

## **complaint**

Mr H complains that Uncle Buck Finance LLP didn't carry out checks to see if he could afford to repay the payday loans it gave him. He wants the remaining debt written off and the default marker removed from his credit records.

## **background**

Mr H took out four payday loans with Uncle Buck over a five month period in 2015 for an amount between £300 and £500. He rolled over the first loan once. He said the loans were unaffordable and shouldn't have been given to him. Mr H also said that he told Uncle Buck he was in financial difficulties after the last loan, and while it has stopped charging interest, it expected him to pay over time the amount owed. Mr H said if Uncle Buck had checked his credit records, it would've seen he used other payday lenders and defaulted some of the loans.

Mr H complained to Uncle Buck. It said it checked his income and carried out a credit check when he first borrowed money. It offered him less than he wanted for the first loan and lent considerably less than his disposable income. It again checked his ability to pay for the final loan, noting Mr H had paid the other loans on time and some were repaid early. Uncle Buck said it was Mr H's choice to borrow and it was fair and reasonable to rely on what consumers told it about their spending. It also said Mr H was struggling to pay the last loan as he'd lost income, but that didn't mean the loan was originally unaffordable.

Mr H complained to us. Uncle Buck pointed out that it lends to high-risk consumers and Mr H's defaults happened more than twelve months before it lent to him. It thought Mr H's finances were improving when it lent to him and Mr H didn't give correct information about his spending when asked.

The adjudicator's view was that Uncle Buck hadn't treated Mr H fairly. She said the number of defaults shown on Mr H's credit records, and the fact he asked to defer payments more than once for the first loan should've told Uncle Buck more loans would be unaffordable. The adjudicator thought the checks had been proportionate for the first loan, but not for the later loans, for which Mr H applied for in quick succession. She said Uncle Buck should refund all interest and fees paid by Mr H for the second loan onwards, together with interest, and remove the loans from his credit records.

Uncle Buck said Mr H only deferred the first loan once and said at the time he wasn't in financial difficulty, but that it suited his budget better to change the payment date. It repeated that there was no default on his credit records for the previous 12 months and didn't know why the adjudicator said that the loans were unaffordable. The adjudicator said the first loan was deferred twice and as a result Uncle Buck should've asked more questions before lending to Mr H again.

## **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 agree with the adjudicator that the first loan doesn't appear to have been unaffordable. When lending money to a consumer, lenders are required to ensure the consumer can repay the borrowing in a sustainable manner without it adversely impacting on their financial situation. A lender should obtain sufficient information to make an informed decision about the lending. Exactly what the lender should consider is for each lender to decide and the guidance and rules lists a number of things each lender may wish to consider. Any checks should be proportionate, based on the size of the borrowing.

Given Mr H's relatively high monthly income, a loan of £300 isn't significant and I agree it was proportionate to rely on information from him about his income and spending, as well as information from the credit reference agency. Apart from looking at Mr H's bank statements, I don't see how else Uncle Buck could've checked his spending and the figures given by Mr H appear realistic.

And I agree with Uncle Buck that the type of consumer to which it lends is likely to have defaults on their credit records; that doesn't mean such consumers shouldn't get loans. Lending decisions should be based on all the facts, including how long ago the defaults occurred.

But the position did change after the first loan was given. Mr H did ask for two deferrals and rolled the loan over. I accept Uncle Buck asked questions as to why Mr H did this, but I'm not convinced the answer given was one which a reasonable lender should've accepted. Mr H said he wanted to defer to "fit in with his budget". Despite saying he had no financial difficulties, his answer sounds as if Mr H would struggle to pay on time. I also don't think it should've accepted Mr H's account of his spending as if it had been correct, he wouldn't have struggled to pay the first loan as planned or asked for a roll over. Lenders aren't acting fairly or reasonably if they accept consumers' accounts of their spending which don't match the repayment history of previous loans.

Mr H then borrowed the same or much larger sums almost every month. His second loan on 22 May 2015 was for £550, which is a significant sum. I agree some loans were paid early, but the pattern of lending appears to show Mr H was dependent on payday lending and needing to borrow more. With the repayments, his disposable income was largely being spent on payday loans. I agree that before lending to him a second time, Uncle Buck should've asked more questions of Mr H and looked at things like his bank statements, particularly as he was a high-risk consumer.

Looking at Mr H's bank statements, if Uncle Buck had done so I think it would've seen he was spending large sums gambling and had very little or nothing left at the end of the month. Mr H didn't tell Uncle Buck about that when he told it about his spending, but that might be as it's a discretionary spend like shopping. He was also borrowing from other payday lenders. I think the loans from 22 May 2015 onwards were unaffordable for Mr H and wouldn't have been given if Uncle Buck had asked to see Mr H's bank statements.

I agree with the adjudicator that it's fair and reasonable for Uncle Buck to refund to Mr H all interest and fees he's paid on all loans taken out after 22 May 2015, together with 8% simple interest from the date of payment until the date of refund. The loans should also be removed from Mr H's credit records.

**my final decision**

My final decision is that I uphold the complaint and Uncle Buck Finance LLP should pay Mr H all interest and fees he's paid on all loans taken out after 22 May 2015, together with interest as outlined above. It should also remove all loans taken out after 22 May 2015 from his credit records.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 22 September 2016.

Claire Sharp  
**ombudsman**