

complaint

Mr W complains that Uncle Buck Finance LLP gave him loans that he couldn't afford to repay.

background

Mr W borrowed three times from Uncle Buck between April and June 2013. He repaid his first two loans on time, but was unable to make any repayments on his final loan. There is a balance remaining on that loan that has now been passed to a third party debt collection company. I've summarised Mr W's borrowing from Uncle Buck below;

Loan Number	Borrowing Date	Repayment Date	Loan Amount
1	16/04/2013	20/05/2013	£ 75
2	20/05/2013	20/06/2013	£ 100
3	20/06/2013	-	£ 500

Mr W's complaint has been assessed by one of our adjudicators. She thought the checks that Uncle Buck did on the first two loans had been sufficient, and so it wasn't wrong for Uncle Buck to give these loans to Mr W. But she didn't think Uncle Buck had done enough checks on the final loan – and better checks would have shown that the loan was unaffordable for Mr W. So she asked Uncle Buck to pay some compensation to Mr W.

Uncle Buck hasn't responded to our adjudicator's assessment. So the complaint has been passed to me, an ombudsman, to decide. This is the last stage of our process. If Mr W accepts my decision it is legally binding on both parties.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've also taken into account the law, any relevant regulatory rules and good industry practice at the time the loans were offered.

Uncle Buck was required to lend responsibly. It needed to make checks to see whether Mr W could afford to pay back each loan before it lent to him. Those checks needed to be proportionate to things such as the amount Mr W was borrowing, and his lending history, but there was no set list of checks Uncle Buck had to do.

But the guidance in place at the time was clear about the responsibility of the lender to take reasonable steps to ensure that a borrower could *sustainably* repay their loans. The Office of Fair Trading (OFT) Irresponsible Lending Guidance states "*Assessing affordability is a borrower-focused test which involves a creditor assessing a borrower's ability to undertake a specific credit commitment, or specific additional credit commitment, in a sustainable manner, without the borrower incurring (further) financial difficulties.*"

The guidance goes on to say that repaying credit in a sustainable manner means being able to repay credit *“out of income and/or available savings”* and without *“undue difficulty.”* And it defines *“undue difficulty”* as being able to repay credit *“while also meeting other debt repayments and normal/reasonable outgoings”* and *“without having to borrow further to meet these repayments”*

Uncle Buck has told us about the checks that it did before lending to Mr W. It says that it asked him about his normal income and expenditure before agreeing each loan. And it did some checks on Mr W's credit file, but it hasn't been able to give us the results of these.

The first two loans that Mr W asked for were relatively small compared to what he told Uncle Buck about his normal income and expenditure. And I've not seen anything to make me think that the results of the credit checks should have caused any additional concern to Uncle Buck. So I think the checks that Uncle Buck did for these loans were proportionate, and it wasn't wrong to give the loans to Mr W.

But the amount Mr W asked to borrow for the third loan was significantly higher. I appreciate that he originally asked to borrow £600 – before Uncle Buck told him it was only willing to lend £500. So that shows that Uncle Buck did apply a degree of care in assessing Mr W's application. But I think the escalation of the amount Mr W was asking to borrow, and the fact that for the second month running he was asking for a new loan on the day he repaid a previous one, should have been indications to Uncle Buck that Mr W's finances might not have been as healthy as he was suggesting.

Given the above, I think it would have been proportionate at this time for Uncle Buck to have sought to independently verify the information that Mr W was providing about his finances. It appears that instead the lender continued to rely on the income and expenditure information that Mr W was supplying – suggesting that he had almost £1,500 left over each month. So I don't think the checks Uncle Buck did were enough at this time.

I've looked at Mr W's finances in more detail – to determine what Uncle Buck would have seen if it had done what I consider to be proportionate checks. I can see what appear to be a large number of gambling transactions on Mr W's bank statements. And he was also borrowing from a number of other lenders – both long and short term lenders. And taking all this into account it is clear to me that Mr W didn't have enough disposable income to repay the loan he took from Uncle Buck. I think that proportionate checks would have clearly shown this to Uncle Buck and so, as a responsible lender, it wouldn't have agreed to lend to Mr W at this time.

So I now need to consider what I think Uncle Buck should do, to put things right.

As I said earlier, Uncle Buck says that Mr W didn't make any repayments to it of either capital or interest on this third loan. So he had a large outstanding balance that was subsequently passed to a third party debt collection company. I don't know whether Mr W has made any repayments to this third party.

Given that Mr W has had the benefit of the money he borrowed from Uncle Buck I think it is fair that he should repay it. But I don't think Uncle Buck should add any interest or charges to what he borrowed. So the most that Mr W should need to repay is the original £500 that he borrowed.

Uncle Buck should take back the debt into its own books and reduce the balance by removing any interest and charges from it. And Uncle Buck should also reduce the balance to reflect any payments Mr W has made, either to Uncle Buck or the third party, by treating them as repayments of the capital he borrowed. And Uncle Buck should then, treating Mr W positively and sympathetically, agree a repayment arrangement for the remaining balance that is affordable for Mr W.

And Uncle Buck should remove from Mr W's credit file any adverse information it recorded relating to the late repayment of this third loan.

my final decision

My final decision is that I partly uphold Mr W's complaint 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 W to accept or reject my decision before 21 September 2017.

Paul Reilly
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