

## **The complaint**

Mr B is complaining that North Edinburgh and Castle Credit Union Limited trading as Castle Community Bank (CCB) lent to him irresponsibly by providing him with a personal loan.

## **What happened**

In August 2023, Mr B applied for a loan with CCB. They lent him £10,000 over a five-year term. The loan required Mr B to make 59 monthly repayments of around £284.09, followed by a final payment to clear the balance.

Mr B complained to CCB in August 2024, saying they shouldn't have given him the loan as it was unaffordable. When he did so, he said as well as a second charge mortgage the year before, he'd taken out a £6,000 loan just a few months before this one and was "maxed out" on various credit cards and repeatedly using his overdraft. He said if CCB had done proper checks the loan would never have been approved.

CCB responded, saying they'd carried out appropriate checks before lending to Mr B. They said they'd reviewed Mr B's credit file and used credit reference agency (CRA) data to verify his income. They said they were satisfied that Mr B met their lending criteria from both a creditworthiness and affordability perspective and so didn't uphold his complaint.

Mr B wasn't happy with CCB's response so he brought his complaint to our service. Mr B said if CCB had done proper checks or had a conversation with him they wouldn't have approved the loan – instead, it was all done online, and the money arrived very quickly. He said as a result he struggled every month to pay his creditors.

One of our investigators looked into Mr B's complaint and thought it should be upheld. In summary, his view was that CCB hadn't done enough checks because of the size of the loan and Mr B's existing level of debt. Our investigator said if CCB had done proportionate checks before lending to Mr B they wouldn't have been able to fairly decide to lend to him.

CCB weren't happy. They said there were no prescriptive rules for assessing creditworthiness and affordability and they were satisfied they made a responsible decision. CCB added that Mr B passed every automated rule in their assessment. They also provided more evidence – the credit report they'd reviewed when assessing Mr B's application. Our investigator said this additional evidence didn't change his view. So CCB asked for an ombudsman's decision – and the matter came to me.

## **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, I'm upholding Mr B's complaint. I'll explain more below.

### *What's required of lenders?*

Although Mr B's loan agreement with CCB is an exempt agreement, and therefore not subject to all the usual consumer credit regulations, CCB is subject to the provisions set out in the Financial Conduct Authority's (FCA) Credit Unions Sourcebook (CREDS).

CREDS 7.2.1AR 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.” And CREDS 7.2.6G states that “The lending policy should consider the conditions for and amounts of lending to members, individual mandates, and the handling of applications for lending.” Finally, CREDS 7.1.2G says that Chapter 7 of CREDS “seeks to protect the interest of credit unions' members in respect of loans to members”.

Taking all this together, it's clear the FCA says that a credit union's lending policy needs to protect members' interests. This suggests the credit union needs to check whether a loan would be sustainably affordable for an applicant as well as the creditworthiness of that applicant – as the members' interests wouldn't be protected if the applicant later defaulted on their loan. And CCB acknowledges this – they said they follow the consumer credit regulations (CONC) as guidance. These regulations say a firm must consider a consumer's ability to make repayments under the agreement in a sustainable way, carrying out checks which are proportionate to the individual circumstances of each application.

### *Did CCB carry out reasonable checks?*

CCB's loan required Mr B to pay back over £17,000, over a five-year period. So my starting point is that I'd expect their checks to have been thorough.

CCB ran automated checks which looked at Mr B's data from his application and CRAs. They verified his annual income as being at least £42,000, and they found no concerning information on his credit file. CCB also estimated Mr B's disposable income – they said his credit commitments were calculated automatically from Mr B's credit file, and his other expenditure was estimated using data from the Office for National Statistics.

Whether or not CCB carried out enough checks depends partly on what they found. CCB told us Mr B passed all their automated checks. When I looked at the credit file they'd reviewed, I noted Mr B had defaulted on only one account, back in February 2019. With this being several years before his loan application, I can understand why it wouldn't have concerned CCB.

The credit file only shows Mr B's active accounts at the time of the lending decision. So I can't see Mr B's payment history on accounts he'd settled. But what I can see shows he was up to date with his payments on all his active accounts, with no missed or late payments in the preceding 12 months. The credit file also shows Mr B had taken out a second charge mortgage in September 2022, and a £6,000 loan in April 2023. And he had eight credit cards with the balances totalling over £18,500 as well as several buy-now-pay-later (BNPL) type creditors. On the face of it, the credit file suggests that although Mr B was heavily indebted, he wasn't in financial difficulties at the time he applied for the loan.

On balance, I think CCB did carry out enough checks. Although they were automated, this doesn't make them insufficient. CCB checked Mr B's income, reviewed his credit file, and estimated his disposable income, finding no adverse information.

### *Did CCB make a fair lending decision?*

Having decided that CCB carried out enough checks, I have to consider whether their decision to lend to Mr B was fair.

CCB explained that when making lending decisions, they calculate a maximum monthly instalment. They do this by deducting a customer's credit commitments, housing costs, and expenditure from their net monthly income, and then deducting a buffer of between £50 and £200.

When I asked CCB what net monthly income figure they used for Mr B, they weren't able to tell me. So I've used an online tax calculator which suggests that having verified Mr B's annual income as £42,000, CCB would have been able to use a figure of around £2,760 as his net monthly income.

CCB have told us that they estimated Mr B's mortgage as £420, his other credit commitments at around £1,007, and his other living costs as around £753. This would leave Mr B with £580 of disposable income from which to make the £284 per month payments due under this loan.

However, I can see from the credit file CCB reviewed that Mr B's mortgage payment was £430, rather than £420, per month. And his monthly payments for other loans and BNPL arrangements totalling around £1,130. On top of this he had credit card balances totalling around £18,500. Whilst the BNPL arrangements would all come to an end within three months of Mr B's loan application, his longer-term loans (including the second charge mortgage) had monthly payments totalling £688. And, while there aren't any rules as to what a business should include in an assessment of disposable income for monthly payments to credit card creditors, I would have expected CCB to have included an amount that allowed Mr B to repay the balances within a reasonable timeframe, rather than just meeting minimum repayments each month. On his balance of £18,500, I'd have expected this to be at least £600. So, as a minimum, I'd have expected CCB to have estimated Mr B's credit commitments to be at least £1,288.

I asked CCB to explain their calculation of Mr B's credit commitments, but they were unable to do so – they just said it was automated based on his credit file. And when I suggested I'd have expected their affordability assessment to include a figure of at least £1,300, they again said it was automatically worked out. I'm not satisfied with this explanation and I'm of the opinion that CCB included too low a figure for Mr B's credit commitments in their assessment. The net of his income, mortgage, and other living costs as estimated by CCB was £1,577. As I've explained above, I think CCB should have included at least £1,288 for Mr B's credit commitments – leaving just £289 monthly disposable income from which Mr B would need to pay £284 per month to CCB. This leaves a buffer of just £5 – when CCB's policy is that the buffer should be between £50 and £200.

So, taking all this together, I'm not satisfied CCB made a fair lending decision. With the information they'd gathered I think they ought to have decided Mr B wouldn't be able to sustainably make the repayments each month.

In addition, I note that our investigator reviewed Mr B's bank statements and was of the opinion that these showed the agreement wasn't affordable for Mr B. Whilst I don't think CCB needed to go into this level of detail when checking affordability, I'm confident that if they had decided to do more checks, these would have also shown that it wouldn't be fair to lend to Mr B.

## **Putting things right**

As CCB shouldn't have approved the loan, I don't think it's fair that Mr B pay any interest or charges for the borrowing. He did have use of the funds he was lent, so it's fair he repays them. CCB should therefore calculate what Mr B has paid towards the loan and anything he's paid above the amount lent should be refunded. If he hasn't repaid the amount lent, CCB should arrange a sustainable payment plan for the shortfall to be repaid.

## **My final decision**

As I've explained above, I'm upholding Mr B's complaint. North Edinburgh and Castle Credit Union Limited trading as Castle Community Bank need to take the following steps to settle the matter:

- Rework the account removing all interest, fees and charges that have been applied; and
  - If the rework results in a credit balance, refund this to Mr B along with 8% simple interest per year\* calculated from the date of each overpayment to the date of settlement; or
  - If after the rework there is still an outstanding balance, arrange an affordable repayment plan with Mr B for the remaining amount.
- Once Mr B has repaid the amount originally lent (net of interest and charges) in full, remove any adverse information recorded on his credit file regarding the agreement.

\* HM Revenue & Customs requires CCB to deduct tax from any award of interest. If CCB consider tax should be deducted from the interest element of my award they should provide Mr B a certificate showing how much they've taken off so that he can reclaim that amount, assuming he is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 17 June 2025.

Clare King  
**Ombudsman**