DRN-2209692

Complaint

Mr D has complained that Advancis Limited (trading as "Buddy Loans") irresponsibly provided him with unaffordable guarantor loans.

Background

Buddy Loans provided Mr D with two guarantor loans. Loan 1 was for £4,000.00 and provided in June 2017. This loan had an APR of 49.9% and a 42-month term. This all meant the total amount repayable of £7,601.74 was due to be repaid in a first instalment of £174.67 followed by 41 monthly instalments of around £181. This loan was settled in full with some of the proceeds from loan 2.

Loan 2 was for £5,000.00 and provided in November 2017. This loan had an APR of 49.9% and a 48-month term. This all meant the total amount repayable of £10,343.51 was due to be repaid in a first instalment of £290.22 followed by 47 monthly instalments of around £214.

One of our investigators considered Mr D's complaint. He told Buddy Loans that the checks it carried out before providing Mr D with these loans weren't reasonable and proportionate and if such checks had been carried out it would have seen that Mr D wasn't in a position to sustainably make the repayments. So he thought that Buddy Loans shouldn't have provided Mr D with these loans and upheld the complaint.

Buddy Loans didn't accept our investigator's assessment. So the complaint was passed to an ombudsman for a final decision.

My findings

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 general approach to complaints about unaffordable/irresponsible lending - including the key rules, guidance and good industry practice - on our website. And I've referred to this when deciding Mr D's complaint.

Having carefully thought about everything, I think that there are two overarching questions that I need to answer in order to fairly and reasonably decide Mr D's complaint.

These two overarching questions are:

- Did Buddy Loans complete reasonable and proportionate checks to satisfy itself that Mr D would be able to repay his loans in a sustainable way?
    - If so, did it make fair lending decisions?
    - If not, would those checks have shown that Mr D would've been able to do so?
- Did Buddy Loans act unfairly or unreasonably in some other way?

__Did Buddy Loans complete reasonable and proportionate checks to satisfy itself that Mr D would be able to repay his loans in a sustainable way?__

The rules and regulations in place when Buddy Loans lent to Mr D required it to carry out a reasonable and proportionate assessment of whether she could afford to repay his loans in a sustainable manner. Buddy Loans was required to carry out this borrower focused assessment in addition to a similar one on the guarantor. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower" focused – so Buddy Loans had to think about whether repaying the loan sustainably would cause difficulties or adverse consequences *for Mr D*. In practice this meant that Buddy Loans had to ensure that making the payments to the loans wouldn't cause Mr D undue difficulty or adverse consequences.

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 Mr D. The existence of a guarantee and the potential for Buddy Loans to pursue the guarantor instead of Mr D, for the loan payments doesn't alter, lessen, or somehow dilute this obligation.

Checks also had to be "proportionate" to the specific circumstances of the loan application. In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different applications.

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).

There may also be other factors which could influence how detailed a proportionate check should've been for a given loan application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances.

I've carefully thought about all of the relevant factors in this case.

Were Buddy Loans' checks reasonable and proportionate?

Buddy Loans has suggested that it completed income and expenditure assessments with Mr D. It says Mr D's monthly income, at the time of loan 1 was recorded as £2,824.00, which was verified by a payslip. Mr D's income at the time of loan 2 was recorded as £3,800.00, which was cross-checked electronically. And Mr D stated he had monthly expenditure of £1,924.14 for loan 1 and £2,987.88 for loan 2. These checks left it concluding Mr D had a monthly disposable income of £899.86 at the time of loan 1 and £812.12 at the time of loan 2, which meant he was comfortably able to make the repayments to these loans.

I've carefully thought about what Buddy Loans has said. But simply requesting information from a borrower doesn't, on its own, mean that a lender will have carried out a borrower focused assessment of the borrower's ability to sustainably repay a loan.

I'm concerned that Buddy Loans' checks highlighted that Mr D had eight defaulted accounts at the time of these applications. And at the time of loan 2 Mr D's existing indebtedness had significantly increased, despite the loan purpose for loan 1 supposedly being debt consolidation and his income supposedly increasing by nearly £1,000.00 a month.

Furthermore, while Buddy Loans' refers to Mr D's income having been verified electronically for loan 2, there's no indication what this 'verification' entailed. I'm also particularly concerned that Buddy Loans appeared to ignore that the credit file information it obtained suggested 16 credit searches had been carried out on Mr D in the previous 12 months prior to loan 1 and this rose to 32 credit searches having been carried out in the 12 months leading up to loan 2, 12 of which had been in the period between loans 1 and 2.

This was indicative of Mr D having made a significant number of applications for credit in the lead up to these loans. Bearing all of this in mind, I think that Buddy Loans ought to have taken steps to verify Mr D's monthly income and expenditure, given the declared monthly disposable income wasn't reflected in the rest of the information Buddy Loans had.

In my view, there was a clear mismatch between what was shown on Mr D's credit file and his declared (or adjusted) disposable income and this suggested further verification was needed. Bearing in mind the cost of the credit, loan 2 being taken within months after loan 1 (and Buddy Loans saw Mr D had topped up another guarantor loan with a different provider in this time), what Buddy Loans saw or ought to have seen in the information gathered and the potential implications for the guarantor, Buddy Loans needed to get a thorough understanding of Mr D's financial position in order to properly assess whether he'd be able to sustainably make the loan payments he was being asked to commit to.

So as well as asking Mr D about the details of her income and expenditure and carrying out credit checks, I think that Buddy Loans needed to verify what Mr D said. It could have done this by asking for information such as payslips, bank statements or copies of bills. And when it obtained this information it needed to properly scrutinise it and ensure that Mr D did have enough funds to be able to make the payments.

As there's no evidence that Buddy Loans did properly scrutinise the information provided, or that it asked Mr D to provide documentary evidence to support the income and expenditure declarations made, I find that it didn't complete fair, reasonable and proportionate affordability checks before providing Mr D with his loans.

Would reasonable and proportionate checks have indicated to Buddy Loans that Mr D would have been unable to sustainably repay these loans?

As reasonable and proportionate checks weren't carried out before these loans were provided, I can't say for sure what they would've shown. So I need to decide whether it is more likely than not that proportionate checks would have told Buddy Loans that Mr D would've been unable to sustainably repay these loans.

Mr D has now provided us with evidence of his financial circumstances at the time he applied for these loans. Of course, I accept different checks might show different things. And just because something shows up in the information Mr D has provided, it doesn't mean it would've shown up in any checks Buddy Loans might've carried out.

But in the absence of anything else from Buddy Loans showing what this information would have shown, I think it's perfectly fair, reasonable and proportionate to place considerable weight on it as an indication of what Mr D's financial circumstances were more likely than not to have been at the time.

As I've already explained, Buddy Loans was required to establish whether Mr D could sustainably make his loan repayments – not just whether the loan payments were technically affordable on a strict pounds and pence calculation, or simply proceed on the basis that it, in any event, had a second bite of the cherry in terms of being able to recover payments from the guarantor.

Of course the loan payments being affordable on a strict pounds and pence 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've carefully considered the information Mr D has provided in light of all of this.

The information provided shows that Mr D was gambling significantly in excess of his income each month. He was borrowing from payday lenders and other high-cost credit providers in order to supplement the amount he gambled. In my view, the information provided demonstrates that Mr D was in no position to have been able to sustainably repay either of these loans.

Bearing this in mind, I'm satisfied reasonable and proportionate checks would more likely than not have demonstrated that Mr D would not have been able to make the repayments to these loans.

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

I've carefully thought about everything provided. Having done so, I've not seen anything here that leads me to conclude Buddy Loans acted unfairly or unreasonably towards Mr D in some other way.

So I find that Buddy Loans didn't act unfairly or unreasonably towards Mr D in some other way.

Did Mr D lose out as a result of Buddy Loans unfairly and unreasonably providing him with his guarantor loans?

I think that these loans had the effect of unfairly increasing Mr D's indebtedness. These loans weren't cheap especially when compared to mainstream providers and he ended up paying interest and charges on loans that he shouldn't have been given in the first place.

So I find that Mr D lost out because Buddy Loans unfairly provided him with these loans.

Fair compensation – what Buddy Loans needs to do to put things right for Mr D

I've carefully thought about what Buddy Loans should do to put things right in this case. Having done so, I think that it would be fair and reasonable in all the circumstances of Mr D's complaint for Buddy Loans to put things right by:

- refunding all interest, fees and charges Mr D paid on his loans 1 and 2;
- adding interest at 8% per year simple on the refunded interest, fees and charges Mr D paid from the date they were made to the date of settlement†;
- remove any adverse information added to Mr D's credit file as a result of these loans.

† HM Revenue & Customs requires Buddy Loans to take off tax from this interest. Buddy Loans must give Mr D a certificate showing how much tax it has taken off if he asks for one.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 20 April 2021.

Jeshen Narayanan
Ombudsman