

The complaint

Mr S complains that Advancis Limited trading as Buddy Loans agreed loans for him which were unaffordable.

What happened

Mr S took the following guarantor loans with Buddy Loans:

	Date	Amount	Term	Monthly Repayment	Purpose
Loan 1	4 May 2016	£1,500	18 months	£113.07	Debt consolidation
Loan 2	9 December 2016	£2,500	2 years	£154.54	Debt consolidation
Loan 3	2 November 2017	£4,000	3 years	£195.16	Debt consolidation
Loan 4	22 June 2018	£6,500	5 years	£256.91	Debt consolidation

Mr S says when he applied for each loan, Buddy Loans didn't carry out proper checks to ensure he could afford the repayments. He says if it had done so, it would have seen he several loans and other credit elsewhere, his expenses were rough guesses and he had a gambling problem.

Buddy Loans said says it carried out reasonable and proportionate checks in line with its usual process based on the information Mr S provided, and it had no concerns about his ability to afford the loan. Mr S disagreed and referred his complaint to us.

One of our investigators looked into the complaint. She said that given the amounts, duration and monthly repayments, she thought Buddy Loans should have carried out more thorough checks. She felt if it had done so, it would have refused to lend to Mr S. Our investigator asked Buddy Loans to put matters right.

Mr S agreed with our investigator, but Buddy Loans didn't. As there was no agreement, the 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 S 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 S was in a position to sustainably repay the loan?

- If not, what would reasonable and proportionate checks have shown at the time and did Buddy Loans make a fair lending decision?
- Did Buddy Loans act unfairly or unreasonably towards Mr S 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 assessment is for Buddy Loans to think about whether repaying the loan sustainably would cause difficulties or adverse consequences for the customer. 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 S. The fact that the loans were guaranteed by a third party and the potential of Buddy Loans to pursue the guarantor instead of Mr S doesn't alter or lessen the obligation.

Buddy Loans had to carry out reasonable and proportionate checks to satisfy itself that Mr S 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?

Loan 1

When Mr S applied for loan 1, he declared a monthly income of £1,200 and expenses of £861. He said he paid £168 to creditors - including the repayment for this loan of £113. Buddy Loans calculated that this left him with a monthly disposable income of approximately £170. So I can understand why Buddy Loans felt the new loan would be affordable for him.

But Mr S tells us that the expenditure details Buddy Loans gathered were based on rough guesses. I've listened to the call where Buddy Loans asked him about his expenditure. With the exception of his board (he lived with parents) and motoring expenses about which he was certain, Mr S seems fairly vague about where his money goes.

For example, when asked if he spent any *'money on busses trains trams taxis...visiting family, friends...during the course of the month'* he said *'err it's sporadic so I never know. If I go out or whatever I don't know'*. The adviser asked *'how often do you go out?'* and he replied *'err every couple of weeks...I'd say...twenty five quid a month on taxis probably.'* The advisor then moved on to *'food, clothing, toiletries going out'*. Mr S said *'it depends...I roughly spend about fifty pound a week [for lunches]'*. The adviser asks *'and what about other things like clothing toiletries, going out things like that'* to which he replies *'err...I've no*

idea...I'd probably say about another sixty quid a week'.

The rules lenders must follow are set out by the industry regulator, the Financial Conduct Authority, in its Consumer Credit Sourcebook (CONC). At the time Buddy Loans agreed this loan, CONC 5.3.1 4(b) said *'it is not generally sufficient for a firm to rely solely for its assessment of the customer's income and expenditure, on a statement of those matters made by the customer'*. I've seen no evidence that Buddy Loans asked further questions to satisfy itself that Mr S would be able to sustainably repay the loan before agreeing to lend.

It seems to me from the conversation outlined above that Mr S didn't have a good handle on where his money goes. Given the rules for lenders which I've set out, I think it would have been reasonable for Buddy Loans to carry out some further checks to try to verify the figures Mr S had quoted to ensure the loan was affordable for him.

In a call earlier in the process, Buddy Loans told Mr S it would have a look at his credit file and asked if he knew what was on it. Mr S said his file was *'shocking – I'm trying to get it better. I went through quite a lot of things when I was younger and it's catching up with me nowadays.'* The adviser says he could see *'there is a fair bit of adverse credit on there...there's three CCJ's [County Court Judgements] on it aren't there'*. He goes on to say, *'it doesn't look too bad, I mean, the CCJ's I've looked at are putting you just over indebted'* and confirmed the new loan was *'just for debt consolidation'* which Mr S confirmed. The adviser didn't explore in any detail how this loan would be used to reduce his indebtedness and confirmed he was happy with everything.

Looking at Mr S's credit file there were seven defaulted accounts totalling £6,370 and three CCJ's totalling £2,183. Most of the defaults were from 2011 which does tie in with what Mr S had said about troubles when he was younger. The CCJ's were more recent. On top of these debts, he had active account balances of £7,062.

Mr S said the loan was for debt consolidation, but neither of the advisers he spoke to gathered any information about which debts he was looking to repay. The only discussion relating to the purpose of the loan (aside from confirming it was for debt consolidation) was to improve Mr S's credit file. It seems therefore he was seeking to repay some of the defaults or CCJ's. But given the balances of the defaults and CCJ's a loan of £1,500 was unlikely to achieve what Mr S was seeking. Furthermore, defaulted debts and CCJ's don't generally attract interest, but Mr S had applied for a loan priced at 49.9% APR. It doesn't appear to have been in his interest to take a loan at this price to repay debts which no longer attract interest.

Taking all the above into account, I'm not satisfied that Buddy Loans carried out reasonable and proportionate checks for Loan 1.

Further loans

We can see from the table above, that Mr S applied for and received a further three loans from Buddy Loans over the next two years. Each one was for more than the last, over a longer term, with higher repayments and for the same purpose; debt consolidation.

Throughout that period, most of Mr S's circumstances remained the same. There were small increases in his income, and Buddy Loans obtained payslips to support that. His credit file remained largely unchanged until Loan 4 when most the defaults had dropped off his records as they'd passed the six-year time limit. There were also new credit agreements in place each time.

I've listened to some of the calls Buddy Loans had with Mr S when he applied for the subsequent loans. For loan 2, after an initial enquiry from him about whether a top up was possible, Buddy Loans confirmed he was eligible for a top up and gave an outline of how it would work. The advisor asked Mr S how much he was looking to borrow and Mr S said *'I'm not sure, I'm just looking at the options really'*. The adviser asked if he had any options in mind, but again Mr S wasn't sure.

Mr S then submitted an application for loan 2 and Buddy Loans called him to go through an income and expenditure. By this time, Mr S said he was paying less to his parents, and when asked about other items such as food, clothing and toiletries Mr S said, *'I've no idea'* and when prompted by the adviser about what he'd said last time, he agreed £30 *'was about right'*. When asked what his plans were for the extra £1,500 or so he was borrowing (once loan 1 was repaid) he said he wanted to pay off his credit card. Looking at his credit file, I can see he had two, with balances of around £800 in total, so it seems there was around £700 of 'new money' being applied for.

Taking all the above into account – including what it knew about Mr S from loan 1, I'm not satisfied that Buddy Loans carried out reasonable and proportionate checks for loan 2.

The subsequent applications for loans 3 and 4 followed a similar pattern. I think the increase in value, repayments and terms of the loans, coupled with further credit agreements being taken out elsewhere, ought to have led Buddy Loans to look further at Mr S's finances before agreeing the loans. It follows that, I'm not satisfied that Buddy Loans carried out reasonable and proportionate checks for loans 3 and 4.

What would reasonable and proportionate checks have shown at the time and did Buddy Loans make a fair lending decision?

I've outlined above some of the circumstances which I think ought to have led Buddy Loans to carry out further checks on Mr S's finances. I think it would have been reasonable for it to get a detailed understanding of his expenditure, for example by asking to see several months of his bank statements in light of what appears to be a reliance on credit.

Mr S has provided us with copies of his bank statements for periods shortly before each loan was taken. A careful review of the statements brings in to question some of the information provided to Buddy Loans.

There are a significant number of gambling transactions showing on each statement and a reliance of rolling credit facilities to keep his account working. It is clear he is relying on credit facilities to meet his obligations to other credit providers. For a credit agreement to be repaid sustainably, CONC 5.3.1 (6) says it should be repayable *'(a) without undue difficulties, in particular:*

- (i) the customer should be able to make repayments on time, while meeting other reasonable commitments; and*
- (ii) without having to borrow to meet the repayments;'*

I think if further checks had been carried out by Buddy Loans, it ought to have realised that none of the loans it gave to Mr S would have been repayable on a sustainable basis. It follows that I don't think Buddy Loans made a fair lending decision when it agreed to lend to Mr S.

Did Buddy Loans act unfairly or unreasonably towards Mr S 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 S in some other way.

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

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 S in the position he would be in now if he hadn't been given the loans. Mr S was given the loans and used the money.

So, I think Buddy Loans should:

- calculate the total amount of money Mr S received as a result of having been given all 4 loans and deduct the repayments Mr S has made.
 - If this results in Mr S 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 S.
- remove any negative information recorded on Mr S's credit file regarding loans 1 to 4.

*If Buddy Loans considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr S 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 S'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 S to accept or reject my decision before 18 August 2021.

Richard Hale
Ombudsman