

The complaint

Miss M says North Edinburgh and Castle Credit Union Limited, trading as Castle Community Bank (CCB), lent irresponsibly when providing her with a loan in 2023.

What happened

In June 2023, CCB loaned Miss M £5,000 over a 24-month term. The stated purpose of the loan was to fund home improvements. The interest rate on the loan was an annual percentage rate (APR) of 42.57%. The total charge for the credit was £2,340.57, which meant the total amount repayable by Miss M for the amount she was borrowing was £7,340.57. The monthly repayments were £295.40.

In January 2024, Miss M complained to CCB that it had lent to her irresponsibly as the credit was unaffordable for her.

CCB rejected Miss M's complaint. CCB said all loan applications were subject to full underwriting checks including a creditworthiness check and affordability assessment. It added that, by signing the paperwork at the time of the sale, Miss M agreed she had no concerns about her ability to repay the borrowing.

Unhappy with CCB's response, Miss M complained to this service. Our investigator looked into the complaint and recommended that it should be upheld. The investigator thought that CCB hadn't carried out the checks it should have done prior to making the lending decision. They felt that, if CCB had, it would have discovered that Miss M wasn't in a financial position to sustainably afford the loan repayments. The investigator asked CCB to put things right for Miss M in line with our general approach.

CCB didn't agree with the investigator's assessment of the complaint. So, the complaint was referred to me to review afresh.

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.

We've set out our approach to considering unaffordable and irresponsible lending complaints on our website – including the key relevant rules, guidance, good industry practice and law. And I've considered this in deciding Miss M's complaint.

Having done so, I uphold the complaint. I'll explain why.

I confirm that I broadly agree with the investigator's findings on CCB's lending decision and with the reasoning they've provided. I'm satisfied that the lending rules and provisions at that time meant CCB needed to assess, by way of undertaking proportionate checks, whether it felt Miss M would be able to repay the credit taking account of factors such as the amount and type of borrowing and her income and expenditure. In summary:

- I recognise CCB carried out some checks to satisfy itself that Miss M was eligible for the loan. I don't doubt that CCB had its own internal lending criteria. But, as I say, there were wider rules and provisions that also needed to be considered by CCB, irrespective of its own policies.
- Miss M was looking to borrow a substantial amount and over a fairly long period of time. I think this warranted checks in addition to those CCB carried out. For example, its checks revealed her actual income was lower than the income she'd declared. It would have been reasonable to have investigated further.
- It appears Miss M had missed payments on active accounts although, without CCB's response to our request for clarification around the exact meaning of the affordability checks it's shared with us, it's difficult to say when these occurred and on how many occasions. This together with, for example, her high level of indebtedness indicates the credit would have left Miss M with very little disposable income and ought to have given CCB cause for concern.
- So, I don't conclude on balance that the checks CCB undertook were proportionate. I think Miss M's bank statements at the time give a good indication of what further checks might have revealed to CCB. I consider it likely that proportionate checks would have revealed she was regularly overdrawn and incurring related interest, further suggesting she didn't have enough disposable income with which to sustainably repay the loan.

I've thought about everything CCB's told us, including that it operates under a unique cooperative model. And that Miss B signed the paperwork to indicate she felt the credit was affordable. But none of this impacts on CCB's fundamental obligation – as the lender – to check for itself that the credit was affordable for her in her circumstances.

Taking everything into account, I can't see that CCB carried out proportionate checks that would have enabled it to make a reasonable assessment of the affordability of the loan for Miss M. Had CCB done so, I don't think it would have satisfied itself that she was able to sustainably afford the credit it was offering. As such, CCB should put things right for her.

Putting things right

I think it's fair and reasonable for Miss M to repay the principal amount that she borrowed, because she had the benefit of that lending. But she's paid interest and charges on the loan that shouldn't have been provided to her. So, I think Miss M's lost out and that CCB should put things right for her. CCB should:

- a) Remove all interest, fees and charges applied to the loan from the outset. Any payments made by Miss M should then be deducted from the new starting balance. If the payments Miss M's made total more than the amount she was originally lent, then any surplus should be treated as overpayments and refunded to her with 8% simple annual interest† calculated on any overpayments made, from the date they were paid by Miss M, to the date the complaint's settled.
- b) If there's still an outstanding balance on the loan, then CCB should agree an affordable repayment plan with Miss M, bearing in mind the need to treat her positively and sympathetically in those discussions, and take account of her current ability to repay the loan.
- c) Remove any relevant adverse information recorded on Miss M's credit file as a result of the lending.

† HM Revenue & Customs requires CCB to take off tax from this interest. CCB must give Miss M a certificate showing how much tax it's taken off if she asks for one.

My final decision

For the reasons given, I uphold this complaint. I require North Edinburgh and Castle Credit Union Limited, trading as Castle Community Bank, to put things right for Miss M as explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 19 June 2024.

Nimish Patel
Ombudsman