

complaint

Mr B says Uncle Buck Finance LLP lent to him irresponsibly. He says it wasn't fair for Uncle Buck to lend to him as he had many other payday loans at the same time.

background

I sent Mr B and Uncle Buck my provisional decision on 19 November 2018. A copy of it is attached and it forms part of this final decision. The full background to the complaint is set out in my provisional decision, so I won't reiterate it here.

I explained why I was planning to uphold the complaint in part and asked Mr B and Uncle Buck to let me know if they had anything to add.

Uncle Buck didn't send me anything else to consider. Mr B made a few comments – in particular he wanted to query the figures in the 'amount repaid' column in the table I had attached to my provisional decision. He said the figures were different to what he actually paid. But if these figures were not to be used for redress calculations, then he had nothing to add.

my findings

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

As neither party has disagreed with the outcome of my provisional decision I see no reason to change it. I'm therefore upholding the complaint in part, for the same reasons as given in my provisional decision.

I will briefly address the point Mr B raised about the information in the table.

I can confirm the table attached to my provisional decision was for information only and wasn't to be used to calculate any redress. I've noted that the figures in the table are different to the figures in the statement of account Uncle Buck sent to him. The redress will be based on what Mr B actually paid. I hope this puts his mind at ease.

To avoid any confusion, I've not included information about the amounts repaid in the table attached to my final decision.

my final decision

I uphold this complaint in part. Uncle Buck Finance LLP must put things right by taking the steps set out in my provisional decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 7 January 2019.

Matthew Bradford
ombudsman

Appendix

Loan no.	Amount lent (£)	Date lent	Date repaid
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1	250	04/08/14	26/08/14
2	500	28/08/14	26/09/14
3*	450	29/09/14	24/10/14
4*	367	24/10/14	26/11/14
5	525	28/11/14	24/12/14
6*	525	24/12/14	26/01/15
7*	525	26/01/15	26/02/15
8	610	27/02/15	26/03/15
9	300	04/06/15	30/06/15
10	610	31/07/15	28/08/15
11	850	02/11/15	30/11/15
12	900	01/02/16	29/02/16
13	900	03/05/16	31/05/16
14	500	10/09/16	30/09/16
15	700	01/12/16	30/12/16
16	250	23/03/17	31/03/17
17	500	01/06/17	30/06/17
18	500	31/08/17	29/09/17
19	300	01/12/17	<i>n/a</i>

Please note that Uncle Buck says it provided 15 loans and that the 'loans' denoted with a * are actually rollovers. The above table is included here only to provide information about the lending history.

COPY OF PROVISIONAL DECISION

complaint

Mr B says Uncle Buck Finance LLP lent to him irresponsibly. He says it wasn't fair for Uncle Buck to lend to him as he had many other payday loans at the same time.

background

The information Uncle Buck provided about the loans (and rollovers) it approved for Mr B is attached as an appendix to this decision.

An adjudicator considered this complaint and recommended it be upheld in part. I understand that he considered Uncle Buck shouldn't have given Mr B the loans it approved from 28 November 2014 and onwards.

Uncle Buck didn't entirely agree with the adjudicator. It said it agreed Mr B didn't have enough disposable income to repay the loans approved on 10 September 2016 and 1 December 2017. But it didn't accept the other loans shouldn't have been provided. It thought the main reason these loans were unaffordable were Mr B's gambling transactions, which it didn't know about and it wasn't required to check Mr B's bank statements for such issues.

As there was no agreement, the complaint has been passed to me to decide.

my provisional 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 taken into account the law, good industry practice and any relevant regulations at the time.

Relevant regulations and guidance include the Financial Conduct Authority's (FCA) Consumer Credit sourcebook (CONC). CONC contains rules and guidance for lenders about responsible lending. Among other things, CONC says lenders should carry out affordability checks which are proportionate in the circumstances of the loan. The regulations also say repayments should be sustainable (*i.e.* repayable from the borrower's income or savings) and that lenders shouldn't allow a borrower to enter into consecutive credit agreements where it would be unsustainable to do so.

With this in mind, I've taken into account whether Uncle Buck carried out proportionate affordability checks before lending. And if I consider it didn't, I've gone on to decide what I think proportionate checks would likely have shown.

did Uncle Buck carry out proportionate checks?

Uncle Buck carried out credit checks and obtained information from Mr B about his income and some of his expenditure. It also obtained information about Mr B's employment and personal circumstances.

For the loans I've labelled 1-7, Mr B told Uncle Buck his income was £4,000 a month. This included 'take-home' pay of £2,000 a month and 'other monthly income' also of £2,000. Mr B says this isn't correct, but from what I've seen it is what was submitted on his applications. For loan 8, Mr B said his income was £2,000 a month and for the remaining loans he said it was £1,800-£1,900. His residential status was recorded as 'living with parents'.

Uncle Buck has shown us the information it recorded about Mr B's expenditure. For loans 1-4, it seems to have only asked about housing, transport and food costs – and recorded expenditure of between zero and £50 a month. And for loans 5-19 it asked additionally about store and credit card repayments, mortgage/rent, fixed loans and 'other' costs.

I think the checks Uncle Buck carried out on the first two loans were proportionate. Although it didn't obtain much detail about Mr B's expenditure, Mr B told it he earned £4,000 a month and that all – or almost all – of that income was disposable. So I don't think further questions about his expenditure would've likely revealed anything to suggest these loans were unaffordable. I don't therefore intend to uphold the complaint about these loans.

Loans 3 and 4 were rollovers of loan 2 – although they appear as separate loans in the 'loan history' document provided by Uncle Buck. As they were rollovers of what was only the second loan, I don't consider it would be proportionate to say further checks were necessary.

For loan 5, I think Uncle Buck could have done more to check Mr B's credit commitments. Although it asked about his regular commitments, I think it also should've asked about his short-term loan commitments. The credit checks it carried out suggested it was likely Mr B had other short-term debt – given the number of new accounts being opened elsewhere. And the pattern of Mr B's borrowing suggested he may not have had a short-term cash flow problem but may have been using short-term credit to fill a regular hole in his finances. In these circumstances, I think the risk of continuing to lend was that the cumulative debt could become unsustainable (as per CONC 6.7.22G) and so further checks would've been proportionate in my view.

Loans 6 and 7 were rollovers, this time of loan 5. As above, I don't think it would be proportionate to say Uncle Buck needed to carry out further checks before letting Mr B rollover the loan.

From loan 8 and onwards, bearing in mind Mr B's previous borrowing, I think Uncle Buck needed to find out more before giving these loans. At this stage, I think that it would've been proportionate to continue to ask about Mr B's normal monthly living costs and regular financial commitments (including any existing short-term lending ones). And I think that it needed to verify at least some of this information.

what would proportionate checks have shown?

For loan 5, bearing in mind the information Uncle Buck had about Mr B's declared income, I don't think further questions about his expenditure would have suggested it was unaffordable. Mr B's declared income was £4,000 and his expenditure £400 – leaving £3,600 in apparent disposable income. I don't think combining the cost of loan 5 with Mr B's scheduled short-term debt payments would total as much as £3,600. So I'm not planning to uphold the complaint about this loan (or the rollovers 6 and 7).

For loans 8-19, which were approved from 27 February 2015 onwards, I've considered information from Mr B's bank statements. I've done this because Uncle Buck didn't ask Mr B for evidence of income or outings, as I think it should've. And as I haven't been given anything else, I think it's reasonable to rely on this information.

Had Uncle Buck verified Mr B's income at this time, I think it would've seen he was earning around £2,500-£2,900 a month. And had it verified his outgoings, I think it would've seen that Mr B was still borrowing from multiple (at least six) other short-term lenders at the same time as Uncle Buck. And the amounts he was repaying on all of his short-term debt mean I think it was unlikely he could sustainably repay further borrowing.

By this stage, proportionate checks would've also shown Uncle Buck that a substantial portion (and in fact often all) of Mr B's income was going on gambling. And I think that if Uncle Buck would've seen this, it wouldn't have lent to Mr B in these circumstances. To give an example, I've seen that Mr B spent around £3,500 on gambling in the month before the loan 8 was approved. This was about £1,000 more than he earned. And this pattern continues until the end of the period of lending.

So I think that most, if not all, of the loans approved from 27 February 2015 were unlikely to be affordable, when taking into account all of Mr B's other debt and his gambling expenditure.

In addition to the individual affordability of the loans, I also think Uncle Buck ought to have considered whether allowing Mr B to enter into so many consecutive loan agreements was unsustainable or otherwise harmful (CONC 6.7.21-22G).

By the time of loan 10, Uncle Buck had been lending to Mr B for a year and the amounts it was lending were generally increasing. I haven't seen that Uncle Buck gave sufficient consideration to the continuing sustainability of the loans. Although Mr B repaid all but the last loan, I think Uncle Buck ought to have thought more about how he was doing this – particularly as its credit reports were showing Mr B was also opening a large number of accounts elsewhere.

I think the number of loans Mr B requested – by the time of loan 10 – ought to have been enough to make Uncle Buck aware that continuing to lend to him would likely be harmful to his overall financial situation. But I intend to uphold the complaint from the point of loan 8, as I think Uncle Buck would've likely established that Mr B wasn't able to afford the loans from this point, as I've explained above.

what Uncle Buck must do to put things right

I plan to tell Uncle Buck to:

- refund the interest and charges Mr B paid on the loans it approved from 27 February 2015 onwards*
- add interest to the above at 8% simple per year, from when they were paid until the date of settlement†
- remove adverse information about these loans from Mr B's credit history

*I understand there's still an outstanding balance on loan 19. So Uncle Buck should remove any interest and charges applied to this loan and treat any payments made as if they were payments towards the capital. If after this there's still an outstanding balance, Uncle Buck can deduct this from the redress above. It should do this after deducting tax from the redress.

† 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 provisional decision

I plan to uphold the complaint in part and to tell Uncle Buck Finance LLP to take the steps set out above.

Matthew Bradford
ombudsman