

complaint

Mr M complains that Uncle Buck Finance LLP gave him loans that he couldn't afford to repay. He asks that it refunds interest and charges and removes information about the loans from his credit file.

background

Mr M took out eight loans with Uncle Buck between December 2014 and September 2016, which he says weren't affordable. The adjudicator didn't recommend that the complaint should be upheld, saying:

- Uncle Buck asked about Mr M's income and expenditure before each loan. Uncle Buck also did credit checks.
- These checks were proportionate for the first two loans. When Mr M asked for the third loan, of £300, Uncle Buck should have asked for more information about Mr M's living costs and whether he had any short term commitments. It should also have asked for more information before the last four loans. Although they were repayable in instalments, the results of the credit checks showed defaults on Mr M's credit file.
- If Uncle Buck had made more checks, it's likely it would have said the loans were affordable based on Mr M's normal living expenses and financial commitments. While Mr M had short term commitments, he was transferring money between his current account and savings account. It's likely Uncle Buck would have assessed the loans as affordable. While there was evidence of gambling, this extent of this wouldn't have affected the lending decision.

Mr M didn't agree. He said the loans were not affordable and he had to keep borrowing from short term lenders.

my provisional findings

As I didn't agree with all of the adjudicator's recommendations, I sent a provisional decision to the parties to explain why. I set out the following provisional findings:

Loans 1 to 3

Mr M took out the first loan, of £200, in December 2014. He told Uncle Buck his monthly income was £1,400 (which it says it verified) and his expenditure was £625. I think these checks were proportionate given the amount of the loan and Mr M's stated income. I also think these checks were proportionate for the second loan, also of £200.

When Mr M took out the third loan, in June 2015, I think Uncle Buck should have made further checks. The amount of the loan increased to £300 and Mr M had rolled over repayment of previous loans. I think Uncle Buck should have asked about Mr M's short term commitments as well as his normal living costs and regular financial commitments.

Had it done so, I think it would have assessed the loan as affordable. Mr M said his monthly income was £1,450 and his outgoings on housing, utilities, credit cards, other and transport was £761. I haven't seen evidence that Mr M had short term commitments when he took out the loan that would have made the repayment unaffordable.

Loans 4 to 6

Although the next loan was for a smaller amount and repayable in instalments, I think Uncle Buck should have made more checks. Mr M agreed a payment plan in July 2015 as he had difficulty repaying the third loan and this could suggest financial difficulties. Mr M also had a county court judgement and defaults on his credit file, some recent, which can also suggest financial difficulties. I think Payday UK should have asked for information to gain a full understanding of Mr M's financial circumstances. While there are different ways of doing this, one is to look at his bank statements.

Mr M doesn't agree that had Uncle Buck looked properly at his finances, it would have assessed the loans as affordable. So I've looked carefully at the evidence he's provided, including his bank statements. Mr M paid rent from a savings account and most of his living expenses from a joint account. There are a number of transfers between accounts.

The rental payment and outgoings from the joint account in August 2015 (other than transfers to other accounts, gambling transactions and short term loans) are about £1,425. I've assumed that Mr M is responsible for about half of this. This is consistent with Mr M telling Uncle Buck his monthly expenditure was £765. When Mr M took out the fourth loan, he had short term commitments of less than £100. There are payments to gambling businesses totalling about £250 in August 2015 and £370 in July 2015.

I think the combination of the gambling transactions, the defaults and county court judgement on Mr M's credit file and the time he took to repay previous loans could suggest a possible problem. But, based on Mr M's income and outgoings, I don't think it would have been unreasonable for Uncle Buck to assess the loan repayments as affordable.

I think the situation was different when Mr M took out the fifth loan in early December 2015. This required monthly instalments of £97.46. Mr M told Uncle Buck his monthly outgoings were £1,090. There are payments from his account of £565 to short term lenders during December 2015. I think if Uncle Buck had made proportionate checks it would have seen that the loan repayments weren't affordable.

Mr M's situation was similar when he took out the sixth loan, in March 2016. His bank statements show payments to short term lenders of more than £650 in the month after he'd taken out the loan. I don't think Mr M had enough income left, after meeting his usual outgoings and short term commitments, to pay the first loan instalment, of £72.73.

Loans 7 and 8

Mr M took out the last two loans in July and September 2016. These required monthly instalments of £71.62 and £140.64, respectively. I think, given his borrowing history, Uncle Buck should have looked more carefully at Mr M's finances. But, if it had done so, I think it would have assessed the loans as affordable. There doesn't seem to have been a significant change in Mr M's income or his normal living expenses. His short term commitments were less than £100.

What happens now?

I don't think Uncle Buck should have agreed to lend loans 5 and 6 (taken out in December 2015 and March 2016) to Mr M. So for each of those loans Uncle Buck should:

- *Refund all interest and charges that Mr M paid on the loans;*
- *Pay interest of 8% simple a year on all refunds from the date of payment to the date of settlement*;*
- *Remove any negative information about the loans from Mr M's credit file.*

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

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Mr M agreed with my provisional decision. Uncle Buck didn't comment. In the circumstances, I see no reason to change the findings or outcome set out in my provisional decision.

my final decision

My decision is that I uphold this complaint. I order Uncle Buck Finance LLP to:

- Refund all interest and charges that Mr M paid on loans 5 and 6 (taken out in December 2015 and March 2016);
- Pay interest of 8% simple a year on all refunds from the date of payment to the date of settlement*;
- Remove any negative information about loans 5 and 6 from Mr M's credit file.

**HM Revenue & Customs requires Uncle Buck to take off tax from this interest. Uncle Buck must give Mr M 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 M to accept or reject my decision before 4 October 2017.

Ruth Stevenson
ombudsman