

## The complaint

Mr H says North Edinburgh and Castle Credit Union Limited, trading as Castle Community Bank (CCB), irresponsibly lent to him.

## What happened

Mr H took out a loan for £5,000 over 60 months in January 2023. The monthly repayments were £165.35 and the total repayable was £9,952.27.

Mr H says if CCB had properly checked his credit record and finances beforehand it would have seen that he was struggling. His mental wellbeing has been massively impacted. He has been in a debt repayment plan since 2007 so CCB should have refused his loan application. The loan was taken out to pay back two credit cards. But as a result of this loan he had to use those cards again after the cost of living increased, as well as his rent.

CCB says it completed full creditworthiness and affordability checks and there was nothing to suggest Mr H could not afford the loan.

Our investigator did not uphold Mr H's complaint. He said CCB completed proportionate checks and they showed the loan would be affordable for Mr H.

Mr H disagreed with this assessment and asked for an ombudsman's review. He said adequate checks were not done and he did not have the disposable income CCB calculated.

I made some different findings to the investigator so I issued a provisional decision. An extract follows and forms part of this final decision. I asked both parties to send any comments by 11 July 2024.

### *Extract from my provisional decision*

*CCB carried out an affordability assessment and creditworthiness check when Mr H applied for his loan. I've reviewed the information it relied on to make its lending decision. It asked Mr H for his annual income (£32,004) and monthly housing costs (£575). It verified his net monthly income externally (£2,148). It seems it estimated his living costs (£811). It completed a credit check to understand his credit history and existing credit commitments (£447). It asked about the purpose of the loan which was debt consolidation. From these checks combined it concluded Mr H had £315 monthly disposable income and so could afford this loan.*

*I am not satisfied these checks were proportionate given the term of the loan and the initial results. CCB needed to be sure Mr H would be able to sustainably make his repayments for five years, and it had learnt from its credit check that he had struggled with his finances in the past. So I think it needed to complete a fuller review of Mr H's actual incomings and non-discretionary outgoings to be sure that he could afford this loan.*

*In cases like this we look at bank statements from the three months prior to application. I am not saying CCB had to do exactly this but it is a reliable way for me to understand what*

*better checks would most likely have shown. And had it done so, I find it could still have fairly made the same lending decision. I say this as the statements show Mr H's income and total non-discretionary costs (housing, living and credit) were largely as CCB had assumed – albeit his living costs were lower and his credit commitments were higher. So Mr H had the disposable income to afford this loan. I note Mr H has challenged this, but as our investigator explained we would only expect the lender to consider his non-discretionary costs. The statements also show none of the typical signs of financial strain such as reliance on an overdraft facility, frequent returned payments or use of payday loans.*

*In addition this loan was for debt consolidation so it was reasonable for CCB to assume Mr H would be settling some of his other accounts and reducing his existing credit commitments.*

*Whilst there was some adverse information in his credit check with two defaults the most recent was 29 months before and all Mr H's active accounts were up-to-date. The only missed payment in the last year was on a utility account 10 months ago and that had been brought up-to-date. Mr H had a debt-to-income ratio of less than 40% so was not over-indebted. So I don't think the results of the credit check ought to have led to a different lending decision either. Mr H says he had been in a debt repayment plan since 2007 but this was not apparent on the credit check and I can only fairly expect CCB to respond to the results of its credit search.*

*Also, I note there were changes to Mr H's circumstances after his loan started: he had bouts of serious illness, as well as the increased living and housing costs he has referenced. But this would not have been foreseeable to CCB at the point of sale.*

*Overall, I cannot fairly conclude CCB was wrong to lend to Mr H.*

*I've also considered whether the relationship might have been unfair under Section 140A of the Consumer Credit Act 1974. However, for the reasons I've already given, I don't think CCB lent irresponsibly to Mr H or otherwise treated him unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here.*

*I am sorry to hear Mr H has struggled financially and that this impacted his mental health. I can see CCB asked for an updated income and expenditure form to see how to best support Mr H but this was not completed. I would urge him to contact CCB to enable it to offer the appropriate assistance. I hope he now has the support he needs. StepChange (tel: 0330 055 2198) and MIND (tel: 0300 123 3393) are organisations that can provide free assistance, with debt management and mental health respectively, if not.*

CCB did not respond to my provisional decision. Mr H did and disagreed with my findings. He said he didn't think everything was looked into. He did not have a disposable income of £315 - after paying everything and nursery fees he really had nothing left over. He submitted a copy of the nursery invoice to show how much childcare was at the time as well as a list of all his expenditures.

### **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.

CCB 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.

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 CCB's lending policy should be prudent, and should be applied in a manner which protects CCB's members as a whole.

To decide this complaint I therefore looked at the checks CCB carried out, assessed whether these allowed it to meet its obligations and considered, if not, what adequate checks would have most likely shown. My findings are set out in the extract above.

In response to my provisional decision Mr H argued that CCB did not do enough, he had no disposable income. To evidence this he sent an invoice for his monthly childcare costs and a list of all his outgoings.

But I cannot find a number of the expenses he listed, including the childcare costs he detailed, on his bank statements. This means that had CCB carried out what I find to be a proportionate level of checks it would likely not have been aware of Mr H's total outgoings. I am not saying I doubt the figures he submitted, nor his testimony that he really had no disposable income. Rather, that it is likely CCB could have reviewed his bank statements to calculate his fixed outgoings and not known about some of the costs he has now detailed.

So my finding stands that CCB could fairly have made the same lending decision had it completed proportionate checks. Given the term and value of the loan I do not find it would have been proportionate to complete the level of financial review needed to understand Mr H's financial position as he now presents it.

And given this loan was for debt consolidation I still think it was reasonable for CCB to assume Mr H would be settling some of his other accounts and reducing his existing credit commitments.

It follows for all the reasons set out above my decision remains that CCB was not wrong to lend to Mr H.

### **My final decision**

I am not upholding Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 12 August 2024.

Rebecca Connelley  
**Ombudsman**