

complaint

Mr B complains that Uncle Buck Finance LLP irresponsibly gave him loans which he couldn't afford to pay back.

background

Mr B took out 16 loans with Uncle Buck between January 2015 and November 2017.

He says he was borrowing to repay existing loans and his credit file shows his use of short term loans. Mr B says he can't now repay the loans and there is a balance outstanding.

In its final response to Mr B's complaint, Uncle Buck offered to refund interest and charges on loans 4 and 5 as it said these were granted in quick succession. Mr B didn't accept that offer and brought his complaint to this service.

Our adjudicator considered the complaint and recommended that Mr B's complaint about loans 7 to 15 should also be upheld. She said it wasn't unfair for Uncle Buck to offer loans 1 to 3, 6 and 16 but at the point of loan 7 Mr B's borrowing pattern was a cause for concern and Uncle Buck should've seen that he was persistently relying on these loans.

Uncle Buck didn't agree with the adjudicator's opinion and in particular said that it didn't think Mr B was persistently relying on the credit. It pointed out the gaps in the lending and set out the calls it had made to Mr B to check he was not in difficulty for loans 7 to 15. In addition to its offer for loans 4 and 5 Uncle Buck also offered to discount Mr B's outstanding balance by £430.

Mr B didn't accept that offer and so the complaint has been passed to me to decide. On 10 January 2020 I issued a provisional decision which set out why I was minded to agree with the adjudicator's conclusions but in addition I was minded to also uphold loan 16.

Neither Uncle Buck nor Mr B had anything to add to my provisional decision so I see no reason to depart from my conclusions which are set out below.

my findings

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.

Uncle Buck 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 B 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 Uncle Buck should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors include:

- 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 *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.

I think it's important for me to start by saying that Uncle Buck was required to establish whether Mr B 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 Consumer Credit Sourcebook defines 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.

So it follows that a lender should realise, or it ought fairly and reasonably to realise, that a consumer won't be able to make their repayments sustainably if they're unlikely to be able to make their repayments without borrowing further.

I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Mr B's complaint. As Uncle Buck has agreed to refund all interest and charges in relation to loans 4 and 5 and to remove these from Mr B's credit file I haven't considered these further save to include it in the redress and as part of Mr B's overall borrowing pattern.

Uncle Buck has told us about the checks it did before lending to Mr B. It asked Mr B for details of his income and normal expenditure. And Uncle Buck carried out checks on Mr B's credit file.

I agree with the adjudicator that it wasn't wrong for Uncle Buck to give Mr B loans 1 to 3 and 6 on the basis of the information he gave about his income and outgoings. It was early in the lending relationship and so I think the checks were enough for Uncle Buck to agree to lend. As Mr B hasn't raised any objection to the adjudicator's recommendation or Uncle Buck's offer in relation to loans one to six, I don't think that I need to say more about them.

I've looked at the overall pattern of Mr B's lending with Uncle Buck to see if there was a point at which Uncle Buck should reasonably have seen that further lending was unsustainable or otherwise harmful. And so Uncle Buck should've realised that it wasn't reasonable to lend more money to Mr B.

Given the particular circumstances of Mr B's case, I agree with the conclusions of the adjudicator and I think that this point was reached by loan seven. I say this because:

- When Mr B took out loan seven, he'd been borrowing almost continually and wasn't making any inroads into the amount that he owed.
- Mr B had repaid loan 6 on the 30 June and on the same day made an application for a loan of £560 which was declined. Mr B made a further application for a loan of £125 on 15 July which was also declined. I think this pattern of lending and requests for repeated borrowing should've alerted Uncle Buck to the likelihood that Mr B was having problems responsibly managing his money.

I think that Mr B lost out because Uncle Buck continued to provide borrowing from loan seven onwards. This is because:

- These loans had the effect of unfairly prolonging Mr B's indebtedness by allowing him to take expensive credit intended for short term use over an extended period of time.
- The number of loans, combined with the total length of time Mr B had been borrowing from Uncle Buck was likely to have had negative implications on his ability to access mainstream credit. This kept Mr B in the market for these high-cost loans.

The adjudicator has said that loan 16 is not part of this harmful borrowing but I can't see any reasoning for excluding it. There is a gap between Mr B repaying loan 15 on 25 July 2017 until 7 November 2017 when he took out loan 16. This is around three and a half months. I don't think this gap is long enough to suggest that Mr B's problems have passed and I consider it is part of the same chain of borrowing that began with loan 7. For these reasons I uphold it.

So uphold Mr B's complaint about loans 7 to 16 and ask Uncle Buck to put things right in relation to these loans as well as its offer for loans 4 and 5.

putting things right – what Uncle Buck needs to do

- A. Add together the total of the repayments made by Mr B towards interest, fees and charges on all upheld loans without an outstanding balance, not including anything it has already refunded.
- B. Calculate 8% simple interest* on the individual payments made by Mr B which were considered as part of "A", calculated from the date Mr B originally made the payments, to the date the complaint is settled.
- C. Remove all interest, fees and charges from the balance on any upheld outstanding loans, and treat any repayments made by Mr B as though they had been repayments of the principal. If this results in Mr B having made overpayments then these should be refunded with 8% simple interest* calculated on the overpayments, from the date the overpayments would have arisen, to the date the complaint is

settled. Uncle Buck should then refund the amounts calculated in "A" and "B" and move to step "E".

- D. If there is still an outstanding balance then the amounts calculated in "A" and "B" should be used to repay any balance remaining on outstanding loans. If this results in a surplus then the surplus should be paid to Mr B. However if there is still an outstanding balance then you should try to agree an affordable repayment plan with Mr B.
- E. Remove any adverse information about loans 4 and 5 from Mr B's credit file. The number of loans taken from loan seven onwards means any information recorded about them is adverse. So all entries about loans 7 to 16 should be removed from Mr B's credit file.

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

my final decision

My final decision is that I uphold Mr B's complaint in part and direct Uncle Buck Finance LLP to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 27 April 2020.

Emma Boothroyd
ombudsman