

## The complaint

Mr B is being represented by a member of his family. He's complaining about Brent Shrine Credit Union Limited trading as My Community Bank (MCB) because it declined to write off a loan that he says was taken out by fraudsters on his behalf and without his knowledge. To keep things simpler, I'll refer to all submissions from Mr B and his representative as if they came from Mr B himself.

## What happened

Sadly, Mr B fell victim to a cruel investment scam. He was contacted by scammers who encourage him to invest on a fake trading platform. He initially invested £250 and, when he was told how well this was doing, he invested a further £1,000 from an account with an Electronic Money Institution (EMI) that the scammers told him set up.

The scammers were in regular contact with Mr B and, in January 2024, a loan was taken with MCB. The loan application was submitted online and MCB agreed to lend £20,000 over a term of five years with an initial repayment of £1,024 followed by regular amounts of £683.

Statements from Mr B's bank show the amount of £20,000 was paid into his account by MCB on 5 January 2024. And that the same amount was paid to his account with the EMI on 8 January. Statements from the EMI then show this amount was transferred to the scammers on the same day. Mr B has confirmed he received nothing back from this payment and the EMI has confirmed that its attempts to recover the money failed.

Mr B has explained that he had serious eyesight problems at this time and MCB has previously been provided with evidence of this. He says these issues meant he'd been off work for some time and had been required to surrender his driving licence. He says these issues meant he couldn't read smaller print or complete forms without assistance. Because of this, he says he'd previously agreed to download remote access software so the scammers could 'help' him, including by setting up an account with the fake investment platform and his EMI account, and in this way they obtained sufficient personal information to apply for the loan.

Mr B says the loan was taken out by the scammers while they had access to his device and that he wasn't aware this was happening. He also says it was the scammers who moved the loan amount from his bank to the EMI and then onto the scam.

Mr B now accepts he received MCB's email of 5 January 2024 informing him of the loan application, but due to his eyesight problems he says he didn't take it in at the time. He says he first became aware of the loan after receiving another email saying a payment was about to be collected. This is when he contacted MCB to explain what had happened and I've listened to a recording of that call on 21 February 2024.

In its initial response to Mr B's fraud claim on 21 February 2024, MCB said it had concluded he *'did not intend to take the loan'* but maintained he was liable for full repayment because he *'did not give proper care or attention when you allowed the scammers remote access to your device'*.

In response, Mr B provided medical evidence relating to his sight difficulties. After reviewing this information, MCB agreed 'due to exceptional circumstances' to remove interest and charges so only the principal sum of £20,000 was owed. MCB has confirmed that this amount has since been referred to a third party debt collection agency.

### **My provisional decision**

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

*The first issue I need to consider is whether MCB should have accepted the loan application in the first instance.*

*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).*

*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".*

*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 that protected its members' interests. In other words, it needed to lend responsibly.*

*So, before lending to Mr B, 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:*

- Did MCB complete appropriate checks to establish Mr B 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?*

*To meet these requirements, and in line with good industry practice in place at the time, I believe MCB was required to carry out a proportionate and borrower-focused assessment of whether Mr B could afford the loan repayments. This assessment also had to consider whether the loan could be repaid sustainably. In practice this means*

*MCB needed to satisfy itself that making repayments wouldn't cause undue difficulty or adverse consequences. In other words, it wasn't enough to simply think about the likelihood of him making payments, it had to consider the impact of the repayments on Mr B.*

*The affordability assessment and associated checks also had to be proportionate to the specific circumstances. What constitutes proportionate checks depends on a number of factors including, but not limited to, the particular circumstances of the consumer (for example their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount, type and cost of the credit being considered. Even for the same customer, a proportionate check could be different for different applications.*

*In general, I think a reasonable and proportionate assessment should be more thorough:*

- the lower the customer's income, reflecting that it could be more difficult to make repayments from a lower level of income;*
- the higher the amount due to be repaid, reflecting that it could be more difficult to meet a higher repayment from a particular level of income;*
- the longer the term of the credit, reflecting the fact that the total cost is likely to be greater and the customer is required to make payments for an extended period.*

*There may also be other factors that could influence how detailed a proportionate check should have been for a given application, including any indications of borrower vulnerability or foreseeable changes in future circumstances.*

*MCB has described the information it gathered to assess whether the loan was affordable for Mr B before it was approved. This included:*

- a creditworthiness assessment based on information obtained from a credit reference agency (CRA);*
- verifying his income with information from a CRA; and*
- modelled statistical data to assess his general expenditure.*

*From this information it concluded the loan repayments were affordable.*

*MCB hasn't provided the information it received from the CRA or its assessment of Mr B's expenditure. But it has provided a copy of the application that stated his annual salary to be £45,000. On the basis that he was borrowing nearly half of this amount and would be required to make high repayments of £683 for five years, I don't agree that an affordability assessment based mainly on modelled statistical data, rather than his actual circumstances, was reasonable and proportionate in this case. It's my view that MCB needed to obtain further information to make a fair assessment on the affordability of the loan.*

*I can't know exactly what further checks MCB might have carried out at the time, but I think a consideration of Mr B's actual income and expenditure would have been*

*reasonable. So I've reviewed 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 from shows Mr B received three monthly payments from his employer of £2,517 in October 2023, £2,450 in November and £2,420 in December. And that immediately before receiving his wages each month, his account was overdrawn – by £305 in October, £469 on November and £252 in December. My interpretation of his financial situation is that he was already living very close to if not slightly beyond his means. And the fact he wasn't able to work while he continued to wait for eye surgery meant there was no reason to think that situation would improve significantly in the near future.*

*Against this backdrop, I don't currently see how anyone could reasonably conclude Mr B would be able to maintain monthly repayments of £683 for five years. And if MCB had seen this information, I'd have expected it to conclude the loan wasn't sustainably affordable and to decline the application.*

*In summary, if MCB had adequately assessed whether the loan repayments were affordable and sustainable, that is whether they were likely to remain affordable throughout the term of the loan, I find that it shouldn't have lent to Mr B. It's for this reason that that I'm currently proposing to uphold his complaint.*

## **The responses to my provisional decision**

Mr B accepted my provisional decision. MCB didn't and made the following key points:

- The complaint raised is specifically about the loan being applied for as part of a scam. There was no complaint about affordability or irresponsible lending and it doesn't believe reviewing Mr B's bank statements as part of the complaint or concluding the loan should be written off is justified.
- Mr B's eyesight is a vulnerability that was considered when his complaint was reviewed. But it doesn't believe this had any direct impact on his understanding of the risk he was taking by allowing the scammers to access his device and doesn't justify the fact that he didn't give proper care or attention when he did this.
- It understands Mr B has recovered from his eyesight issues following surgery.
- In view of Mr B's temporary vulnerability, and to give him the best chance of recovering from the debt, it decided to waive all interest on the loan.

As Mr B's application passed all its checks, including the affordability assessment and with the prospect of him returning to work, he should be liable for the repayment of the capital balance.

## **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.

My consideration of this complaint isn't necessarily restricted to the specific issues raised. Instead, my role is to reach an outcome that's fair and reasonable in all the circumstances. The key issue to be addressed here is whether Mr B should be expected to repay the loan balance. It's my view that a consideration of whether or not the loan application should have been accepted in the first place is entirely relevant.

Revolut hasn't provided any further information relating to its initial affordability assessment, so it remains my view that the loan shouldn't have been approved for the reasons set out previously.

In terms of how MCB should put this right, I don't think it's fair for Mr B to be expected to pay interest and charges on money that shouldn't have been lent to him and MCB has already removed these. The next point to address is whether he should have to repay the principal amount borrowed. I've thought about this very carefully again and, on balance, I still don't think it would be fair to expect him to do so. I've reached this conclusion for the following reasons:

- I'm satisfied the information Mr B has provided and that we've obtained from the EMI shows all of this money was lost to the investment scam and that he received no benefit from it.
- There's no suggestion or indication Mr B acted in any way dishonestly. I'm persuaded the sight difficulties outlined in the medical evidence provided support his account that the loan was taken out by scammers without his knowledge and MCB has already accepted he *'did not intend to take the loan'*. I'm also conscious that he appears to have contacted MCB about this as soon as he realised what had happened.
- The information we do have about Mr B's financial situation, irrespective of whether his sight has recovered to the point he will be able to return to full-time work, I think there's a real likelihood that making any meaningful repayment to the debt collection agency would cause him financial hardship.

So it remains my view that Mr B shouldn't be required to repay the loan.

### **Putting things right**

The aim of any award I make must be to return Mr B as far as possible to the position he'd now be in but for the errors or inappropriate actions of MCB. To put things right, I conclude that MCB:

- should re-acquire the debt from the debt collection agency and write off the loan balance in full so there's nothing further for Mr B to pay.
- if Mr B has made any repayments, either to MCB or the debt collection agency, it should return these to him in full with simple interest at 8% per year from the date the repayment was made to the date it's refunded.

HM Revenue & Customs (HMRC) requires MCB to deduct tax from any interest. It must provide Mr B with a certificate showing how much tax has been deducted if he asks for one;

- and remove any adverse information recorded on Mr B's credit file relating to this loan.

I'm satisfied this represents a fair and reasonable settlement of this complaint.

### **My final decision**

My final decision is that I uphold this complaint. Subject to Mr B'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 B to accept or reject my decision before 18 September 2025.

James Biles  
**Ombudsman**