DRN-2461271

The complaint

Miss F complains about two loans from Advancis Limited, trading as Buddy Loans, ("BL"), which she says were unaffordable.

What happened

Miss F was given two loans by BL from August 2016 to March 2017. Loan 1 was repaid from the proceeds of Loan 2. From the most recent information I've seen (from December 2020), Loan 2 hasn't been repaid. A summary of Miss F's borrowing history is as follows:-

Loan number	Date of loan	Loan amount	Repayment date	Number of monthly repayments and amounts
1.	31/8/2016	£3,750	7/3/2017	1 x £234.27 and 23 x £231.81
2.	7/3/2017	£5,000	Unpaid	1 x £160.54, 46 x £213.88 and 1 x £214.81

Both loans were secured by a guarantor who would be responsible for repaying them if Miss F failed to make her repayments.

Miss F said that in 2016, she had a lot of debt and was desperate when she borrowed Loan 1. She couldn't get a loan anywhere else as her credit rating was very poor. She was struggling financially and had also started to gamble. This got out of hand. She had nowhere to turn and she became so desperate, she borrowed Loan 2. After this, she couldn't cope at all financially and ran up priority debts. She relied on family to help her, but prioritised payments to BL to prevent the lender contacting her guarantor.

In its final response letter, BL said that it was a responsible lender and conducted thorough underwriting checks on all borrowers and their guarantors before a loan was approved. These checks included identity, credit history, income verification and affordability. Miss F's loans were no exception and would not have been granted had these checks not been met. BL had reviewed the underwriting of the loan agreements and was happy that sufficient checks were carried out and that the loans were affordable for Miss F.

Our investigator assessed the complaint and recommended that it be upheld. She said, in summary, that BL would have seen from its credit checks that Miss F was reliant on payday loans and had defaulted accounts which had not been settled. She said that BL ought to have carried out further checks. If BL had done so, it would've established that it was highly unlikely that Miss F would've been able to sustainably repay the loans. It would've seen that she wasn't managing her finances well and that it also would've been irresponsible to lend to her, due to gambling amounts.

BL disagreed and responded to say, in summary, with regard to each loan:-

Loan 1: Miss F had a total owing of £662 on her credit file and was using the BL loan to get out of a payday loan cycle and help manage her finances going forward. As Miss F was earning £2,500 per month and had only one creditor going forward with a debt of £231.81, she could afford to repay the loan.

Loan 2: BL noted that the investigator had said that Miss F's borrowing had worsened in the six months because her debt increased from £662 to £4,058. But the increase was as a direct result of Loan 1. It felt that the investigator's view was based on the gambling seen on Miss F's bank statements. But BL wasn't required to see these as Miss F's income was verified with proof for both applications and reasonable and proportionate figures were taken for expenditure items.

As this complaint hasn't been resolved informally, it has come to me, as an ombudsman, to review and resolve.

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.

I have also taken into account the law, any relevant regulatory rules and good industry practice at the time.

When BL lent to Miss F, the regulator was the Financial Conduct Authority (FCA) and relevant regulations and guidance included its Consumer Credit Sourcebook (CONC). Its rules and guidance obliged BL to lend responsibly. As set out in CONC, this meant that BL needed to take reasonable and proportionate steps to assess whether or not a borrower could afford to meet their loan repayments in a sustainable manner over the lifetime of the agreement.

Repaying debt in a sustainable manner meant being able to meet repayments out of normal income while meeting normal outgoings and not having to borrow further to meet these repayments.

The lender was required to carry out a borrower focussed assessment each time - sometimes referred to as an "affordability assessment" or "affordability check". Neither the law nor the FCA specified what level of detail was needed to carry out an appropriate assessment or how such an assessment was to be carried out in practice. The FCA said that the level of detail would depend on the type of product, the amount of credit being considered, the associated cost and risk to the borrower relative to the borrower's financial situation, amongst other factors.

The checks had to be "borrower" focussed – so BL had to think about whether Miss F could sustainably repay her loan. In practice this meant that the lender had to ensure that making the payments to the loan wouldn't cause Miss F undue difficulty or adverse consequences. In other words, it wasn't enough for BL to simply think about the likelihood of it getting its money back, it had to consider the impact of loan repayments on Miss F.

In general, I'd expect a lender to require more assurance the greater the potential risk to the borrower of not being able to repay the credit in a sustainable way. So, for example, I'd expect a lender to seek more assurance, potentially by carrying out more detailed checks

- the lower a person'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 borrower is required to make payments for an extended period);
- the *greater* the number and frequency of loans, and the longer the period of time during which a consumer had been given loans (reflecting the risk that repeated refinancing might signal that the borrowing had become, or was becoming, unsustainable).

Bearing all of this in mind, in coming to a decision on Miss F's case, I have considered the following questions:

- Did BL complete reasonable and proportionate checks when assessing Miss F's loan applications to satisfy itself that she would be able to repay the loans in a sustainable way? If not, what would reasonable and proportionate checks have shown?
- Did BL make a fair lending decision?

Did BL complete reasonable and proportionate checks when assessing Miss F's loan applications to satisfy itself that she would be able to repay the loans in a sustainable way?

Loan 1

BL provided Miss F with Loan 1 on 31 August 2016. The interest rate was 41.16%, (49.9% APR). If Miss F made each payment when it was due, she'd pay £5,565.90 in total.

BL gathered some information from Miss F about her income and expenses. It also carried out a credit check. It was also aware that Miss F had three dependents and that the loan was to be used for debt consolidation.

I've reviewed BL's personal details form. This said that Miss F had a total income of £2,780 (made up of wages and benefits), her expenditure was £1,544 and it said that her monthly credit commitments (including its monthly loan repayment) were £281.81. It had seen an extract from Miss F's bank statement to verify her wages. BL calculated that Miss F had a disposable income of £954.19.

I'm concerned that BL appears to have relied on Miss F's statement of her expenses without verifying them. CONC 5.3.1(4) said:

If a firm takes income or expenditure into account in its creditworthiness assessment required under CONC 5.2.2R (1):
(a) The firm should take account of actual current income or expenditure and reasonably expected future income or expenditure (to the extent it is proportionate to do so) where it is reasonably foreseeable that it would differ from actual current income or expenditure over the anticipated repayment period of the agreement;
(b) 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;

So, I think in Miss F's circumstances, it would have been proportionate for BL to have verified her actual expenditure.

I've also reviewed BL's credit checks. I note that these showed that Miss F had a total credit balance of £662 outstanding of which the outstanding loans balance was £240. The report showed that Miss F had five active accounts and that three accounts had been opened in the previous six months.

I can see there were three accounts on the credit checks which had been defaulted, the latest of which was around 15 months prior to Miss F's loan application. All three accounts still had balances outstanding. It appears that no repayments had been made on them since before September 2015.

I appreciate that having some historic debt isn't automatically a barrier to taking on further credit. But I think BL ought to have taken further steps to check that Miss F would be able to meet its repayments sustainably, given she wasn't potentially able to clear her existing debts without borrowing again.

The credit checks also showed that Miss F had an outstanding payday loan. This had been taken out in July 2016 with £284 to repay. But BL would also have likely been aware from its credit checks that Miss F had repaid five payday loans in the seven months prior to her current outstanding payday loan. The second earliest loan onwards had been taken out within two weeks of the previous loan being repaid. This suggests that Miss F needed to borrow in order to fill a hole in her finances that was made by making a loan repayment which isn't a sustainable form of borrowing. The July 2016 payday loan was the largest of the six loans. So, Miss F wasn't making any inroads into her payday loan debt. I think BL ought to have been concerned about Miss F's recent short term loan borrowing history and that the frequent use of payday loans cast doubt on the accuracy of the income and expenditure information provided. So, I don't think it was reasonable for BL to have relied on the expenditure information provided by Miss F. And I think it should have taken steps to independently verify Miss F's true financial position to satisfy itself that Miss F could sustainably repay Loan 1 over a 24 months period. She was, after all, committing to repay £5,565.90 over that period.

So overall, I don't think the checks BL had carried out before Loan 1 were reasonable and proportionate. BL was required to establish whether Miss F could make her loan repayments without undue difficulty and without experiencing adverse consequences and not just to ascertain whether the loan repayments were technically affordable on a strict pounds and pence calculation. It could have done this by, for example, requesting bank statements from Miss F, asking for copies of bills and/or receipts for her expenses and by asking her for more information about her existing credit commitments. BL didn't say that it took steps to do this, other than to verify Miss F's wages.

Although I don't think that BL carried out reasonable and proportionate checks before Loan 1, that in itself doesn't mean that Miss F's complaint about the loan should succeed. I'd also need to be persuaded that what I consider to be proportionate checks would have shown BL that Miss F couldn't sustainably afford the loan.

Loan 2

Around six months after taking out Loan 1, BL provided Miss F with Loan 2 on 7 March 2017. I think BL might have been concerned about Miss F's need to borrow again at that time. The loan amount had increased to £5,000 and the monthly loan repayments were slightly less than the repayments for the previous loan. But this was because the loan term had doubled. So, Miss F was making a relatively lengthy commitment to BL. The balance on Loan 1 was repaid from the proceeds of Loan 2 and Miss F received £1,700 from the loan. The interest rate was 41.16%, (49.9% APR). If Miss F made each payment when it was due, she'd pay £10,213.83 in total over 48 months.

I've reviewed BL's personal details form. This said that Miss F had a total income of £3,029 (made up of wages and benefits), her expenditure was £1,660 and it said that her monthly credit commitments (including its monthly loan repayment) were £268.88. So, it calculated that Miss F had a disposable income of £1,100.12. BL had seen an extract from Miss F's bank statements to verify her wages which were put into her account around 12 days previously. It had also seen deposits for Miss F's wages in December 2016 and January 2017 on the statement extract.

But I'm again concerned that BL appears to have relied on Miss F's statement of her expenditure without verifying it in line with CONC 5.3.1(4).

I've also reviewed BL's credit checks. I note that this showed that Miss F had a total credit balance of £4,058 outstanding of which £3,075 was the outstanding balance on Loan 1. The report showed that Miss F had five active accounts and that one account had been opened in the previous six months.

But I could also see that the payday loan Miss F had taken out in July 2016, which I'd referred to above, wasn't paid until 2 December 2016, and the credit checks show arrears for two months on that loan. And six days after repaying that payday loan, Miss F had taken out another payday loan. The credit checks showed that loan was in arrears in February 2017. In addition, Miss F had exceeded the credit limit on her credit card. I think that BL might have been concerned that notwithstanding receipt of Loan 1 for debt consolidation, Miss F had then fallen into arrears on her July 2016 payday loan. I think the arrears on her two most recent payday loan accounts, and her credit card balance exceeding the account's credit limit show that it was likely that her financial situation was under strain.

So overall, I think BL's checks should have included a full review of Miss F's finances including verification of her expenditure. BL needed to ensure that the loan repayments would be sustainable over a term of 48 months. She was, after all, committing to repay £10,213.83 over that period.

What would reasonable and proportionate checks have shown? And did BL make a fair lending decision?

Miss F has provided her bank statements from around the time she applied for Loans 1 and 2. I'm not suggesting here that these were the checks that BL should have done. But I think looking at these gives me the best picture of what the lender was likely to have seen had it made better checks. Had it sought verification of Miss F's actual spending before lending, I think BL would've been in a better position to understand Miss F's financial situation before it decided to lend to her.

I've reviewed Miss F's bank statements for June to August 2016, January 2017 and February 2017. It's clear from Miss F's bank statements that she was struggling to manage her finances. There were numerous returned payments and short term credit. More worryingly, the statements show that Miss F was spending a substantial amount on gambling. She'd spent at least 75% of her salary on gambling in each of June 2016 and July 2016, and she spent in excess of her salary on gambling in each of August 2016, January 2017 and February 2017. Miss F's spending on gambling was frequent enough that it was more likely than not that it would continue in the same pattern and posed a risk to Miss F being able to repay Loans 1 and 2 sustainably. In these circumstances, I don't think that BL would have lent if it knew this.

So, if BL had carried out what I consider to be proportionate checks, I think it's more than likely it would have discovered Miss F's relatively substantial expenditure on gambling and that Miss F was in no position to have been able to sustainably repay either of her loans. So, it's clear that further checks wouldn't have provided the assurance BL needed. And, it should reasonably have concluded that it treated Miss F unfairly when it agreed to lend Loans 1 and 2 to her.

I note that BL's personal details form said that Loan 1 was for debt consolidation. But as I have just concluded, if BL had carried out further checks it would have seen that Miss F was spending significant amounts on gambling transactions that would have shown it that she was having problems managing her finances that a debt consolidation wouldn't have solved. It was clear from the level of her gambling that her finances weren't stable.

So, I'm upholding Miss F's complaint and BL should put things right as shown below.

Putting things right – what BL needs to do

I understand that Loan 1 was repaid from the proceeds of Loan 2 and that Loan 2 hasn't been fully repaid. In order to put Miss F back into the position she would have been had Loans 1 and 2 not been agreed for her, BL needs to ensure that Miss F only repays the principal borrowed on these loans. In other words, Miss F shouldn't repay more than the combined capital amount of £8,750 she borrowed on these loans. So, BL needs to:

a) treat all payments that Miss F has made towards Loans 1 and 2 as payments towards the principal amounts borrowed;
b) if Miss F has made payments above the combined capital amount, then these should be refunded to her, along with simple interest at the rate of 8% per year on these amounts from the date they were paid to the date of settlement*;
c) if after applying the refunds, there is still an outstanding capital balance then BL needs to treat Miss F fairly and sympathetically in this matter. This may mean agreeing a mutually agreeable repayment plan with her.
d) remove any adverse information about Loan 1 from Miss F's credit file; and
e) remove any adverse information about Loan 2 from Miss F's credit file, once it has been settled.

If BL has sold the outstanding debt on Loan 2 it should buy it back if it is able to do so or chooses to do so and then take the steps listed above. If BL isn't able to buy the debt back or chooses not to, then it should liaise with the new debt owner to bring about steps a) to e) above.

*HM Revenue & Customs requires BL to take off tax from this interest. BL must give Miss F a certificate showing how much tax it has taken off if she asks for one.

My final decision

For the reasons I've explained above, I'm upholding Miss F's complaint. Advancis Limited, trading as Buddy Loans, should put things right in the way I've set out above under the heading "Putting things right – what BL needs to do".

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 20 August 2021.
Roslyn Rawson
Ombudsman