

## **complaint**

Mr L complains Uncle Buck Finance LLP was irresponsible to lend him money.

## **background**

The background to this complaint and my provisional findings are set out in my provisional decision dated 9 May 2016 – a copy of which is attached and forms part of this, my final decision. In my provisional decision I explained why I considered Uncle Buck shouldn't have lent Mr L this money.

Mr L accepts my provisional findings. But Uncle Buck disagrees. It says (in summary)

- it's a lender in the sub prime sector so its "risk appetite" is higher than other lenders
- a poor credit history isn't a bar to credit if the customer displays sufficient affordability and meets lending criteria;
- lending criteria is commercially sensitive and the decision to lend is a legitimate exercise of commercial judgment. It reviewed information on Mr L's credit file, including the adverse information, and he fell within the relevant lending criteria so it was still prepared to take the risk;
- that risk reduced with each loan Mr L repaid;
- it wouldn't decline to lend just because Mr L used other payday lenders and the fact he'd repaid 46 accounts shows Mr L was able to pay back what he borrowed – meaning the loans were affordable. And, weighted against that strong evidence of repayment, four defaults doesn't suggest the risk was unacceptable;
- it informs customers payday loans aren't suitable for long term borrowing but it doesn't make a customer's financial choices for them;
- bank statements can be tampered with so they might not provide an accurate representation of the facts and consumers can have more than one account – which may be the case here, going from transfers in Mr L's bank statements. So it's unreasonable to draw conclusions about his overall financial situation based on statements from only one bank;
- these loans were repaid out of salary and not used for essential expenses; and
- Mr L's gambling problem caused his financial issues and it shouldn't be held responsible for that.

## **my findings**

I've re-considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've thought carefully about what Uncle Buck has said. But, for reasons I'll explain, I am not persuaded there are reasonable grounds here for me to depart from the conclusions set out in my provisional decision.

Lenders, including those in the "sub-prime" sector, are required to check if an individual borrower is likely to be able to pay back a specific loan in a sustainable way before lending. And I'm satisfied the decision to lend should take more than just the lender's appetite for risk into account.

My role here is to look at whether Uncle Buck acted responsibly - and carried out a reasonable and proportionate affordability assessment in all of the circumstances. Uncle

Buck should have obtained enough information to reasonably and proportionately gauge if Mr L would be able to meet his repayments without undue difficulties. And it should have considered the potential for this borrowing to adversely impact on Mr L's financial situation.

I've acknowledged already that

- Uncle Buck carried out some checks before lending;
- it's not necessarily wrong to lend just because a customer's credit history contains adverse information or he has a number of other accounts; and
- customers should give lenders correct information, which lenders are generally entitled to rely on.

But, for the reasons I've explained in my provisional decision, I'm satisfied there were inconsistencies between what Mr L told Uncle Buck and information available from other sources. And I remain of the view Uncle Buck should reasonably have suspected Mr L might not have been truthful - and there could be an affordability issue here.

Uncle Buck was obliged to ensure the information it took into account was correct. So I'm satisfied it would have been reasonable to question that and do some more checks to verify Mr L's situation.

Uncle Buck suggests further checks might not have revealed the extent of Mr L's problems - because he could have supplied false or misleading bank statements. I can't say for certain that wouldn't have happened. But I'm not persuaded many borrowers take the trouble and risk to falsify bank statements when a lender asks for them. And I think an experienced lender like Uncle Buck would probably notice if a customer did.

I reach my decision on the balance of probabilities, what I think is most likely to have happened – taking all of the evidence and wider circumstances into account. On balance overall, I remain satisfied it's more likely than not Uncle Buck would have realised Mr L was in trouble if it had done some more reasonable and proportionate checks. And, as a responsible lender, it would probably have concluded these loans weren't affordable and declined the applications.

I'm not persuaded the fact loans were settled the day after Mr L was paid means he repaid this money in a sustainable way – in the light particularly of his repeated borrowing from other payday lenders. And, from the evidence I've seen, I remain of the view these loans weren't affordable at the outset.

I accept Uncle Buck's not responsible for all of Mr L's problems. But I'm satisfied it shouldn't have provided these loans and they probably made an already difficult situation worse. So I find it fair and reasonable that Uncle Buck should refund interest and charges on all of the loans plus interest and remove related information from Mr L's credit file.

### **my final decision**

My decision is I uphold this complaint. In full and final settlement I require Uncle Buck Finance LLP to

1. refund all interest and charges applied to Mr L's loans;
2. pay 8% simple interest per year on that refund from the date of payment to the date of settlement; and

3. remove any information recorded about these loans from Mr L's credit file.

HM Revenue & Customs may require Uncle Buck to take off tax from the interest paid.  
HCCF must give Mr L a certificate showing how much tax it's taken off if he asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 8 August 2016.

Claire Jackson  
**ombudsman**

## **copy of provisional decision**

### **complaint**

Mr L complains Uncle Buck Finance LLP was irresponsible to lend him money.

### **background**

Mr L says he was having serious personal and financial difficulties when he took these loans out. And Uncle Buck would have known that if it had checked affordability properly, as there was evidence of problem debt, over reliance on short term loans and defaults.

Uncle Buck says Mr L obtained five loans between December 2014 and April 2015 - all were repaid on time. And it's a high risk lender that doesn't automatically decline if a borrower has defaults. Uncle Buck considers affordability was assessed properly - and Mr L's disposable income suggested he would be able to pay the money back sustainably. Mr L didn't mention he was in a debt management plan (DMP) or explain he had a gambling addiction - so it had no way of knowing about those, and it wasn't wrong to lend.

Our adjudicator initially considered the lending was irresponsible, as she thought Uncle Buck should have known Mr L was in a DMP from its credit searches. But Uncle Buck produced information from its credit search provider suggesting the DMP hadn't appeared in search results - as the relevant lender didn't report it or the information was suppressed because of a dispute. So our adjudicator isn't persuaded it would be fair to criticise Uncle Buck when the DMP wasn't visible on the search it saw. She's satisfied Uncle Buck did enough to assess affordability in the circumstances and the complaint shouldn't be upheld.

Mr L disagrees. He says (in summary)

- he defaulted four accounts in the 10 months before he took out the first loan here - which should have alerted Uncle Buck to the fact there was something wrong;
- Uncle Buck should have asked about that poor credit history - given his declared relatively high monthly disposable income;
- his credit file displays numerous credit accounts and such a high number should have been another cause for concern;
- he was only able to repay these loans by incurring more problem debt;
- his gambling addiction is a mental illness and he didn't set out to mis-lead Uncle Buck about the DMP;
- having a DMP isn't as bad as unsatisfied defaults because defaults indicate failure to pay - whereas a DMP shows a borrower's taking steps to resolve financial issues; and
- this service has upheld other complaints on similar facts.

### **my provisional findings**

I've considered all the evidence and arguments available so far to decide what's fair and reasonable in the circumstances of this complaint.

Financial Conduct Authority (FCA) rules provide lenders must carry out a creditworthiness assessment (based on sufficient information from the customer where appropriate and a credit reference agency where necessary) before agreeing to lend.

That assessment must consider the customer's ability to make repayments on time, sustainably, over the loan term - as well as the loan's potential to impact adversely on the customer's financial situation – taking into account information the lender's aware of at the time.

I accept a lender has some choice about the extent and scope of any affordability assessment. FCA rules say it should be dependant on, and proportionate to, a number of factors which *may* include the

type, amount and cost of credit – and any indication the customer is in or has experienced financial difficulties, amongst other things. And, I acknowledge a lender is generally entitled to rely on information provided by the customer – unless the lender has reason to know or suspect the customer hasn't been truthful.

I can see that Uncle Buck obtained information about Mr L's income and outgoings before it agreed to provide the first loan here. I appreciate Mr L's declared disposable income of about £1,700 suggested the loan of £200 was affordable. But I'm satisfied Uncle Buck had obtained other information about Mr L's finances as well - from a credit search. That showed he had four defaulted accounts in the previous 12 months.

The Information Commissioner's office says a default, when recorded with a CRA, should be used to refer to a situation *"where the relationship between an individual and a creditor has broken down"*. And it's *"an accepted industry standard to record only serious defaults"* as *"a reliable reflection of the individual's credit standing"*. As such I think the fact Mr L had four defaults in the very recent past should have raised a red flag with any reasonable lender.

The credit search also shows Mr L had at least two other delinquent accounts – suggesting late or missed payments. And he had 61 accounts in total – 46 of which were settled. Uncle Buck says only 15 were still active, which it considers a low number. But I think 61 accounts in all, is relatively high – and I consider that should have flagged up the fact Mr L might be borrowing from other payday lenders as well.

Uncle Buck says, as a high risk lender, it often sees such adverse information - and it doesn't mean a loan will be declined automatically. I don't suggest it should. But I don't think it's reasonable for a lender to simply disregard such information either.

I'm satisfied the defaults are evidence that Mr L had already failed to repay several debts. I find it surprising that a consumer with such relatively high disposable income wasn't able to repay what he owed. And taken with the delinquent markers and total number of accounts I think it would have been reasonable for Uncle Buck to make some further enquiries.

I appreciate Mr L said he had essential outgoings of about £600 a month. But he didn't declare any credit commitments - which seems to me to be somewhat inconsistent with the information Uncle Buck got from the credit search. So I think Uncle Buck should have asked for some confirmation that the information Mr L provided was correct and complete.

Uncle Buck says it had no independent way of verifying Mr L's expenditure - or finding out about his gambling addiction. I disagree. I think it would have been relatively easy, and not disproportionate (in the specific circumstances here) for Uncle Buck to ask Mr L for bank statements, for example.

I've seen Mr L's statements for the relevant time. And I'm satisfied if Uncle Buck had looked at even one month's, it would have realised straightaway the very serious nature of the personal and financial problems Mr L was facing. In which case, I think Uncle Buck is unlikely to have reasonably agreed to provide any of these loans.

I appreciate Mr L paid off the loans, but I think he was probably only able to do so in an unsustainable manner - by incurring more problem debt. And, while I accept the loans weren't large, I think it's likely (given Mr L's particular circumstances) they had an adverse impact on his financial situation. Overall, and on balance, I'm satisfied none of the loans were affordable. And I consider Uncle Buck was irresponsible to provide the lending.

Mr L's had the benefit of the capital, so I think it fair he should repay that. But I'm minded to require Uncle Buck to refund all interest and charges applied to Mr L's loans, along with interest, and remove any related information from his credit file.

**my provisional decision**

For the reasons I've given, and subject to any further submissions I may receive from Mr L or Uncle Buck, I am minded to uphold this complaint and require Uncle Buck Finance LLP to

1. refund all interest and charges applied to Mr L's loans;
2. pay 8% simple interest per year on that refund from the date of payment to the date of settlement; and
3. remove any information recorded about these loans from Mr L's credit file.