

The complaint

Mr B complains that a loan given to him by Advancis Limited trading as Buddy Loans was unaffordable for him.

What happened

In April 2019, Mr B applied for – and was given – a loan of £4,250. It was to be repaid in 48 instalments of around £182 per month with a total amount repayable of £8,783.26. Mr B says he was in a cycle of borrowing money to repay other debts, couldn't afford the repayments so would borrow more, and he was gambling. He says this loan was unaffordable for him.

Buddy Loans said it had carried out its usual checks and was satisfied that Mr B could afford the loan based on what he'd told it and the information it gathered.

Mr B referred his complaint to us and one of our investigators looked into it. She felt the information Buddy Loans gathered ought to have led it to carry out further checks on Mr B's finances. Had it done so she thought it would have found the loan was unaffordable from the start. She asked Buddy Loans to put things right.

Mr B accepted what our investigator said, Buddy Loans didn't. As there was no agreement, Mr B's complaint has been passed to me for a final decision.

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 on our website – including the key relevant rules, guidance good industry practice and law. I've considered this approach when deciding this complaint.

Buddy Loans needed to take reasonable steps to ensure that it didn't lend to Mr B irresponsibly by carrying out reasonable and proportionate checks. I think there are key questions I need to consider in order to decide what is fair and reasonable in the circumstances of this complaint:

- Did Buddy Loans carry out reasonable and proportionate checks to satisfy itself that Mr 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 Mr B in some other way?

Buddy Loans was required to carry out a borrower focussed assessment. This assessment is sometimes referred to as an 'affordability check' or 'affordability assessment'. The purpose of the checks is for Buddy Loans to think about whether repaying the loan sustainably would cause difficulties or adverse consequences for Mr B. In other words, it wasn't about Buddy

Loans assessing the likelihood of it being repaid, but it had to consider the impact of the loan repayments on Mr B. The fact that the loan was guaranteed by a third party and the potential for it to pursue the guarantor instead of Mr B doesn't alter or lessen the obligation.

Buddy Loans had to carry out reasonable and proportionate checks to satisfy itself that Mr B would be able to repay the loan sustainably. There was no set list of checks that it had to do, but it could take into account several different things such as the amount and length of the loan, the amount of the monthly repayments and the overall circumstances of the borrower. Taking all that into account, I think a reasonable and proportionate check ought generally to have been more thorough where:

- a customer as a low income (because it may make it more difficult to make loan payments of a set amount from a low level of income);
- the higher the amount due to be repaid (because it may be more difficult to meet a higher repayment for a particular level of income);
- the longer the term of the loan (because the total cost of the credit is likely to be higher, and the customer is obliged to make payments for a longer 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 (because of the risk of repeated refinancing may signal that the borrowing has become or was becoming unsustainable).

Did Buddy Loans carry out reasonable and proportionate checks to satisfy itself that Mr B was in a position to sustainably repay the loan?

Buddy Loans asked Mr B for details of his income and expenditure and got his permission to review his credit file. It says it carried out a number of checks to confirm what Mr B had told it. Buddy Loans says the checks it carried out before agreeing to lend to Mr B were reasonable and proportionate, and it believes the loans were affordable for him.

Mr B's credit file shows he had a number of credit accounts elsewhere, most of which he was looking to repay with this loan. It shows he'd opened four new accounts in the last six months, one of which was a guarantor loan with repayments of £309 which he wasn't looking to refinance. Buddy Loans has said itself that it noted that there'd been arrears on some of the accounts '*in the past*' but these arrears had been cleared.

The arrears that had accrued however were within the last six months and there had been an 'arrangement to pay' on some of them. There were also several occasions when Mr B's accounts had been over their limits – on one account during each of the last three months reported. While the arrears had been cleared, that coincided with Mr B taking another guarantor loan. So I think there were signs of financial pressure on his credit file.

Mr B told Buddy Loans he wanted to refinance all his existing debts with the exception of a guarantor loan he'd taken in February 2019. The repayments on that loan were £309 per month and it was due to run for two years. When added to the £181 Mr B would have to pay Buddy Loans for this loan, Mr B's payments totalled £490 per month. Given he'd declared monthly earnings of £1,350, this meant over a third of his monthly income would be going towards repaying creditors. This level of commitment to credit is often considered to be a sign of potential financial difficulties.

I acknowledge that consolidating Mr B's debts with this loan would have reduced his monthly commitments and made his finances simpler to manage. But without refinancing *all* Mr B's debts, he was being left with a large commitment relative to his income.

During the conversation Mr B had with Buddy Loans when discussing his application, the underwriter questioned the amount Mr B was borrowing. The underwriter believed there would be over £1,000 left after all Mr B's debts were repaid. He asked Mr B what that was for and Mr B had no real plan for it. He said it was for '*emergencies - just for backup*'. The underwriter suggested Mr B might be looking to book another holiday which Mr B agreed would be '*handy*', so the underwriter said he'd put it down as '*emergencies and possibly another holiday*.'

So from the call, it seems Buddy Loans was lending new money. The underwriter said he calculated that Mr B had a monthly disposable income – after this new loan – of just over £400.

Given the financial pressures we can see from his credit file including recent arrears, I think Buddy Loans should have asked further questions to gain a better grasp of Mr B's financial situation – especially as its calculations showed it was lending new money for which there was no real plan.

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

I've outlined above some of the circumstances which I think ought to have led Buddy Loans to carry out further checks on Mr B's finances. I think it would have been reasonable for Buddy Loans to get a more detailed understanding of Mr B's financial situation, for example by asking to see several months of his bank statements.

Mr B has provided us with copies of his bank statements for the period leading up to the loan being drawn. The statements show Mr B's income was slightly lower than he'd said on the application but given that he was paid four-weekly rather than monthly, I think the income quoted is reasonable.

In the last few months, the statements show he was regularly in his overdraft and there were fees for unarranged overdraft usage and unpaid items. This shows that Mr B was finding it difficult to live within his means despite Buddy Loans having calculated he had in excess of £400 disposable income per month.

A closer look at Mr B's statements shows he was gambling regularly. I think the volume and frequency of these transactions, together with the pressures evident on his credit file I've mentioned above mean it's unlikely the Mr B would have been able to repay this loan on a sustainable basis.

It follows that I don't think Buddy Loans reached a fair lending decision on this loan.

Did Buddy Loans act unfairly or unreasonably towards Mr B in some other way?

I've carefully read, listened to and thought about all the evidence provided by each party to this complaint. Having done so, I don't think Buddy Loans has acted unfairly or unreasonably towards Mr B in some other way.

But I do think Buddy Loans should have refused to lend to Mr B, so I am upholding his complaint about the loan.

Putting things right

When I find that a business has done something wrong, I'd normally direct that business to put the complainant in the position they would be in now if the mistake it made hadn't

happened, as far as is reasonably practical.

In this case, that would mean putting Mr B in the position he would be in now if he hadn't been given the loans. But he has been given the loans and has used the money.

So, I think Buddy Loans should:

- calculate the total amount of money Mr B received as a result of having been given this loan and deduct the repayments he's made.
 - If this results in Mr B having paid more than he received, the overpayments should be refunded along with 8% simple interest (calculated from the date the overpayments were made until the date of settlement).*
 - If any capital balance remains outstanding, then Buddy Loans should attempt to arrange an affordable/suitable payment plan with Mr B.
- remove any negative information recorded on Mr B's credit file regarding the loans.

*If Buddy Loans considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr B how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold Mr B's complaint. Advancis Limited trading as Buddy Loans should put things right as I've described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 1 September 2021.

Richard Hale
Ombudsman