

The complaint

Mr M complains that Buffa Loans Ltd (trading as 'Buffa') lent to him irresponsibly.

What happened

This complaint is about loans Buffa provided to Mr M as follows:

Loan	Date Taken	Date Repaid	Instalments	Amount	Highest Repayment
1	4/01/2020	9/03/2020	3	£200.00	£95.25
2	8/05/2020	28/05/2020	3	£100.00	£46.49
3	29/05/2020	29/05/2020	3	£200.00	£98.84
4	31/05/2020	28/08/2020	3	£200.00	£97.63
5	30/08/2020	27/11/2020	3	£200.00	£97.63
6	1/02/2021	27/05/2021	3	£200.00	£95.72

Mr M mainly said that Buffa failed to carry out sufficient checks before lending to him – in particular, it looked only at bank statements for one of his accounts and Mr M said if it had checked properly it would have seen evidence of significant gambling on another account.

When Mr M complained to Buffa it said all the loans had been provided only after full affordability assessments had been done and didn't uphold Mr M's complaint.

Our adjudicator upheld the complaint in part. He felt he hadn't seen enough to say it was unfair for Buffa to have provided loans 1, 2, 3 and 4 to Mr M. But our adjudicator explained why he thought that Buffa should've realised that loans 5 and 6 shouldn't have been lent and he set out the steps Buffa needed to take to put things right.

Buffa didn't accept our adjudicator's view and asked for an ombudsman to review the complaint. In brief summary, Buffa mainly said it had done proportionate checking each time before lending and this included looking at bank statements. It told us that by looking at these statements, which covered the three months prior to the loans being requested, it saw Mr M's income and regular transactions being made out of the account for day to day expenses.

Buffa said that whilst it could see money being moved between accounts in Mr M's name it wasn't considered proportionate given the amount and duration of the loans to pry further still. Based on the evidence supplied, which it feels was proportionate at the time of the assessment, Buffa said it was apparent Mr M was in control of his finances.

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 general approach to complaints about short-term lending - including all of the relevant rules, guidance and good industry practice - on our website. I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Mr M's complaint. I'd like to reassure both Mr M and Buffa that I've looked at the complaint afresh – and I've independently reached the same conclusions as our adjudicator. I'll explain my reasons in more detail.

Buffa needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mr M could repay the loans in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure. With this in mind, in the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate.

But certain factors might point to the fact that Buffa should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors include:

- the *lower* a consumer'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 *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 even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

Buffa was required to establish whether Mr M could sustainably repay his loans – not just whether the loan payments were affordable on a strict pounds and pence calculation. Of course the loan payments being affordable on this basis 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 difficulties and in particular 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 repayments sustainably if they're unlikely to be able to make their repayments without borrowing further.

I've come to the same view as our adjudicator about loans 1-4. I've looked at the information Buffa recorded for Mr M, including income and expenditure details from the time and the checks it carried out. I agree that there isn't enough to say Buffa shouldn't have provided these loans. Given the repayment amounts, what was apparent about Mr M's circumstances and his borrowing history at that time with Buffa, I don't think it would've been proportionate for Buffa to ask Mr M for the amount of information that would be needed to show the lending was unsustainable before agreeing the first four loans. In other words, I wouldn't reasonably expect Buffa to have asked to see the bank statements that Mr M has sent us showing his gambling activity. So if that wasn't information that Mr M told Buffa about (and I can't see that he did) then the lender *wouldn't* have known about it and I can't fairly say that Buffa *should've* known about it. So this is why I'm not upholding Mr M's complaint about loans 1-4.

By loan 5, I think it's fair to say that Mr M was showing signs that he might be struggling financially. By now, he had been repeatedly borrowing and repaying Buffa loans over the previous 8 months or so. I don't think that the gap between paying loan 1 and taking out loan 2 was long enough for Buffa reasonably to think that Mr M might've put his finances in order during this period. And Buffa could see that save for his second loan, Mr M had been continuously borrowing and repaying £200 loans each time. This suggested that he wasn't making any real inroads into his money problems.

Buffa has acknowledged that it was aware at the time that the bank statements it saw revealed an incomplete picture of Mr M's finances. And given that the purpose of short-term lending is to provide a temporary cash boost to cover one off or emergency spending, I think that by this point Buffa should have taken more steps to verify what Mr M was saying to ensure it had a proper understanding of his financial situation before lending to him further.

Mr M has provided further bank statements which I've looked through to see what Buffa was likely to have found out if it had carried out more robust checking of Mr M's circumstances. To be clear, I'm not suggesting the lender should necessarily have looked at bank statements – the rules aren't prescriptive. But in the absence of other evidence, I think these give a reasonable guide as to Mr M's finances at the time and Buffa could have asked Mr M to produce these at the time.

And had Buffa looked in more depth at Mr M's finances, as I think a proportionate check in these particular circumstances would've required it to do, it would likely have seen that he was facing serious problems managing his money.

I think it would have seen that Mr M was regularly spending significant amounts on what appear to be gambling transactions. All the indications are that Mr M wasn't managing his money responsibly at the time. I think if Buffa had seen this information it should've realised that there was a significant risk that loan 5 was unsustainable. And so Buffa shouldn't have provided loan 5 – or any further borrowing.

This means, overall, I'm upholding the complaint about loans 5 and 6.

In coming to my decision I've carefully taken into account everything Buffa has said, including comments made in response to our adjudicator's view. I haven't commented on everything Buffa has mentioned where there's nothing more I can usefully add to what our adjudicator has said in response already. I have dealt in my decision with all the main points that have an impact on the outcome of this complaint.

I hope that setting out the reasons as I've done will help explain how I've reached my decision.

Putting things right

In deciding what redress Buffa should fairly pay in this case I've thought about what might have happened if it hadn't provided lending to Mr M, as I'm satisfied it ought to have. Clearly there are a great many possible, and all hypothetical, answers to that question.

For example, having been declined this lending Mr M may have simply left matters there, not attempting to obtain the funds from elsewhere. If this wasn't a viable option, he may have looked to borrow the funds from a friend or relative – assuming that was even possible.

Or, he may have decided to approach a third-party lender with the same application, or indeed a different application (i.e. for more or less borrowing). But even if he had done that, the information that would have been available to such a lender and how they would (or ought to) have treated an application which may or may not have been the same is now impossible to reconstruct accurately. From what I've seen in this case, I don't think I can fairly conclude there was a real and substantial chance that a new lender would have been able to lend to Mr M in a compliant way at this time.

Having thought about all of these possibilities, I'm not persuaded it would be fair or reasonable to conclude that Mr M would more likely than not have taken up any one of these options. This means it wouldn't be fair now to reduce Buffa's liability in this case for what I'm satisfied it has done wrong and should put right.

So, Buffa should do the following:

- A. Add together the total of the repayments made by Mr M towards interest, fees and charges on loans 5 and 6, including payments made to a third party where applicable, but not including anything it has already refunded.
- B. Calculate 8% simple interest* on the individual payments made by Mr M which were considered as part of "A", calculated from the date Mr M originally made the payments, to the date the complaint is settled.
- C. Pay to Mr M the amounts calculated in "A" and "B".
- D. Remove all adverse entries from Mr M's credit file for loans 5 and 6.

*HM Revenue & Customs requires Buffa to take off tax from this interest. Buffa must give Mr M a certificate showing how much tax it's taken off if he asks for one.

My final decision

For these reasons, I partly uphold Mr M's complaint and Buffa Loans Ltd should take the steps I've set out above to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 5 January 2022.

Susan Webb
Ombudsman