DRN-4875853

Financial Ombudsman Service

The complaint

Mr S is complaining about Brent Shrine Credit Union Limited trading as My Community Bank because he says it lent irresponsibly in providing a loan he couldn't afford.

What happened

In July 2021, Mr S took out a loan with My Community Bank (MCB) for £21,000, which was repayable over 60 months at £464 per month.

Our investigator ultimately concluded the complaint should be upheld. She felt MCB should have carried out a more detailed affordability assessment and, after completing a review of his income and expenditure by reference to all of his accounts, she concluded the loan was unaffordable for Mr S. In particular, she noted that the loan didn't allow him to clear all of his existing debt or reduce his monthly outgoings.

MCB didn't accept the investigator's assessment and made the following key points:

- it saw statements for two of Mr S's accounts and the cost of his overdraft was included in its assessment of his credit file; and

- when considering Mr S's expenditure, it's not reasonable to refer to the money he transferred to his partner each month because these payments were ad-hoc, for different amounts and paid out of more than one account. It believes its estimate, based on modelled statistical data provides a more accurate assessment.

The complaint has now been referred to me for review.

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've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. 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.

Before lending to Mr S, 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 reasonable and proportionate checks to establish Mr S 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 reasonable and proportionate checks have discovered, and would the decision to lend have been fair and reasonable in light of that information?

The rules, regulations and good industry practice in place at the time the loan was approved required MCB to carry out a proportionate and borrower-focused assessment of whether Mr S could afford the repayments. This assessment also had to consider whether the loan could be repaid sustainably. In practice this meant MCB had to satisfy itself that making payments to the loan 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 S.

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; and
- the greater the instances and frequency of credit, and the longer the period of time during which a customer has been given credit, reflecting the risk that repeated refinancing may signal borrowing has become unsustainable.

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 Mr S's loan was affordable before it was approved. This included:

- information contained in his application, including residential status, employment status and his income, which was separately verified;
- information obtained from a credit reference agency (CRA), giving details of his existing credit arrangements and any past issues with credit; and
- an expenditure assessment using a combination of modelled data for key expenses, along with actual data from the CRA about the cost of his existing credit arrangements.

MCB maintains its affordability assessment was proportionate to the loan being given and demonstrated it was affordable.

After carefully reviewing the information MCB obtained, I think there were factors that should have prompted it to carry out further checks before approving Mr S's loan. In particular, I'm conscious the amount being borrowed was significant and the monthly repayment considerable and this would need to be maintained for a period of five years. In the circumstances, I don't agree the affordability assessment based partly on modelled statistical data, rather than Mr S's actual circumstances, was reasonable and proportionate in this case.

I can't know exactly what further checks MCB might have carried out at the time, but I think a consideration of Mr S's actual income and expenditure would have been reasonable. So we've obtained copies of his credit report and statements for all of his bank accounts for the period prior to the lending to establish what information could reasonably have been discovered.

A review of this information shows Mr S had the following outstanding credit arrangements:

- loan – LiveLend – balance of around £7,500 and monthly repayments of £189;
- loan – Lendable – balance of around £7,500 and monthly repayments of £225;
- loan – Halifax – balance of around £26,000 and monthly repayments of £445;
- credit card – balance of around £3,500, to which he was paying £100 per month; and
- overdrafts – across three current accounts, with variable balances generally totalling between £2,500 and £3,500. The interest charges on these facilities totalled as much as £90 per month.

The information provided by MCB indicates it calculated Mr S's existing credit commitments to be £800 per month. This is significantly below the £1,049 apparent from his credit report and bank statements.

Mr S also had a mortgage, which his credit report shows was costing £423 per month. The information provided by MCB indicates it estimated his mortgage costs to be £150, which is significantly lower than the actual figure even if it could be shown that it was reasonable to assume he was only responsible for half of this commitment.

In addition to his existing credit commitments, Mr S's bank statements show he was regularly transferring around £2,350 per month to his partner. He says this was to cover bills and living costs, which appear to have included the mortgage, and I've no reason to doubt this. I don't accept MCB's suggestion that the fact the payments weren't on a set date or all from the same account means it's estimate of his key expenses based on modelled statistical data is somehow a more accurate assessment of Mr S's outgoings.

Taking all of the above into account, I think it's clear there were significant deficiencies in MCB's assessment of Mr S's outgoings. The evidence shows these were in reality considerably greater than it calculated and I think the fact Mr S was consistently overdrawn by so much on three of his accounts throughout the period before the loan was approved demonstrates he was living beyond his means and unlikely to be able to afford an increase to his monthly outgoings.

I'm conscious MCB says the purpose of the loan was to consolidate existing debt and Mr S has provided evidence that around £14,000 of the amount borrowed was used to pay off his credit card, Lendable loan and three current account overdrafts. He says the rest was retained to help fund the monthly loan repayments going forward. Based on the figures outlined above, paying off the debts he did reduced Mr S's outgoings by around £415 per month, compared to the monthly repayment to MCB of £464. So the effect of the loan was actually to increase his monthly outgoings by around £50 and his overall debt by £7,000.

If MCB had seen this information, it's my view that it shouldn't have lent to Mr S.

On balance, and taking all the evidence provided into account, if MCB had adequately assessed whether the loan repayments were affordable and sustainable, it's my view it shouldn't have lent to Mr S. It's for this reason that that I'm upholding his complaint.

Putting things right

The principal aim of any award I make must be to return Mr S to the position he'd now be in but for the errors or inappropriate actions of MCB. But that's not entirely possible here as the lending provided can't be undone.

Because I don't think MCB should have lent to Mr S, I don't think it's fair for him to pay interest or charges on the amount borrowed. But he has had use of the money that was lent, so I think it's fair he repays the amount borrowed (without the addition of interest or charges).

To put things right, MCB now needs to take the following steps:

- Calculate the total of all Mr S's payments towards the loan, including all interest, fees, charges and insurances (not already refunded).

- If this exceeds the £21,000 borrowed, any excess above £21,000 should be paid to him with simple interest at 8% per year from the date of each overpayment to the date of settlement.

  HM Revenue & Customs (HMRC) requires MCB to deduct tax from any interest. It must provide Mr S with a certificate showing how much tax has been deducted if he asks for one. If MCB intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

- If the total of all Mr S's payments doesn't exceed the £21,000 borrowed, MCB should arrange an affordable payment plan with him for the shortfall.

- Remove any adverse information recorded on Mr S's credit file relating to this loan, once any outstanding balance has been repaid.

If MCB no longer owns the debt, it should liaise with whoever does to ensure any payments Mr S has made since moving the account are factored into the calculation of the compensation that's due or the balance that remains outstanding.

In reviewing this complaint, I've also considered whether the relationship might have been unfair under Section 140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed above results in fair compensation for Mr S in the circumstances of his complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

My final decision

For the reasons I've explained, I'm upholding Mr S's complaint. Subject to his 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 S to accept or reject my decision before 6 August 2024.

James Biles
Ombudsman