DRN-2398986

The complaint

Mr H says Advancis Limited (trading as Bunny Loans) lent to him irresponsibly.

What happened

Mr H took out a guarantor loan from Bunny Loans in June 2019. It was for £5,000 over 60 months. The monthly repayment was £197.62 and the total repayable was £11,898.03. The loan remains outstanding.

Mr H says Bunny Loans lent irresponsibly as he had a large amount of unsecured debt, including payday loans, and a gambling problem. He says he asked for the interest to be removed so he can make lower monthly repayments, and for his guarantor to be released, but Bunny Loans refused this request.

Our adjudicator recommended the complaint should be upheld. He said the lender's checks were not proportionate: proportionate checks would have shown that the loan wasn't affordable for Mr H and that he was having problems managing his money.

Bunny Loans disagreed with the adjudicator's view. It said the loan was to consolidate a number of Mr H's more expensive debts, so it wasn't increasing his indebtedness. Its checks were proportionate, and Mr H should have honestly disclosed that he paid all the mortgage. It asked for the complaint to be passed to an ombudsman 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.

Our approach to unaffordable/irresponsible lending complaints is set out on our website and I've followed it here.

The Financial Conduct Authority (FCA) was the regulator when Bunny Loans lent to Mr H. Its rules and guidance, set out in its Consumer Credit Sourcebook (CONC), obliged Bunny Loans to lend responsibly. Amongst other things, Bunny Loans was required to carry out a reasonable and proportionate assessment of whether Mr H could afford to repay what he owed in a sustainable manner. This is sometimes referred to as an affordability assessment or an affordability check.

The checks also had to be borrower-focused. So Bunny Loans had to think about whether repaying the credit sustainably would cause any difficulties or adverse consequences for Mr H. In other words, it wasn't enough for Bunny Loans to simply think about the likelihood of it getting its money back, it had to consider the impact of the loan repayments on Mr H.

Checks also had to be proportionate to the specific circumstances of each loan application. In general, what makes up 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 and cost of credit they have applied for.

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 repayments to credit from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet higher repayments from a particular level of income);
- the *longer* the period of time a borrower will be indebted for (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make repayments for an extended period).

There may also be other factors which could influence how detailed a proportionate check should've been for a given application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. I've kept all of this in mind when thinking about whether Bunny Loans did what it needed to before agreeing to lend to Mr H, and have considered the following questions:

- did Bunny Loans complete reasonable and proportionate checks when assessing Mr H's loan application to satisfy itself that he would be able to repay the loan in a sustainable way?
- if not, what would reasonable and proportionate checks have shown?
- did Bunny Loans make a fair lending decision?
- did Bunny Loans act unfairly or unreasonably in some other way?

Bunny Loans asked for some information from Mr H before it approved the loan. It asked for details of his income and his monthly living costs. It verified his declared income by asking for a payslip, in addition to completing an external check. It checked his credit file to understand his credit history and his existing credit commitments. It asked about the purpose of the loan, which was debt consolidation. It then deducted the repayments of the four accounts Mr H was settling with this loan and added in the repayment of this loan.
From these checks combined Bunny Loans concluded Mr H would be left with monthly disposable income of £201.36 and so the loan was affordable.

But I don't agree that these checks were proportionate. Mr H was applying to borrow a significant amount of money from Bunny Loans. He was entering into a long-term commitment and would need to make monthly repayments for five years. So I would expect that Bunny Loans would want to gather, and independently check, more detailed information about Mr H's financial circumstances before it agreed to lend to him. It knew from his credit report that he had 17 active accounts, total unsecured of debt over £55,000, that three of his credit cards were running at or close to their credit limit and that he been using his overdraft every month for more than the last 12 months. So, given the term and value of Mr H's loan and his level of indebtedness, I think Bunny Loans ought to have completed a fuller financial review before agreeing the loan.

However its failure to do so doesn't in itself mean Mr H's complaint should succeed. I need to look at what proportionate checks would have shown Bunny Loans and consider if it ought to have realised that Mr H most likely couldn't sustainably afford the repayments.
I have looked at Mr H's bank statements. I am not saying Bunny Loans had to do this but it's one way Bunny Loans could have gathered the information I think it needed on Mr H's financial situation. In his view our adjudicator summarised what the statements showed in the month prior to Mr H's loan application. He said Mr H's income was £3838 as he'd

declared, but his expenditure totalled £3859 so he concluded Mr H didn't have the disposable income Bunny Loans had calculated, rather he had no disposable income available to spend, or to make this loan repayment.

In response to this finding Bunny Loans said as Mr H was taking out its loan for the purpose of debt consolidation a number of his debts would be cleared. As I set out earlier, I can see it therefore removed these repayments from its affordability calculations. This is a fair to a point. What I would have expected Bunny Loans to understand and react to was Mr H's ongoing credit commitments and overall level of indebtedness.

Whilst Mr H was clearing two high-cost short-term loans, an unsecured loan, one credit card and in full and £1,100 from another, he was paying off only ten percent of his overall unsecured debt. Discounting the debts that Mr H cleared with this loan, but including ongoing commitments, Bunny Loans' list of his unsecured creditors shows Mr H would still have to meet monthly repayments of £1935. This was a significant proportion of his monthly income and in excess of the guidance in The FLA Lending Code 2006 that says factors which may show a high risk of a consumer experiencing financial difficulty include spending more than 25% of monthly income on credit.

Returning to what better checks would have shown, I can see from the bank statements that Mr H was making a mortgage repayment of £1,148, not £574 as he disclosed. There is no evidence of an incoming credit to cover the other £574 so it seems he made the full repayment each month. So after making just this adjustment to his living expenses and amending his credit commitments to reflect the consolidated debts, Mr H did not have sufficient disposable income to make this loan affordable. And this is before taking into account that I also can see from his bank statements that Mr H was spending around 15% of his income on gambling, something Bunny Loans did not have sight of due to its level of checks.

Bunny Loans says the problem is that Mr H gave a false value for his contribution to the mortgage payment when he applied. But this does not change my conclusion as his inaccurate disclosure does not alter Bunny Loans' obligation to carry out proportionate checks before lending.

I think that if Bunny Loans had completed proportionate checks, it would have realised the loan was unaffordable for Mr H. So as a responsible lender it would have decided not to approve his application. And in addition to it not being unaffordable on a pounds and pence basis, there were several indications that Mr H was having problems managing his money and was already borrowing to repay given the number of loans he was managing, and the consistent use of his overdraft. So there was a clear and high risk he wouldn't be able to sustainably repay any further borrowing.

I have also looked at whether Bunny Loans acted unfairly or unreasonably in some other way. I haven't found any evidence that it did. Mr H says he asked for reduced payments, but the lender rejected this request. In the account notes Bunny Loans has supplied there are no contacts that reflect such a conversation. However, now the complaint is resolved I would remind Bunny Loans of its obligation to treat Mr H positively and sympathetically as it must work to agree an affordable payment plan. As Mr H is experiencing financial difficulties, he may find it helpful to seek support from an organisation that helps with this type of situation such as StepChange (tel: 0330 055 2198) if he hasn't already done so.

Putting things right

I think it's fair and reasonable for Mr H to repay the capital that he borrowed, because he had the benefit of that money. But he has paid interest and charges on a loan that shouldn't have been provided to him.

It should:

- Remove all interest, fees and charges from the loan and treat all the payments Mr H made as payments towards the capital.
- If reworking the account leaves an amount of capital still to be paid, then Bunny Loans should work to agree an affordable repayment plan with Mr H, bearing in mind its obligation to treat him positively and sympathetically in these discussions. Bunny Loans should not pursue any outstanding balance made up of capital it has already written-off.
- Remove any adverse information recorded on Mr H's credit file in relation to the loan.

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

To settle this complaint, Mr H also asked for his guarantor to be discharged. But I am considering here what needs to be put right for Mr H. If his guarantor is unhappy with Bunny Loans' conduct, she should raise a complaint with them directly. She can of course then bring her complaint to this service if she is unhappy with their response.

My final decision

I ma upholding Mr H's complaint and Advancis Limited (trading as Bunny Loans) must now put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 7 April 2021.

Rebecca Connelley
Ombudsman