

The complaint

Mr R complains that Uncle Buck Finance LLP lent to him in an irresponsible manner.

What happened

Mr R was given nine loans by Uncle Buck between July 2015 and December 2017. Each of the loans was repayable in three monthly instalments. Mr R successfully repaid the first eight loans but a balance remained outstanding on his final loan. Uncle Buck has sold that debt to a third party. A summary of Mr R's borrowing from Uncle Buck is as follows;

Loan Number	Borrowing Date	Repayment Date	Loan Amount
1	21/07/2015	24/09/2015	£ 250
2	01/10/2015	22/12/2015	£ 450
3	23/12/2015	31/03/2016	£ 400
4	31/03/2016	30/06/2016	£ 600
5	07/07/2016	29/09/2016	£ 425
6	18/11/2016	23/02/2017	£ 200
7	01/07/2017	28/09/2017	£ 625
8	28/09/2017	21/12/2017	£ 450
9	22/12/2017	-	£ 450

Mr R's complaint has been assessed by one of our adjudicators. He didn't think Uncle Buck had been wrong to give the first three loans to Mr R. But he didn't think the remaining loans should have been agreed. So he asked Uncle Buck to pay Mr R some compensation.

Uncle Buck didn't agree with that assessment, but it did offer to refund the interest and charges that Mr R had paid on loan 8. Mr R didn't accept that offer. So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process. If Mr R accepts my decision it is legally binding on both parties.

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 general approach to complaints about short-term lending - including all of the relevant rules, guidance and good industry practice - on our website.

Uncle Buck needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure that Mr R could repay the loans in a sustainable manner. These checks could take into account a

number of different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure. With this in mind, in the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate.

But certain factors might point to the fact that Uncle Buck should fairly and reasonably have done more to establish that any lending was sustainable for a consumer. These factors include:

- the *lower* a customer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount 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 *greater* the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

I think that it is important for me to start by saying that Uncle Buck was required to establish whether Mr R could sustainably repay his loans – not just whether the loan payments were affordable on a strict pounds and pence calculation.

Of course the loan payments being affordable on this basis might be an indication a consumer could sustainably make their repayments. But it doesn't automatically follow this is the case. This is because the relevant regulations define sustainable as being without undue difficulties and in particular the customer should be able to make repayments on time, while meeting other reasonable commitments; as well as without having to borrow to meet the repayments. And it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower won't be able to make their repayments sustainably if they're unlikely to be able to make their repayments without borrowing further.

I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Mr R's complaint.

Uncle Buck did some checks before it lent to Mr R. It asked him for details of his income, and his normal expenditure. And Uncle Buck says it validated this information by speaking to Mr R on the phone before it agreed loans 4 and 5. Uncle Buck also checked Mr R's credit file before agreeing each loan. I've looked at the results of those checks, particularly those from the time of the earlier loans, and they don't appear to show anything that I think should have caused additional concerns to the lender.

I think that the checks Uncle Buck did before agreeing the first three loans were proportionate. The amounts that Mr R needed to repay were small compared with the disposable income he'd declared. Given these repayment amounts, what was apparent about Mr R's circumstances at the time, and his borrowing history with the lender, I don't think it would've been proportionate for Uncle Buck to ask him for the amount of information that would be needed to show the lending was unsustainable before agreeing the first three loans.

But having considered the overall pattern of Uncle Buck's lending history with Mr R I think by loan 4 the lender should reasonably have seen that further lending was unsustainable, or otherwise harmful. And so Uncle Buck should have realised that it shouldn't provide further loans.

By this time Mr R had been borrowing from Uncle Buck, with hardly any break, for a period of more than eight months. He generally took a new loan at most just a few days after repaying some earlier borrowing. I think that pattern of frequent borrowing should have indicated to Uncle Buck that Mr R was most likely having significant problems managing his money.

When Mr R asked for loan 4 he wasn't making any inroads to the amount he owed the lender. In fact there was a clear upward pattern to the amounts that Mr R was asking to borrow, and loan 4 was for more than double his first loan. It would have been reasonable for Uncle Buck to see this as a clear sign that Mr R's indebtedness was increasing unsustainably.

I have considered that Uncle Buck says it spoke to Mr R before loans 4 and 5 were agreed. Without recordings, or transcripts, of those calls I cannot be sure what was discussed. But I would think it unreasonable for Uncle Buck to expect that Mr R would provide information on those calls that would contradict the income and expenditure information he'd already submitted. And as I've said above, I think the lender's concerns here should have been about the sustainability of Mr R's repayments – not just whether the loan repayments were affordable on a strict pounds and pence calculation.

I have also noted that Mr R's reliance on borrowing from Uncle Buck appears to have reduced around the time of loan 6. The amounts he borrowed had reduced a little and there were some longer gaps between loans 5 and 6 and between loans 6 and 7. But on balance, having considered what had gone before, I don't think these factors were enough for Uncle Buck to reasonably conclude that Mr R's finances had returned to a more stable footing.

I think that Mr R lost out because Uncle Buck continued to provide borrowing from loan 4 onwards because these loans had the effect of unfairly prolonging his indebtedness by allowing him to take expensive credit intended for short-term use over an extended period of time. The sheer number of loans was likely to have had negative implications on Mr R's ability to access mainstream credit and so kept him in the market for these high-cost loans.

So, in summary, I don't think Uncle Buck should have continued lending to Mr R from loan 4 onwards. Uncle Buck needs to pay Mr R some compensation.

Putting things right

I don't think Uncle Buck should have agreed to lend to Mr R after, and including, the loan that he took on 31 March 2016. Uncle Buck has sold the debt relating to the final loan to a third party. If Uncle Buck is able, and willing, to take that debt back into its own books, it should;

- refund all the interest and charges Mr R paid on loans 4 to 8
- pay interest of 8% simple a year on any refunded interest and charges from the date they were paid (if they were) to the date of settlement†
- remove any interest and charges still outstanding on loan 9 and treat all the payments Mr R made towards this loan (whether to Uncle Buck or the third party) as payments towards the capital
- if reworking Mr R's loan 9 account as I've directed results in Mr R effectively having made payments above the original capital borrowed, then Uncle Buck should refund these overpayments with 8% simple interest calculated on the overpayments, from the date the overpayments would have arisen, to the date of settlement†.
- if reworking Mr R's loan 9 account leaves an amount of capital still to be paid, then Uncle Buck can use the total refund for loans 4 to 8 (after the deduction of tax) to offset this. And if there is still an outstanding capital balance then I remind Uncle

Buck that it should take a sympathetic view when seeking to agree an affordable repayment plan with Mr R

- remove all information about loans 4 to 8 from Mr R's credit file, and about loan 9 when it is fully repaid

If Uncle Buck does not take the outstanding debt in relation to loan 9 back into its books, it should;

- refund all the interest and charges (including any added by the third party) Mr R has paid on loans 4 to 9
- pay interest of 8% simple a year on any refunded interest and charges from the date they were paid (if they were) to the date of settlement†
- pay an amount to Mr R equivalent to any interest and charges still outstanding on loan 9 that have been added by Uncle Buck or the third party. It will be up to Mr R to decide whether to use this sum to reduce the amount he owes to the third party
- remove all information about loans 4 to 8 from Mr R's credit file, and about loan 9 when it is fully repaid. Uncle Buck should also request the third party to remove any information it has added about loan 9 once it has been repaid.

† HM Revenue & Customs requires Uncle Buck to take off tax from this interest. Uncle Buck must give Mr R a certificate showing how much tax it's taken off if he asks for one.

My final decision

My final decision is that I partly uphold Mr R's complaint and direct Uncle Buck Finance LLP to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 22 April 2020.

Paul Reilly
Ombudsman