DRN-4066199

The complaint

Mr J complains through a representative that Buffa Loans Ltd (Buffa) gave him loans without carrying out proportionate affordability checks.

What happened

Mr J took two loans from Buffa, and I've outlined a summary of his borrowing below.

loan number	loan amount	agreement date	repayment date	number of instalments	instalment amount
1	£100.00	21/10/2019	30/11/2019	3	£43.43
2	£310.00	30/11/2019	30/01/2020	6	£86.66

In response to the complaint, Buffa issued its final response letter. In summary, it said it had carried out proportionate checks which showed these loans were affordable and so it didn't uphold the complaint. Mr J's representative didn't agree and instead referred the complaint to the Financial Ombudsman.

The complaint was considered by an adjudicator who upheld in full. He said the checks at loan 1 indicated Mr J had opened 17 new accounts within the preceding six months and in the adjudicator's view these were likely payday loan accounts. And, he said that based on the bank statements, Mr J's credit commitments took up almost all of his declared income. The adjudicator thought this meant both loans would be unlikely to be unsustainable for Mr J.

Mr J's representative appear to have accepted the proposed outcome.

Buffa didn't agree with the outcome the adjudicator proposed for both loans and I've summarised its comments below:

- All credit accounts were settled correctly.
- There is no evidence that Mr J was falling behind with his other payments or other evidence of financial hardship.
- The credit file shows payments to other creditors as being £476 for loan 1 and £845 for loan 2.
- Mr J's borrowing wasn't excessive.
- Mr J hadn't declared any costs for credit commitments which Buffa knew to be incorrect. Even though Mr J signed a statement confirming the information he had given was accurate.

The adjudicator went back to Buffa and explained why in his view its comments hadn't changed his mind. And as no agreement could be reached the complaint has been passed to me for a 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 general approach to complaints about short-term lending - including all the relevant rules, guidance and good industry practice - on our website.

Buffa had to assess the lending to check if Mr J could afford to pay back the amounts he'd borrowed without undue difficulty. It needed to do this in a way which was proportionate to the circumstances. Buffa's checks could have taken into account a number of different things, such as how much was being lent, the size of the repayments, and Mr J's income and expenditure.

With this in mind, I think in the early stages of a lending relationship, less thorough checks might have been proportionate. But certain factors might suggest Buffa should have done more to establish that any lending was sustainable for Mr J. These factors include:

- Mr J having a low 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 amounts to be repaid being especially high (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- Mr J having a large number of loans and/or having these loans over a long period of time (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable);
- Mr J coming back for loans shortly after previous borrowing had been repaid (also suggestive of the borrowing becoming unsustainable).

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable for Mr J.

Buffa was required to establish whether Mr J could sustainably repay the loans – not just whether he technically had enough money to make his repayments. Having enough money to make the repayments could of course be an indicator that Mr J was able to repay his loans sustainably. But it doesn't automatically follow that this is the case.

Industry regulations say that payments are sustainable if they are made without undue difficulties and in particular, made on time, while meeting other reasonable commitments and without having to borrow to make them. If a lender realises, or ought reasonably to have realised, that a borrower won't be able to make their repayments without borrowing further, then it follows that it should conclude those repayments are unsustainable.

I've considered all the arguments, evidence and information provided in this context, and thought about what this means for Mr J's complaint.

Loans 1 and 2

Buffa has shown, that as part of the affordability assessment it asked Mr J for details of his income and expenditure. Mr J's income has been recorded as being £1,400 per month for both loans.

Mr J also declared his monthly outgoings were £50 (for both loans). This was recorded as being for 'rent'. No other living costs were declared, and this left Mr J disposable income of £1,350. While this left more than enough disposable income for Buffa to be confident Mr J could afford the loans, I do have some concerns with Mr J's declared expenditure.

Firstly, he declared rent but no utilities or any other bills – which doesn't seem plausible. And secondly, while Mr J may have signed a declaration to say the information he had declared was accurate, Buffa was given other information that suggested he did indeed have other outstanding credit.

This information alone ought to have prompted Buffa to have undertaken some further checks with Mr J. But in any event, I haven't looked at what those further checks may have involved or what it may have shown because I'm satisfied the credit check results alone ought to have been sufficient for Buffa to realise the loans weren't sustainable.

However, before these loans were approved Buffa also carried out a credit search and it has provided the Financial Ombudsman with a copy of the results it received from the credit reference agency. I want to add that although Buffa carried out a credit search there isn't a regulatory requirement to do one, let alone one to a specific standard. But what Buffa couldn't do, is carry out a credit search and then not react to the to the information it received. And in this complaint, I don't think it reacted to what it was being told by the credit reference agency.

And what Buffa ought to be aware of, is that the affordability assessment has to be more than showing the loans were pounds and pence affordable. The loans also have to be sustainable for Mr J – which would include him being able to make the repayment without borrowing again.

For loan 1, it knew that Mr J had opened 90 credit accounts within the last six years, but more concerning was the fact that Mr J had opened 17 new credit accounts within the last six months. This is close to an average of three accounts per month in that time period. This is a significant sum of new credit being granted – on a regular basis. I think it's fair to say that on balance, these new accounts are likely to be payday loans.

The credit report provided by Buffa also showed that Mr J had at least two outstanding payday loans, two active home credit loans and then three other loans termed as "Finance House" – which were likely to be payday or instalment loans. But the more concerning information was that four of these accounts had been opened within the previous four weeks. So, Mr J had demonstrated a real and immediate need to obtain further credit.

For loan 2, I accept loan 1 was repaid more quickly than the agreement was scheduled, but the credit report this time further reinforces my view that Mr J was likely having financial difficulties to the extent that he was approaching and being approved new loans from other high-cost credit providers. Indeed, in the previous six months Mr J had opened 21 new credit accounts – close to an average of four per month.

I accept that Mr J may have been up to date with his credit commitments, but he'd opened six new credit accounts – likely to have been payday loans and / or home credit loans in the month before this loan was approved. When this loan was advanced, he had 13 such accounts active, and the commitments to these were more than 50% of Mr J's declared income.

Taking everything together, as well as thinking about whether the loans would be sustainably repaid, I just can't ignore that Mr J was actively seeking and being granted new credit from other providers when he was repaying loan 1. In my view, Mr J was now likely, using payday loans to make repayments towards other lenders – which isn't a sustainable form of repayment.

In addition, looking back through all the settled accounts, I can see that Mr J had been a regularly user of payday loan / Finance House accounts since at least 2015. Which ought to have further indicated to Buffa that Mr J was having financial difficulties, as he was using short term loans to clearly cover a long-term hole in his finances.

I am therefore upholding Mr J's complaint about these loans, and I've outlined below what Buffa needs to do in order to put things right.

Putting things right

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

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

Or, they 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 they 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 impossible to reconstruct now accurately. From what I've seen in this case, I certainly 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 J in a compliant way at this time.

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

Buffa shouldn't have lent loans 1 and 2 to Mr J.

A. Buffa should add together the total of the repayments made by Mr J towards interest, fees and charges on these loans.
B. Buffa should calculate 8% simple interest* on the individual payments made by Mr J which were considered as part of "A", calculated from the date Mr J originally made the payments, to the date the complaint is settled.
C. Buffa should pay Mr J the total of "A" plus "B".
D. Buffa should remove any adverse information it has recorded on Mr J's credit file in relation to these two loans.

*HM Revenue & Customs requires Buffa to deduct tax from this interest. Buffa should give Mr J a certificate showing how much tax it has deducted if he asks for one.

My final decision

For the reasons I've explained above, I'm upholding Mr J's complaint.

Buffa Loans Ltd should put things right for Mr J as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 20 June 2023.

Robert Walker
Ombudsman