

## The complaint

Ms O complains that Advancis Limited trading as Buddy Loans agreed loans for her which were unaffordable.

## What happened

Ms O took the following guarantor loans with Buddy Loans:

	Date	Amount	Term	Monthly Repayment	Purpose
Loan 1	20 June 2018	£5,000	5 years	£197.62	Debt consolidation & home improvements
Loan 2	17 March 2019	£4,000	5 years	£158.10	Debt consolidation

Ms O says the loans were unaffordable for her. She says if Buddy Loans had checked her credit file properly it would have seen a lot of missed payments and a lot of debt she was struggling to pay. She says if Buddy Loans had checked her bank statements it would have seen she had a gambling problem and couldn't afford the loans.

Buddy Loans says it carried out reasonable and proportionate checks in line with its usual process based on the information Ms O provided, and it had no concerns about her ability to afford the loans. Ms O disagreed and referred her 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 Ms O. Our investigator asked Buddy Loans to put matters right.

Ms O accepted our investigators' opinion, but Buddy Loans didn't. As there was no agreement, Ms O'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 the approach when deciding the complaint.

Buddy Loans needed to take reasonable steps to ensure that it didn't lend to Ms O 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 the complaint:

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

Buddy Loans was required to carry out a borrower focussed assessment. The 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 Ms O. The fact that the loans were guaranteed by a third party and the potential of Buddy Loans to pursue the guarantor instead of Ms O doesn't alter or lessen the obligation.

Buddy Loans had to carry out reasonable and proportionate checks to satisfy itself that Ms O 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 she applied for loan 1, Ms O declared a monthly income of £1,200, expenses of £591 and payments to creditors – including this loan – of £228. Buddy Loans asked Ms O for evidence of her income. She provided screen shots of her bank statements which showed only money paid in to the account and no withdrawals or debits. Having looked at those, Buddy Loans reduced her income on the application to £1,152. This left her with a monthly disposable income of £334, so I can understand why Buddy Loans felt the new loan would be affordable for her.

Buddy Loans gained Ms O's permission to check her credit file during a call in which it discussed her application with her. The adviser said he noted she had *'a few items of adverse [information]'* on her credit file and said, *'I just need to run through them and see what's happening and whether you've got any payments in place.'* He listed five defaulted accounts and asked if she was paying anything to them. Ms O said, *'they're from a long time ago when I was with my husband so they're nothing to do with me anymore.'* The adviser correctly pointed out they are all in Ms O's name to which she replied *'oh, are they, right ok...as far as I'm aware [my ex-husband] should be paying all them'*. Again, the adviser correctly said the debts would only be in her name if they were her debts, and the kind of

debts they were, meant they couldn't be joint applications. Miss O said, *'yeah, I'll need to look into that, but I'm not paying anything to them'*.

The adviser went on to talk about two County Court Judgements (CCJ's) in Ms O's name and asked if she had anything in place for them. Ms O said, *'that's all sorted now...it was due to separation and a council tax bill he didn't pay it for about a year.'* The adviser asked which CCJ she was referring to, but she wasn't clear. The adviser went on to ask about any other credit Ms O may have elsewhere; she didn't have any (apart from another guarantor loan she was repaying with this one) and the call moved on to other aspects of the application.

It seems to me from this conversation, that Ms O didn't really know what debt she had outstanding and the adviser's stated aim of running through the debts to see what was happening with them wasn't properly fulfilled. Ms O simply said the debts were nothing to do with her. The adviser clearly felt they must be as they were in her name, but there was no proper discussion about what was happening with them.

Four of the defaults were from 2015 – around three years before this application. But one account had been defaulted in November 2017 – just a few months earlier. The CCJ's had been logged in May 2017 and January 2016.

The 'bank statement' Ms O provided was filtered to show only credits. The adviser queried another credit which had gone into the account. But I'd also have expected him to question why there were no debits showing on the account. The bank statement had led to Buddy Loans identifying Ms O had overstated her income, so it had reduced it on the application. I think that ought to have made it wonder if perhaps she'd understated her expenditure and prompted further questions when the statement didn't show any debits.

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 Ms O would be able to sustainably repay the loan before agreeing to lend.

Given the amount of information on her credit file and the vagueness of her answers regarding it, along with the absence of normal activity on her bank statements, I think Buddy Loans ought to have made further checks to properly understand her financial situation before agreeing to the loan.

I don't think Buddy Loans carried out reasonable and proportionate checks for loan 1.

## *Loan 2*

When she applied for loan 2, Ms O declared a monthly income of £1,470 which Buddy Loans confirmed through a payslip. She declared expenses of £695 and payments to creditors – including this loan – of £215. Buddy Loans calculated she had a monthly disposable income of £560 so again, I can understand why it felt the loan was affordable for her.

She told Buddy Loans she wanted to pay off another guarantor loan with another provider which had been taken in January 2019 (loan 1 had already been repaid), some credit card debt and some money she'd borrowed from friends and family.

Buddy Loans gained Ms O's permission to check her credit file. The adviser who did so, noted three accounts which had recently been marked as delinquent and asked Ms O about

them. She explained that her partner had lost his job but was now back in work, so she was looking to tidy things up.

Two of the delinquent accounts had been taken out since loan 1 and the third just shortly before. They were credit card and mail order debts which had been used to their maximum straight away, and the balances hadn't dropped at all. This implies there had been no payments made to the accounts with the exception of one payment to one account in July 2018 (but that account had remained over its limit and no further payments made).

Ms O's credit file also shows a further home credit account which was taken in November 2018 which has received no payments so far – it was showing as two months in arrears at this point. There's also a credit card taken in July 2018, used to its maximum and showing as two months in arrears.

The advisor noted that one of Ms O's utility accounts was in arrears and Ms O assured her that was resolved. But looking at her credit file, it's clear that Ms O had been in arrears almost every month on one or both of her utility accounts over the last year.

The adviser also noted there had been *'quite a few applications for credit'* on Ms O's file. She acknowledged that and explained she and her partner had been thinking about how to tide themselves over until he found a job, but they'd ended up borrowing from family rather than proceeding with the applications.

I think Buddy Loans ought to have carried out further checks to get a better understanding of Ms O's financial position. Let me explain why.

In the nine months between these applications, Ms O had taken on a number of other credit facilities but had not made any payments to the majority of them. She'd fallen into regular arrears on priority bills – her utilities – and was clearly reliant on credit. At the time of this application, CONC 5.2A.12 said, *'The firm must consider the customer's ability to make repayments under the agreement:*

- (3) without the customer having to borrow to meet the repayments;*
- (4) without failing to make any other payment the customer has a contractual or statutory obligation to make'*

CONC 5.2A.22 said, *'The firm should also have regard to information of which it is aware at the time the creditworthiness assessment is carried out that may indicate that:*

- (1) the customer is in, has recently experienced, or is likely to experience, financial difficulties'*

Taking into account the information I've highlighted above, I'm not persuaded that Buddy Loans did enough to meet the above rules. Ms O's credit file shows numerous credit agreements under a year old which are at or near the maximum and in arrears. Some of those arrears had started in the within a couple of months of the application although she'd said her partner was now back in work. It seems clear that she was reliant on credit to make ends meet and was in – or likely to experience – financial difficulties.

Ms O's declared monthly disposable income of £560 which – if accurate - would enable her to clear the arrears on these accounts in one month and reduce her contractual commitments substantially within a few months without having to take a sizable, costly long

term loan. I think Buddy Loans ought to have made further checks to properly understand her financial situation before agreeing to the loan.

I don't think Buddy Loans carried out reasonable and proportionate checks for Loan 2.

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 Ms O's finances. I think it would have been reasonable for it to get a detailed understanding of her expenditure, for example by asking to see copies of her *full* bank statements, in light of what appears to be a reliance on credit.

Ms O has provided us with copies of her bank statements for periods shortly before each loan was taken. There are a significant number of gambling transactions showing on each statement. I think the size and frequency of these transactions, together with the reliance on credit and the information available on Ms O's credit file, mean it's unlikely that Ms O would have been able to repay these loans on a sustainable basis.

It follows that I don't think Buddy Loans reached a fair lending decision on either on these loans.

Did Buddy Loans act unfairly or unreasonably towards Ms O 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 Ms O in some other way.

But I do think Buddy Loans should have refused to lend to Ms O, so I am upholding her 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 Ms O in the position she would be in now if she hadn't been given the loans. But she has been given the loans and has used the money.

So, I think Buddy Loans should:

- calculate the total amount of money Ms O received as a result of having been given both loans and deduct the repayments she's made.
  - If this results in Ms O having paid more than she 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 Ms O.
- remove any negative information recorded on Ms O'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 Ms O how much it's taken off. It should also give her a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

**My final decision**

My final decision is that I uphold Ms O'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 Ms O to accept or reject my decision before 17 August 2021.

Richard Hale  
**Ombudsman**