

The complaint

Mr L has complained that Advancis Limited (trading as “Buddy Loans”) lent to him irresponsibly.

What happened

Mr L was given a fixed term guarantor loan by Buddy Loans. The details of this is given below:

Date taken	Instalments	Amount	Repayments	Total to repay
15/09/2015	24	£1750	£108.18	£2577.73

One of our adjudicators looked into the complaint. He thought Buddy Loans had been wrong to provide Mr L with the loan. He concluded that Buddy Loans hadn’t carried out proportionate checks and if it had done so, it would have seen Mr L couldn’t afford to repay the loan as he was having problems at the time with his finances. He also concluded that Buddy Loans had also not made a fair lending decision based on what it had in front of it. Buddy Loans didn’t agree with the adjudicator’s assessment. As the complaint hasn’t been settled, it has been passed to me to resolve the matter.

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 considering unaffordable and irresponsible lending complaints on our website - including the key relevant rules, guidance, good industry practice and law.

And I’ve considered this approach when deciding Mr L’s complaint.

I think there are some overarching questions I need to consider in order to decide what’s fair and reasonable in the circumstances of this particular complaint:

- Did Buddy Loans complete reasonable and proportionate checks to satisfy itself that Mr L would be able to repay their loan in a sustainable way? If not, what would reasonable and proportionate checks have shown at the time?
- Ultimately, did Buddy Loans make a fair lending decision?

As the lender, Buddy Loans should have taken steps to ensure that it didn’t lend to Mr L irresponsibly.

The lender was required to carry out a borrower focussed assessment or “affordability check”. The checks had to be “borrower” focussed – so Buddy Loans had to think about whether repaying the loan sustainably would cause difficulties or adverse consequences for Mr L.

Buddy Loans had to carry out reasonable and proportionate checks to satisfy itself that Mr L would be able repay his loan sustainably. There was no set list of checks that Buddy Loans had to do, but it could consider a number of different things such as the loan amount, the length of the loan term, the repayment amounts, and the borrowers' overall joint financial circumstances.

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).

The loan payments being 'affordable' on a pounds and pence basis, something Buddy Loans says was the case, might be an indication a consumer could sustainably make their repayments. But it doesn't automatically follow this is the case. This is because the relevant regulations define sustainable as being without undue difficulty – in particular without incurring or increasing problem indebtedness. The customer should be able to make repayments on time, while meeting other reasonable commitments; as well as without having to borrow to meet the repayments. And it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower won't be able to make their repayments sustainably if they're unlikely to be able to make their repayments without borrowing further.

There may also be other factors which could influence how detailed a proportionate check should've been for any particular 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 Buddy Loans did what it needed to before agreeing to lend to Mr L.

Buddy Loans on the occasion it lent to Mr L asked for information about his income and expenditure. It also says it verified his wages, carried out a credit check and used data from the Office of National Statistics to compare alongside the expenditure he declared. It says it added a buffer to the amount it had calculated for Mr L's expenditure.

Buddy Loans say the checks it carried out showed that Mr L had enough disposable income to afford the loan repayments, but I don't need to draw any conclusions about what it says it did at the time and whether it did carry out sufficient checks on this occasion. This is because, on balance, like the adjudicator, I don't think Buddy Loans made a fair lending decision on this loan and I will explain why.

Mr L asked for the loan on 15 September 2015 for £1750 and when he did this, he told it about his income and expenditure. when I see Buddy Loans' income and expenditure calculation I can see, on the face of it, Mr L had sufficient income to be able to afford the loan.

But the lender was aware from the credit check it had acquired (and supplied to our service) that Mr L had defaults, a delinquent account and other adverse credit data, that I think should have shown it that he wouldn't have been in a position to make the loan repayments in a sustainable way.

I can see three defaulted accounts on the credit check findings Buddy Loans would have had in front of it at the time. One was for a bank current account that although had defaulted in 2013, was still showing an outstanding balance for Mr L to repay. Mr L had also defaulted on a short-term loan in November 2014 with the whole balance left to repay. Mr L hadn't made a single repayment on this loan only months before he asked for this one. And then he also defaulted on a telecommunications account six months before asking for this one with a balance still left to repay. Also, I can see that Mr L had got into arrears on a credit card account and it was showing on Buddy Loans credit search as a delinquent account. Mr L was considerably over the credit limit set, this had steadily risen up to the point of application and there was no indication that he was repaying anything back. I think it would have been reasonable for Buddy Loans to conclude that despite the disposable income calculation that it arrived at, Mr L was struggling to manage his finances and that more likely than not he wouldn't have been able to repay the loan in a sustainable way. Especially due to the fact this loan was due to be repaid over a term of 24 months.

Finally, Buddy Loans in response to our adjudicator's view, says that ethically it doesn't think this complaint should be upheld as Mr L didn't notify it that he was unemployed at the time he asked for the loan. Instead Mr L disclosed a monthly income figure, something Buddy Loans used to assess affordability for Mr L of the loan. Mr L provided a letter that shows he was dismissed from his employment the day before he applied for the loan.

I acknowledge what Buddy Loans has said here and have seen the letter that it is referring to. That being said, my role is to consider what Buddy Loans did or didn't do when it agreed to lend in this instance. I am considering whether or not Buddy Loans lent to Mr L irresponsibly or not. Whether it carried out proportionate checks and made a fair lending decision based on what it had in front of it and what it did know at that time. Whatever it feels it ought to do about anything that has come to light with Mr L in the meantime is a matter for it to consider or not, separately from Mr L's complaint about irresponsible lending.

Taking matters as a whole, I think on balance that Buddy Loans ought reasonably to have realised that Mr L was finding it difficult to repay his existing credit commitments. It was unlikely that he would be able to sustainably repay the loan over the extended terms provided. I think in these particular circumstances (from the adverse credit information on his report); Buddy Loans should reasonably have concluded that it was not appropriate to lend to him.

Putting things right

I think it is fair and reasonable for Mr L to repay the principal amount that he borrowed, because he has had the benefit of that lending. But he has paid interest and charges on lending that shouldn't have been provided to him.

Buddy Loans should:

- Remove all interest, fees and charges on the lending and treat all the payments Mr L made as payments towards the capital.
- If reworking Mr L's loan account results in him having effectively made payments above the original capital borrowed, then Buddy Loans should refund these overpayments with 8% simple interest calculated on the overpayments, from the date the overpayments would have arisen, to the date the complaint is settled*.
- Remove any adverse information recorded on Mr L's credit file in relation to the loan.

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

My final decision

Having considered all the evidence provided to me and reflecting on what is most likely to have happened in the circumstances, I uphold Mr L's complaint about Advancis Limited trading as Buddy Loans.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 18 August 2021.

Mark Richardson
Ombudsman