B. MCB should calculate 8% simple interest* on the individual payments made by Mrs R which were considered as part of “A”, calculated from the date Mrs R originally made the payments, to the date the complaint is settled.
C. It should pay Mrs R the total of “A” plus “B”.
D. Finally, it should remove any adverse information it has recorded on Mrs R’s credit file in relation to the loan.

*HM Revenue & Customs requires MCB to deduct tax from this interest. MCB should give Mrs R a certificate showing how much tax it has deducted, if she asks for one.

My final decision

For the reasons I’ve explained above and in the provisional decision, I’m upholding Mrs R’s complaint.

Brent Shrine Credit Union Limited trading as My Community Bank should put things right for Mrs R as directed above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs R to accept or reject my decision before 20 June 2025.

Robert Walker
Ombudsman