

## **complaint**

Mrs P complains that Uncle Buck Finance LLP gave her payday loans without checking she could afford them. She wants it to refund the interest and charges she paid.

## **background**

Mrs P had two loans from Uncle Buck between May and June 2013. She didn't repay the second loan and the debt was sold on. She said Uncle Buck hadn't checked she could afford the loans and didn't allow her a repayment plan when she couldn't repay the second loan. Uncle Buck said Mrs P hadn't told it she was engaged in a debt management plan before she took out her loans. If it had known this, it wouldn't have approved the loans.

Our adjudicator recommended that the complaint should be upheld in part. She thought Uncle Buck had made appropriate checks that Mrs P could afford to repay her loans. But she thought it hadn't acted positively or sympathetically when Mrs P told it she was in a debt management plan. It continued to apply interest and didn't correspond with Mrs P's debt management company. So she thought Uncle Buck should refund Mrs P the interest and charges she paid after she told it she was in a debt management plan, with interest, and remove any negative information about the loan from Mrs P's credit file.

Uncle Buck didn't respond to the adjudicator's view, so the complaint has come to me for a final decision.

## **my findings**

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

Mrs P's first loan was for £150 (£202.42 with interest). She repaid this and then two weeks later took out a loan for £200 (£269.90 with interest). She rolled over this loan twice before defaulting on it.

Mrs P wrote to Uncle Buck explaining that she was unable to make the repayment due to changed circumstances. She asked it to contact her debt management company (DMC) to agree a repayment plan. The DMC made four payments, but Uncle Buck said it couldn't make an agreement with it as Mrs B had entered debt management in 2010. Mrs P repaid her loan in 2016.

Uncle Buck was required to lend responsibly. It should have made checks to ensure Mrs P could afford to repay the loans before it lent to her. Those checks needed to be proportionate to things such as the amount Mrs P was borrowing, and her lending history. But there was no set list of checks Uncle Buck had to do.

For her first loan, Mrs P told Uncle Buck she earned £900 a month after tax and her monthly living expenses, including regular commitments, were £438. These decreased to £320 for her second loan. I think it was reasonable for Uncle Buck to rely on the accuracy of the information Mrs P provided.

Uncle Buck said it made a credit check, but I can't see what this found. But Mrs P has provided us with her credit file from the time and I can't see anything untoward that would have stopped Uncle Buck lending to her.

So I think the checks on affordability that Uncle Buck made were proportionate and sufficient. It looked as if Mrs P had enough disposable income to repay her loans comfortably. So I can't say that it was wrong for it to give her the two loans.

When Mrs P's second rollover of her second loan was due for repayment, she told Uncle Buck of her financial difficulties and directed it to the DMC. She offered to make a repayment plan.

But Uncle Buck said that when Mrs P took out her loans she was asked if she was involved in debt management and she had said she wasn't. I can see that this is clearly set out in her loan agreement. It said her agreement with the DMC was dated 2010. Mrs P has explained to us that she was in a debt management plan between 2010 and 2012, but she thought this had ended. I can't see that Uncle Buck explained to Mrs P why it didn't correspond with the DMC. It continued to add interest and charges and then sold the debt on.

I agree with the adjudicator that this wasn't a positive or sympathetic approach to Mrs P's financial difficulties. I can see that she emailed Uncle Buck repeatedly to explain her situation. I don't think it was fair for it to not respond or to engage with the DMC. So I think it should act to put things right. I think a positive response would have been to freeze Ms P's interest and charges from this point.

### **my final decision**

My final decision is that I uphold this complaint in part. I require Uncle Buck Finance LLP to do the following:

1. Refund Mrs P the interest and charges she paid on her second loan in addition to her agreed interest after she told Uncle Buck of her financial difficulties in September 2013. It should add interest at 8% simple per annum from the date of payment to the date of settlement.
2. HM Revenue & Customs requires Uncle Buck to withhold income tax from that interest. It must give Mrs P a certificate showing how much it's taken off if she asks for one.
3. Remove any adverse information relating to this loan from Mrs P's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 15 May 2017.

Phillip Berechree  
**ombudsman**