

## The complaint

Miss R says Brent Shrine Credit Union Limited, trading as My Community Bank (MCB), irresponsibly lent to her.

## What happened

Miss R took out a loan for £15,000 over 60 months in April 2022. The monthly repayments were £371.98 and the total repayable was £22,424.76.

Miss R says her indebtedness was very high at the time, and her income changed regularly. There were no thorough checks completed or documents requested to verify any details to confirm the affordability. If checks were completed MCB would have seen that this loan was not affordable.

MCB says it undertook a meticulous assessment of Miss R's application using bespoke scorecard methodology, creditworthiness assessments and affordability algorithms, and in this case, a detailed investigation of her unsecured lending supported by credit search and affordability checks conducted with the relevant credit bureaus. These showed the loan to be affordable.

Our investigator did not uphold Miss R's complaint. She said MCB's checks were not proportionate but she felt the loan bettered Miss R's financial position and so MCB was not irresponsible to lend to Miss R.

Miss R disagreed with this assessment and asked for an ombudsman's review. In summary, she said the loan may have been used for debt consolidation but based on the subsequent outstanding credit commitments it would have still been unaffordable. The loan added to her financial burden and based on her salary she cannot see how this would have been affordable and responsible lending.

I reached a different conclusion to the investigator and so issued a provisional decision. An extract follows and forms part of this final decision. I asked both parties to send any comments by 21 May 2024.

### *Extract from my provisional decision*

*MCB carried out an affordability assessment and creditworthiness check when Miss R applied for her loan. I've reviewed the information it relied on to make its lending decision. It has told us this included Miss R's declared income and this was verified with one of the credit reference agencies. It used estimates for her housing and living costs using national statistics, and the results of a credit check it carried out to understand the monthly cost of her existing credit commitments. It asked about the purpose of the loan which was recorded as 'other'. From these checks combined MCB concluded Miss R had sufficient monthly disposable income of in excess of £1,000 and so could afford this loan.*

*I am not satisfied these checks were adequate. Miss R was looking to borrow a large amount of money over a five-year term. So to treat her fairly MCB needed to know she could*

*do this without suffering any financial harm over that extended period of time. And I think this meant it needed to do a fuller financial review.*

*In cases like this we look at bank statements for the three months prior to application and/or the full credit file of the applicant. I am not saying MCB had to do exactly this but it is a reliable way for me to understand what better checks would most likely have shown. And in this case I don't think MCB would have needed to look beyond Miss R's actual income and total credit commitments to realise the lending was not prudent. I'll explain why.*

*The bank statements show Miss R's average monthly salary was £2,987.60 and her total monthly income including benefits and child support was £3,989. I note Miss R has told us the child support stopped the next month, but I think it would have been reasonable for MCB to include it as at the time of the application it was a regular monthly credit to her account. I have not taken into account one-off income payments as I do not find this would be a fair and reasonable approach.*

*I have then reviewed Miss R's credit commitments – she would need to spend £1,862 each month assuming a 5% repayment of all revolving debt plus her fixed term loan repayments. This is almost half of Miss R's income. Adding this loan took that proportion to 55%. This ought to have concerned MCB that there was a high risk she would not be able to repay this new loan without suffering some type of financial harm. She was also already using her overdraft facility of £500 on one of her two current accounts.*

*I have considered the loan was for debt consolidation but I have seen no evidence that MCB knew this, or that it had taken steps to understand which debts Miss R intended to settle to ensure this loan would be financially helpful to her. It had recorded the purpose of the loan as 'other'.*

*In the round I cannot fairly conclude that MCB made a fair lending decision. There were clear indicators that Miss R would most likely struggle to repay this loan. I find that by lending to her MCB failed to both treat her fairly in line with its stated policy, and to protect its members as a whole as required.*

I then set out what MCB would need to do to put things right.

Miss R did not reply. MCB did and it disagreed with my conclusion. It said it followed its internal policies for income verification, which are FCA approved and industry standard. It had no concerns regarding the affordability of the loan once these checks had been carried out and therefore saw no justification to request bank statements. It does not consider £15,000 to be a particularly large loan, but regardless of this, it does not agree that the loan amount or the fact that the loan term was five years was reason enough to carry out any additional checks.

### **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.

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. 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.

Therefore I have solely focussed on the rules and guidance in CREDS which do apply in this case, as well as the credit union’s own stated lending policy to treat all customers in a fair and reasonable manner.

Of particular relevance is CREDS 7.2.1AR 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 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.

In my provisional decision I explained that I felt better checks ought to have been carried out. MCB disagreed. It said its checks were industry standard and its internal policies were FCA approved. But as it knows there is no set list of checks and what would be considered prudent in the circumstances of one application can fall short in another, even for the same applicant.

So in the circumstances of this case I still find that the loan term and value should have prompted further checks, particularly as MCB knew from its credit check that Miss R was already spending around half her income on her existing credit commitments. So I cannot agree with its position that it was reasonable to conclude after its checks that there were no affordability concerns. It is accepted across the industry that spending a high proportion of income on unsecured credit can be an indicator of pending financial difficulties.

And as I explained in my provisional decision had MCB carried out proportionate checks I think it would, as a responsible lender, have declined Miss R’s application.

It follows, for all the reasons set out in my provisional decision I find MCB was wrong to lend to Miss R.

### **Putting things right**

As I don’t think MCB should have arranged this loan, I don’t think it’s fair for Miss R to pay any interest or charges for the borrowing. However, Miss R did have the use of the funds she was lent, so I think it’s fair she repays them.

This means to settle Miss R’s complaint MCB will have to:

- remove all interest, fees and charges from Miss R’s loan account and treat all repayments Miss R has made as repayments of the capital
- if this results in any overpayments they should be refunded adding 8% simple interest per year\* from the date of each overpayment, if there were any, to the date of settlement
- if this means Miss R hasn’t repaid the capital amount lent then MCB should arrange an affordable payment plan for the shortfall

- remove any adverse information recorded on Miss R's credit file regarding the agreement, once any outstanding capital balance has been repaid.

\*HM Revenue & Customs requires MCB to take off tax from this interest. MCB must give Miss R a certificate showing how much tax it's taken off if she asks for one. If it intends to apply any refund due to reduce the capital balance it must do so after deducting the tax.

### **My final decision**

I am upholding Miss R's complaint. Brent Shrine Credit Union Limited, trading as My Community Bank (MCB), must put things right as set out above.

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

Rebecca Connelley  
**Ombudsman**