DRN-1958765

The complaint

Mrs B complains that Advancis Limited, trading as Buddy Loans, lent to her irresponsibly.

What happened

Mrs B was given a guarantor loan by Buddy Loans in August 2018 for £2,000. Mrs B's loan was to be repaid in 36 monthly instalments of around £98. The total amount due to be repaid over the three-year loan term, including interest, was just over £ 3,514. I understand Mrs B is still repaying the loan.

Mrs B says she had a gambling problem at the time she applied for the loan. She complains Buddy Loans failed to carry out proportionate affordability checks or review her bank statements. She thinks had Buddy Loans done so, it would have seen that it shouldn't have lent to her. So, she says this lending is irresponsible.

One of our investigators has looked into the complaint. He didn't think Buddy Loans should have provided Mrs B with the loan and he 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 B's complaint.

Buddy Loans needed to take reasonable steps to ensure that it didn't lend to Mrs B 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 B 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 B 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 B. 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 B. The existence of a guarantee and the potential for Buddy Loans to pursue the guarantor instead of Mrs B 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 B 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).

<u>Did Buddy Loans carry out reasonable and proportionate checks?</u>

Buddy Loans asked Mrs B for information about her income and expenditure and it acquired a credit report. Buddy Loans has told us it performs a number of checks to confirm the information provided by the borrower. It thinks that the checks it carried out before it agreed to lend to Mrs B were reasonable and proportionate, and that the loan was affordable for her. But I don't think it's enough for a lender to simply carry out checks. I would expect a lender to respond appropriately to the information it gathers when assessing a customer's application for lending.

The information gathered by Buddy Loans from its credit report showed that in the previous six months, Mrs B had borrowed around £28,600 across five unsecured loans. She had added a £4,500 overdraft facility on one of her current accounts and the balance stood at around £4,350. She had also increased the overdraft facility on another current account from £300 to £1,500. So, I think that Buddy Loans ought to have been aware of a real risk that Mrs B's dependency on credit could – or had already – become unsustainable.

Mrs B pre-empted Buddy Loans' questions about her income and expenditure by first explaining that her husband earnt significantly more than she did and as such, he covered all the household expenses from his income. Buddy Loans accepted this at face value, without further verification or evidence and did not challenge her further about how much she contributed towards the household spend. As a result, it overrode the checks in place as part of its electronic validation system. I think fair to say that, given her recent number of applications, Mrs B was likely to have been familiar with the sort of information Buddy Loans would ask as part of its application process. So, in my opinion, not checking further that she didn't contribute at all towards the household spend and accepting it at face-value was a poor decision in the 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 B'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 B provided at the time. But as I explained above, I think Buddy Loans ought to have reasonably sought a more detailed understanding of Mrs B'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 B about the details of her income and expenditure, I think Buddy Loans should have carried out more detailed checks into Mrs B's financial circumstances – for example, as she ran her own business and had only traded for around 18 months, 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 B were fair, reasonable or proportionate.

<u>What would reasonable and proportionate checks have shown at the time?</u>

Mrs B has provided us with copies of her bank statements 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 B's financial position. In particular I think it more likely than not Buddy Loans would have realised that Mrs B was regularly gambling very considerable amounts of money.

Buddy Loans says it thinks the loan was affordable for Mrs B, based on its analysis of her income and expenditure. But as I've already explained, Buddy Loans was required to establish whether Mrs B 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 B 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 (given that is what she was intending to do on this occasion and repay another lender). I think Buddy Loans ought reasonably to have realised that it was unlikely that Mrs B would be able to sustainably repay her loan. So it should reasonably have concluded that it was not appropriate to lend to her.

<u>Did Buddy Loans act unfairly or unreasonably towards Mrs B in some other way?</u>

I've carefully thought about everything provided. Having reviewed the matter carefully, I don't find that Buddy Loans acted unfairly or unreasonably towards Mrs B in some other way.

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

Putting things right

When I find that a business has done something wrong, I'd normally direct that business – as far as it's reasonably practicable – to put the complainant in the position they *would be in now* if the mistakes it made hadn't happened.

In this case, that would mean putting Mrs B in the position she would now be in if she hadn't been given the loan in question.

However, this isn't straightforward when the complaint is about unaffordable lending. Mrs B was given the loan and she used the money. In these circumstances, I can't undo what's already been done. So, it isn't possible to put Mrs B back in the position she would be in if she hadn't been given the loan in the first place.

Instead, I must consider another way of putting things right fairly and reasonably given the circumstances of this complaint. Having done so, I think Buddy Loans should:

a) Remove all interest, fees and charges applied to the loan from the outset. The payments Mrs B made should then be deducted from the new starting balance. If the payments Mrs B 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 B to the date the complaint is settled.
c) Remove any adverse information recorded on Mrs B'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 B a certificate showing how much tax it's deducted, if she asks for one.

My final decision

For the reasons I've explained, I'm upholding Mrs B's complaint. Advancis Limited should put things right for Mrs B in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 22 March 2021.

Stefan Riedel
Ombudsman