

The complaint

Mr G complained that Advancis Limited trading as Buddy Loans acted irresponsibly when it accepted him as guarantor for a loan.

What happened

In December 2018, Mr G entered into a guarantee and indemnity agreement in respect of a loan for £8,000 that Buddy Loans provided to a borrower. The loan was due to be repaid in 36 monthly instalments, mostly of around £391. The total amount to be repaid over the three year loan term was £13,994.01 including interest.

Mr G says that he couldn't afford to guarantee the loan and he agreed to it only to help out a long-standing friend who told him he was trying to put his finances in order. He thinks Buddy Loans didn't carry out sufficient checks and had it done so it would have seen that he had other debts, he was constantly utilising his overdraft and he had a gambling habit – so it should not have accepted him as a guarantor.

One of our investigators looked into Mr G's complaint and upheld the complaint. Buddy Loans didn't agree with the investigator's assessment. So the matter has come 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 and guarantor loans on our website - including the key relevant rules, guidance, good industry practice and law.

Buddy Loans needed to take reasonable steps to ensure that it didn't act irresponsibly when it accepted Mr G as guarantor for the loan. I've carefully considered all the arguments, evidence and information provided in this context and what it means for Mr G's complaint. In doing so, I have considered the following key questions:

- ☐ Did Buddy Loans obtain Mr G's properly informed consent to become guarantor for the loan?
- ☐ Did Buddy Loans carry out reasonable and proportionate checks to satisfy itself that Mr G was in a position to sustainably repay the loan, in the event that the borrower did not? If not, what would reasonable and proportionate checks have shown at the time?
- ☐ Ultimately, did Buddy Loans make a fair lending decision (as Mr G would be equally liable for this loan with the borrower).

From what I've seen, and after I've carefully listened to what Mr G discussed with Buddy Loans, I think it's likely that Mr G understood the consequences of being a guarantor and he

did freely consent to becoming the loan guarantor for this loan, in the knowledge that the monthly repayments were around £390 and the loan was due to run for three years.

The rules and regulations required Buddy Loans to carry out a reasonable and proportionate assessment of whether Mr G could afford to repay this loan in a sustainable manner, should the borrower fail to do so, as he was equally liable with the borrower. It had to carry out this guarantor-focussed assessment in addition to the proportionate checks it was required to undertake in relation to the borrower. In effect, this meant that Buddy Loans had to ensure that, if the guarantee was enforced against Mr G, it wouldn't impact adversely on his own financial situation.

I've taken into account that Buddy Loans told us that it carried out checks in line with its regulatory obligations and it also allowed for an extra £100 spending to cover unexpected costs. It calculated that that Mr G should have disposable income of around £1,174 each month so it was satisfied that he could meet the loan repayments, if he was called upon to do so as guarantor. But our investigator didn't think that Buddy Loans did enough checking before accepting Mr G as guarantor – and I agree.

I say this because although Buddy Loans had gathered income and expenditure information from Mr G, and done a background check on his salary, I think it's fair to say that its credit checks showed clear signs that Mr G's finances were already stretched.

Buddy Loans could see that he owed £18,000 on credit cards and he also had other finance agreements.

The credit check results show that Mr G had used most of his available credit and he was approaching the limit on four credit cards.

In addition, he was utilising the overdraft on two bank current accounts that were in sole name – and he had a joint current account overdraft which had also been persistently overdrawn for more than 12 months.

It was apparent that the balances on several credit accounts hadn't been reducing for some time and Mr G wasn't making any obvious inroads into this debt.

I think Buddy Loans should have realised that what Mr G had said about his financial situation appeared to be significantly at odds with what its own credit checks showed. So it needed to carry out further and more in-depth checks to gain a proper understanding of his financial situation to ensure it didn't accept him as guarantor if he wasn't in a position to sustainably afford the loan repayment.

And also bearing in mind the amount of the loan repayment he was signing up to guarantee, and the loan term, I don't think its checks were proportionate.

So I've thought about what a proportionate check would likely have revealed to Buddy Loans

Mr G has provided us with copies of his bank statements to help me understand what better checks might have shown to 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 Mr G's financial position.

In addition to what it knew about his existing use of credit and the extent of his indebtedness, Mr G's bank statements show that in the run up to becoming guarantor on this loan, he was routinely overdrawn and typically starting and ending the month in overdraft – on one account his average debit balance was around £1,931.

He was paying daily overdraft fees regularly on his other account.

I can also see that Mr G was spending on gambling. On one day in October 2018 for instance he spent at least £300 on what appear to be online gambling transactions. I'm not suggesting that was necessarily typical daily spending – but at the time he was £2,153 overdrawn and close to his £2,300 overdraft limit on the account.

So I think if Buddy Loans had done a proportionate check it could've found out about this information and it would've realised that there was a serious risk that Mr G wouldn't be able to sustainably afford to pay this loan if he needed to.

And I think if Buddy Loans had looked further into Mr G's financial position it should have realised that after paying his regular expenses, and if he was making meaningful progress towards repaying his existing creditors(as opposed to just making minimum repayments which would never be enough to clear his debt in a reasonable timescale), it didn't look likely that Mr G would have sufficient disposable income to meet his repayments as guarantor.

Mr G potentially had to maintain the loan repayments as guarantor every month for three years – he was at risk of having to repay almost £14,000. Overall, I think Buddy Loans ought fairly to have realised that Mr G was most likely going to find it very difficult to manage his financial position to be able to do this and that it was unlikely that he would be able to sustainably repay the loan as guarantor, over the extended loan term.

So Buddy Loans shouldn't have agreed to this arrangement.

I haven't seen enough information to make me think that Buddy Loans acted unfairly or unreasonably towards Mr G in some other way.

So I don't award any additional redress.

But overall, I don't think that Buddy Loans ought reasonably to have accepted Mr G as loan guarantor. He was expected to make repayments on a loan where he shouldn't have been accepted as guarantor and I think Buddy Loans needs to put things right.

Putting things right

In line with our approach to redress, Buddy Loans should put Mr G in the position he'd now be in if he hadn't unfairly and unreasonably been accepted as a guarantor on this loan.

So Buddy Loans should put things right for Mr G by:

- a) Releasing Mr G from any obligations under the guarantee and indemnity agreement and then terminating it.
- b) Refunding any payments made by Mr G as guarantor. Buddy Loans must add 8%* simple interest a year to each of those sums, from the date Mr G paid them to the date the refund is paid to him.
- c) Removing any information about this loan from Mr G's credit file.

*HM Revenue & Customs requires Buddy Loans to deduct tax from this interest. Buddy Loans should give Mr G a certificate showing how much tax it's deducted, if he asks for one.

My final decision

I uphold Mr G's complaint and direct Advancis Limited trading as Buddy Loans to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 6 August 2021.

Susan Webb
Ombudsman