DRN-1653474

The complaint

Mrs H has complained that Advancis Limited trading as Buddy Loans irresponsibly provided her with an unaffordable guarantor loan.

What happened

Mrs H was given a guarantor loan by Buddy Loans in April 2017 for £3,500. Mrs H's loan was to be repaid in 60 monthly instalments of around £138. The total amount due to be repaid over the five-year loan term, including interest, was just over £8,344. I understand the loan was settled early in 2019.

One of our investigators has looked into the complaint. She didn't think Buddy Loans should have provided Mrs H with the loan and she asked the lender to put things right. Buddy Loans didn't agree with the adjudicator's assessment, and so the complaint has been passed to me to make a final decision about the matter.

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 complaints about high cost credit and guarantor loans on our website - including the key relevant rules, guidance, good industry practice and law. And I've considered this approach when deciding Mrs H's complaint.

Buddy Loans needed to take reasonable steps to ensure that it didn't lend to Mrs H irresponsibly.

I think there are key questions I need to consider in order to decide what's fair and reasonable in the circumstances of this particular complaint:

- Did Buddy Loans carry out reasonable and proportionate checks to satisfy itself that Mrs H was in a position to sustainably repay the loan? If not, what would reasonable and proportionate checks have shown at the time?
- Did Buddy Loans make a fair lending decision?
- Did Buddy Loans act unfairly or unreasonably towards Mrs H in some other way?

Buddy Loans was required to carry out a borrower focussed assessment (and a similar assessment on the guarantor). This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower" focussed – so Buddy Loans had to think about whether repaying the loan sustainably would cause difficulties or adverse consequences for Mrs H. In other words, it wasn't enough for Buddy Loans to simply think about the likelihood of it getting its money back, it had to consider the impact of loan repayments on Mrs H. The existence of a guarantee and the potential for Buddy Loans to pursue the guarantor instead of Mrs H for the loan payments doesn't alter, lessen, or dilute this obligation.

Buddy Loans had to carry out reasonable and proportionate checks to satisfy itself that Mrs H would be able repay the loan sustainably. There was no set list of checks that Buddy Loans had to do, but it could take into account a number of different things such as the loan amount, the length of the loan term, the repayment amounts, and the borrower's overall financial circumstances.

In light of this, I think that a reasonable and proportionate check ought generally to have been more thorough:

- 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 longer the term of the loan (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make payments for an extended period); and

- 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).

Did Buddy Loans carry out reasonable and proportionate checks?

Buddy Loans says it asked Mrs H for information about her income and expenditure and it carried out some credit checks. Buddy Loans says it thinks the loan was affordable for Mrs H, based on the information she provided to them at the time and what it found in its checks.

But requesting information from a borrower doesn't, on its own, mean that a lender will have carried out a borrower focussed assessment of the borrower's ability to sustainably repay a loan.

Buddy Loans was aware from Mrs H's credit report that she'd taken another significant loan of £7,500 payable over five years from another lender only a few months before she made an application to Buddy Loans. The credit report also showed that Mrs H had a number of historic defaults and a CCJ that had not been satisfied. Mrs H was applying to Buddy Loans for an expensive loan, repayable over a long period and the rules and guidance suggest that the risk of any credit not being sustainable directly relates to the amount of credit granted and the total charge for credit - relative to the customer's financial situation.

Buddy Loans might have been prepared to accept this credit risk because the loan had a guarantor who was equally liable with Mrs H. This might have given Buddy Loans more confidence that the loan repayments would be made. But I don't think that the existence of the guarantor, on its own, meant that Mrs H herself would be able to sustainably make the repayments - given the amount being lent, the repayment amounts and the extended length of the loan term.

Buddy Loans says the most recent previous default happened over a year prior to Mrs H applying for her loan. But taking things in the round, I think Buddy Loans ought reasonably have realised that this was a consumer with history of credit defaults and, given her application to Buddy Loans for £3,500 in addition to the £7,500 she'd recently borrowed elsewhere, this was someone who was having difficulties getting out from under her financial problems. Mrs H was going to have to maintain her loan repayments every month for five years and there was a real possibility that the guarantor would be required to step in and make the payments on her behalf.

In these circumstances I think Buddy Loans ought reasonably to have realised that in order for its affordability checks to be fair, reasonable and proportionate, they needed to be more detailed and contain a greater degree of independent verification.

Buddy Loans has told us it had verified Mrs H's income and it doesn't think additional checks were necessary. The rules and regulations say that where a lender takes income or expenditure into account, it is not generally sufficient for it to rely solely on a statement of those matters made by the customer. I appreciate that Buddy Loans had acquired a credit report and it thinks it should fairly rely on the information that Mrs H provided at the time. But as I explained above, I think Buddy Loans ought reasonably have sought a more detailed understanding of Mrs H's financial position in order to assess whether she'd be able to sustainably repay her loan over the extended loan term. So as well as asking Mrs H about the details of her income and expenditure, I think Buddy Loans should have carried out more detailed checks into Mrs H's financial circumstances – for example by asking to see her bank statements.

Taking everything into account, I don't think the checks Buddy Loans did before agreeing to lend to Mrs H were fair, reasonable or proportionate.

What would reasonable and proportionate checks have shown at the time?

Mrs H has provided us with copies of her bank statement leading up to her application to Buddy Loans, so I can determine what better checks might have shown Buddy Loans at that time. And I have considered this information in light of what I've set out above. Of course, different checks might show different things. But I think if Buddy Loans had carried out what I consider to be proportionate checks, I think it's likely it would have discovered more about Mrs H's financial position. In particular I think it more likely than not Buddy Loans would have realised that Mrs H was regularly gambling very considerable amounts of money.

Buddy Loans says it thinks the loan was affordable for Mrs H, based on its analysis of her income and expenditure. But as I've already explained, Buddy Loans was required to establish whether Mrs H could *sustainably* make her loan repayments – not just whether the loan payments were technically affordable on a strict pounds and pence calculation.

Of course the loan payments being affordable on this basis might be an indication that a consumer could sustainably make the repayments. But it doesn't automatically follow that this is the case. And as a borrower shouldn't have to borrow further in order to make their payments, it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower won't be able to sustainably make their repayments if it is on notice that they are unlikely to be able to make their repayments without borrowing further.

I think if Buddy Loans ought reasonably to have realised that Mrs H was having serious difficulties managing her finances and that she was most likely borrowing as a result of her gambling – and would also most likely need to borrow elsewhere to repay her loan from Buddy Loans. I think Buddy Loans ought reasonably have realised that it was unlikely that Mrs H would be able to sustainably repay her loan. So it should reasonably have concluded that it was not appropriate to lend to her.

Did Buddy Loans act unfairly or unreasonably towards Mrs H in some other way?

Mrs H's representative has told Buddy Loans that Mrs H was suffering from a mental health condition when she applied for the loan. I am sorry that Mrs H has been suffering ill health and I appreciate that she has gone through a very difficult time. But I haven't seen anything to make me think that her condition had been disclosed to the lender when she applied for her loan. So I don't think Buddy Loans could reasonably have known that Mrs H was a vulnerable consumer when it made its lending decision, as it does not appear to have been made aware that she was suffering from poor mental health at the time.

Having reviewed the matter carefully, I can't fairly say that Buddy Loans acted unfairly or unreasonably towards Mrs H in some other way.

But I don't think Buddy Loans should have provided the loan to her. So I am upholding Mrs H's complaint about the loan

Putting things right

I think it is fair and reasonable for Mrs H to have repaid the principal amount that she borrowed, because she had the benefit of that lending. But she has paid interest and charges on a loan that shouldn't have been provided to her. So I think Mrs H has lost out and Buddy Loans should put things right for her.

Buddy Loans should:

a) Remove all interest, fees and charges applied to the loan from the outset. The payments Mrs H made should then be deducted from the new starting balance. If the payments Mrs H has made total more than the amount she was originally lent, then any surplus should be treated as overpayments and refunded to her.

b) Add 8% simple interest* calculated on any overpayments made, from the date they were paid by Mrs H to the date the complaint is settled.

c) Remove any adverse information recorded on Mrs H's credit file as a result of this loan.

*HM Revenue & Customs requires Buddy Loans to deduct tax from this interest. Buddy Loans should give Mrs H a certificate showing how much tax it's deducted, if she asks for one.

My final decision

Having considered all the evidence provided to me and reflecting on what is most likely to have happened in the circumstances, I uphold Mrs H's complaint and direct Advancis Limited trading as Buddy Loans to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 9 October 2020.

Sharon Parr

Ombudsman