

complaint

Mrs A complains Uncle Buck Finance LLP (“UBF”) provided her with loans she couldn’t afford to repay.

background

The background to this complaint, and my initial two sets of findings on it, can be found in the attached provisional decisions which form a part of and should be read alongside the rest of this final decision.

After receiving my second provisional decision, both Mrs A and UBF said they had nothing further to add.

my findings

I’ve once again reconsidered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

As neither party to the complaint has anything further to add, I see no reason to depart from the conclusions I reached in my second provisional decision. I don’t think UBF should have given Mrs A loans 3 to 6, and it must provide redress as set out in the following section. In that section “S” refers to the company UBF has sold Mrs A’s outstanding debt to.

putting things right

UBF shouldn’t have given Mrs A loans 3 to 6, so to put things right it must:

1. Calculate the amount Mrs A has paid in interest, charges and any other fees for loans 3 to 6*. To each of these sums, it must add 8% simple interest per year**, from the date Mrs A paid them to the date of settlement.
2. Settle directly with S the remaining balance on the loan 6 CCJ, so Mrs A doesn’t have to pay anything further to S.
3. Remove all interest, charges and fees that haven’t yet been paid in respect of loan 6 from the outstanding balance. UBF should then apply any repayments made in respect of this loan as though they were repayments of the capital sum. If there is still a capital balance left owing after this, UBF may apply the sum calculated in “1” above to reduce that capital.

If, after the sum in “1” above has been applied against the capital balance outstanding, there is still a sum remaining for Mrs A to pay, a mutually-agreeable repayment plan should be arranged. If however, the refund covers the entire principal and some refund is left over, the remaining amount of refund should be paid to Mrs A.

4. Remove any adverse information it has reported relating to loans 3 to 6 from Mrs A’s credit file.

*To calculate this amount for loan 6, UBF should obtain a statement of account from S. Anything Mrs A has paid S above £550 should be considered “interest, charges and any other fees”.

**HM Revenue & Customs requires UBF to take off tax from this interest. It must give Mrs A a certificate showing how much tax it’s taken off, if Mrs A asks for one.

my final decision

For the reasons given above, and set out in my previous provisional decisions, I uphold Mrs A's complaint and direct Uncle Buck Finance LLP to take the actions set out in the "putting things right" section of this final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 21 December 2017.

Will Culley
ombudsman

COPY OF SECOND PROVISIONAL DECISION

complaint

Mrs A complains Uncle Buck Finance LLP (“UBF”) provided her with loans she couldn’t afford to repay.

background

The background to this complaint, and my initial findings on it, can be found in my attached first provisional decision.

UBF didn’t reply to that provisional decision. Mrs A made a few points which could be summarised as follows:

- She’d had a county court judgment (CCJ) on her credit file at the time she applied for her first loan from UBF. She wondered if this should have affected its decision to lend to her.
- UBF had passed on her loan to a debt collector which had also obtained a CCJ against her. The amount she had to pay back was much more than what she’d borrowed from UBF. She wanted to know if this would be taken into account, and also what would happen to this CCJ now.

my revised 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 along with any relevant regulatory guidance and good industry practice at the time.

the impact of Mrs A’s existing CCJ

I’ve considered what Mrs A’s said about having an existing CCJ when she applied for her first loan.

The CCJ was something UBF was aware of because it came up during the credit checks it carried out. The information UBF received was basic, indicating only the number of CCJs Mrs A had.

As a lender operating in the market for high cost short term credit, where borrowers often do not have strong credit ratings, UBF would not necessarily have seen the CCJ as a reason not to lend to Mrs A. However it would have been something I’d expect it to take into account when thinking about what kind of other checks it would be proportionate to carry out before it agreed to lend to her.

I think it would’ve been reasonable for UBF to have made some more enquiries about the CCJ, for example to find out if it had been obtained recently. Had it done so, it would’ve discovered the CCJ was obtained more than a year previously. Taken by *itself* I don’t think this would’ve caused a responsible lender to see a need to carry out further checks. However, Mrs A did also have a default on her credit file which had occurred less than a year before she applied for her first loan.

I think a responsible lender would’ve thought it proportionate to go further in the circumstances – but not so far as to verify independently the state of Mrs A’s finances. I think it would’ve been proportionate for UBF to look into whether Mrs A had other short term loans to pay which could be driving her applications for borrowing.

At the time she applied for loans 1 and 2, Mrs A didn’t have much in the way of other short term debt. She had a loan of £150 from another short term lender at the time she applied for loan 2. But I don’t think this would’ve made loan 2 appear unaffordable based on the income and expenditure figures I believe Mrs A would’ve provided had she been asked.

So my view is that although the combination of Mrs A's CCJ and default might have caused a responsible lender to carry out further checks, the results of these checks would not have made loans 1 or 2 appear unaffordable or unsustainable. Therefore I don't think it was wrong of UBF to agree these loans.

Mrs A's loan 6 CCJ

I've carried out some further investigation into the situation surrounding this CCJ. It doesn't appear that Mrs A made any payments towards the £742.23 she owed on loan 6. UBF tried contacting Mrs A in February 2015 about the outstanding debt but its internal notes suggest it received no reply. In September 2015 it sold the debt to a company which I'll call "S".

S seems to have moved quickly to obtain a CCJ against Mrs A, and it was awarded judgment in November 2015 for £1,309 – significantly more than the original debt. I understand Mrs A has since paid over £1,000 towards this.

My view remains the same regarding this loan – that UBF wouldn't have given it to Mrs A had it carried out proportionate checks into whether she could afford it. I can understand how, in the circumstances, it wouldn't seem fair that this CCJ remains on Mrs A's credit file – especially as it could affect her ability to obtain credit in the future.

But I've seen a copy of Mrs A's credit file. I note she has two other CCJs, one of which is due to stay on her credit file for longer than the one in question here. She also has a number of defaults. So I think it's likely Mrs A will find it difficult to obtain credit even if this CCJ was set aside. And if Mrs A applies for and is turned down for credit it would be difficult to determine whether it was solely because of this CCJ.

In these circumstances, while I accept that the CCJ is only on Mrs A's credit file because UBF gave her a loan it shouldn't have, bearing in mind it is S that has applied it, I think it would be disproportionate to require UBF to remove it. So given the particular circumstances of this case, I'm not going to ask UBF to make sure that the CCJ is removed from Mrs A's credit file.

I realise this will be disappointing news for Mrs A, but in light of what I've said above I don't intend to direct UBF to take any action regarding the CCJ.

putting things right

I now intend to direct UBF to do the following:

5. Calculate the amount Mrs A has paid in interest, charges and any other fees for loans 3 to 6*. To each of these sums, it must add 8% simple interest per year**, from the date Mrs A paid them to the date of settlement.
6. Settle directly with S the remaining balance on the loan 6 CCJ, so Mrs A doesn't have to pay anything further to S.
7. Remove all interest, charges and fees that haven't yet been paid in respect of loan 6 from the outstanding balance. UBF should then apply any repayments made in respect of this loan as though they were repayments of the capital sum. If there is still a capital balance left owing after this, UBF may apply the sum calculated in "1" above to reduce that capital.

If, after the sum in "1" above has been applied against the capital balance outstanding, there is still a sum remaining for Mrs A to pay, a mutually-agreeable repayment plan should be arranged. If however, the refund covers the entire principal and some refund is left over, the remaining amount of refund should be paid to Mrs A.

8. Remove any adverse information it has reported relating to loans 3 to 6 from Mrs A's credit file.

*To calculate this amount for loan 6, UBF should obtain a statement of account from S. Anything Mrs A has paid S above £550 should be considered "interest, charges and any other fees".

**HM Revenue & Customs requires UBF to take off tax from this interest. It must give Mrs A a certificate showing how much tax it's taken off, if Mrs A asks for one.

my second provisional decision

For the reasons explained above, and in my first provisional decision, I intend to uphold Mrs A's complaint. I intend to direct UBF to take the actions outlined in the "putting things right" section above.

Will Culley
ombudsman

COPY OF FIRST PROVISIONAL DECISION**complaint**

Mrs A complains Uncle Buck Finance LLP (“UBF”) provided her with loans she couldn’t afford to repay.

background

Mrs A took out six loans with UBF between August and December 2014. I’ve included some of the information we’ve received about these loans in the table below:

Loan #	Date	Date repaid	Advance	Interest	Expected Repayment
1	19/08/2014	29/08/2014	£250	£87.38	£337.38
2	03/09/2014	30/09/2014	£500	£174.75	£674.75
3	30/09/2014	31/10/2014	£650	£227	£877.18
4	03/11/2014	28/11/2014	£675	£235.91	£910.91
5	02/12/2014	19/12/2014	£675	£235.91	£910.91
6	22/12/2014	Outstanding	£550	£192.23	£742.23

Mrs A repaid the first five loans, but failed to repay the last one. Mrs A later complained the loans had been unaffordable and UBF hadn’t checked properly that she could repay them.

UBF didn’t agree with Mrs A. It explained that as part of assessing her loan applications it had performed credit searches which hadn’t given it cause for concern about her ability to repay. It had also asked Mrs A about her income and expenditure, and based on the figures she’d provided the amounts it had agreed to lend to her appeared affordable. For her last loan it had also phoned Mrs A to ask her more questions before agreeing to lend. It said it had asked Mrs A whether she was going to use the loan to pay off other debts, or whether she was involved in or seeking debt management, and Mrs A had said no.

The case was then referred to this service, where one of our adjudicators investigated it. She came to the conclusion that UBF hadn’t carried out a sufficient level of checks into Mrs A’s ability to repay loans 2 to 6. She said that, had it done so, it would have discovered it wouldn’t have been responsible to lend to Mrs A – and in particular because she was gambling.

UBF disagreed with the adjudicator. It put forward a number of arguments to support its position. It said that there was no need at the time for it to have carried out any more checks than it did. And that in any event even when Mrs A’s gambling was taken into account the second loan appeared to be affordable. It also said it hadn’t had any reason to suspect Mrs A was gambling, and that it didn’t generally presume that loan applicants were gamblers or ask them to prove that they were not.

No agreement could be reached, so the case 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 along with any relevant regulatory guidance and good industry practice at the time.

UBF had to assess Mrs A's applications for borrowing to check if she could afford to pay back the amounts she'd borrowed without undue difficulty. It needed to do this in a way which was proportionate to the circumstances. It then needed to assess whether – based on the information it had gathered from its proportionate checks – Mrs A could afford to meet her loan repayments sustainably. According to guidance from the industry regulator at the time Mrs A applied for her loans, repayments are sustainable if they're made from income or savings – so not if they're made, for example, from further borrowing.

did UBF carry out proportionate checks?

Based on the information provided by UBF, it appears it carried out four searches of Mrs A's credit file (one to cover the first three loans, and one each for the last three loans). It also asked her to confirm her income on each application, and from the third loan onwards it's been able to provide evidence it asked her to provide a breakdown of her expenditure.

Each time Mrs A was asked about her income she said it was £2,605 per month. And every time she was asked about her expenditure, she said this was £1,100 per month. My understanding is that this was all done online apart from the last loan, where UBF spoke to Mrs A and asked her the questions I referred to in the background of this decision. It also asked her to confirm verbally her income and expenditure, and she provided the same figures as she had previously.

I don't think any of UBF's checks went far enough. For the first two loans my view is that it should have already been asking about Mrs A's regular expenditure and financial commitments. And I think that for loans 3 to 6 UBF's checks should have gone further still. The amounts borrowed by Mrs A were steadily increasing and her expected repayment for loan 3 represented around 33% of the income she'd declared to UBF.

This may well have appeared affordable based on the expenditure information Mrs A had provided, but payday loans are designed to help with short-term cash-flow problems. And I think Mrs A's emerging pattern of borrowing, where loans were taken out almost immediately after repayment of the previous one, and for increasing amounts, suggested she may have had more long-term money issues. I also think the information UBF said it discovered when it carried out its credit searches would have indicated that Mrs A was someone who may previously have had problems with paying back debt as recently as the last 12 months.

When all these pieces of information are put together they suggest a more robust assessment was required. I think it would've been proportionate from loan 3 onwards for UBF to carry out an in-depth assessment of Mrs A's financial situation to verify what she'd reported about her income and expenditure, and determine whether she could truly make her repayments sustainably.

what would proportionate checks have shown for loans 1 and 2?

Because UBF hasn't been able to show it asked Mrs A about her expenditure before it granted these loans, I've had to think about what she would have been likely to say, had she been asked at the time. I think it's reasonable to assume – given how close together loans 1 to 3 were – and the consistent figures Mrs A provided on her applications from loan 3 onwards, that Mrs A would've reported her regular monthly expenditure as £1,100 if asked for loans 1 and 2. So I think UBF would've thought these loans appeared affordable had it carried out proportionate checks.

what would proportionate checks have shown for loans 3 to 6?

A full assessment of Mrs A's finances in the lead-up to her application for loan 3 would've revealed a number of things which UBF would've found relevant when deciding whether or not to lend to Mrs A.

Mrs A earned slightly less than she'd reported to UBF. Her salary was approximately £2,500 per month. In terms of her expenditure, she made a contribution to her household living costs of £500 per month and she had a mobile phone bill which varied between around £10 and £40 per month. Mrs A also spent a varying amount on petrol each month, but this seemed to come to around £40 on average.

So Mrs A's expenditure on her regular financial commitments doesn't appear to have been very high. However, it would have been apparent to a lender which had carried out a detailed assessment that Mrs A was spending significant amounts of her income on online gaming and betting sites. For example, in September 2014 before her application for loan 3, Mrs A spent £1,270 on these websites. In the previous month, she'd spent £1,150. So she was spending up to half her income in this way.

If Mrs A's regular financial commitments at this time (approximately £550 per month) are combined with her spend on gambling in September 2014 and then the total is subtracted from her income, she was left with £680 to cover all other expenses. This was not enough to make her expected repayment towards loan 3. So this loan should've appeared unaffordable to a responsible lender which had carried out proportionate checks.

I've reviewed Mrs A's financial situation across loans 4 to 6 and I've concluded this remained much the same. In some months Mrs A gambled less, but other expenses began to appear on her bank statements. From October 2014 Mrs A began repaying a loan to an individual at a rate of between £875 and £965 per month. These unusually large transactions are things which I think would've been queried by a responsible lender – which would've then discovered Mrs A had significantly larger financial commitments than she'd reported.

As Mrs A's financial situation continued to deteriorate, her household contributions reduced to £200 per month prior to her applying for loan 6. But based on my analysis of her bank statements, she still did not have enough income available to meet her repayment to loan 6. She would've needed to borrow further in order to do so, which is not a sustainable way of repaying credit.

Overall, based on what I've seen of Mrs A's circumstances between loans 3 to 6, I don't think a responsible lender which had carried out proportionate checks would've agreed to lend to her. This is for two main reasons. The first was that Mrs A's available income after both her regular financial commitments and spend on gambling was not sufficient to make her repayments. The second is that it would've been apparent that Mrs A's gambling spend represented a large enough proportion of her income that to lend to her would be irresponsible.

putting things right

Because UBF shouldn't have lent loans 3 to 6 to Mrs A, it's not fair that she should have to pay interest or charges on these loans, or have them affect her credit file in a negative way.

With this in mind, I intend to direct UBF to do the following:

1. Calculate the amount Mrs A has paid in interest and charges for loans 3 to 6. To each of these sums, it must add 8% simple interest per year*, from the date Mrs A paid them to the date of settlement.
2. Remove all interest and charges that haven't yet been paid in respect of loan 6 from the outstanding balance. UBF should then apply any repayments made in respect of this loan as though they were repayments of the capital sum. If there is still a capital balance left owing after this, UBF may apply the sum calculated in "1" above to reduce that capital.**

If, after the sum in "1" above has been applied against the capital balance outstanding, there is still a sum remaining for Mrs A to pay, a mutually-agreeable repayment plan should be arranged. If however, the refund covers the entire principal and some refund is left over, the remaining amount of refund should be paid to Mrs A.

3. Remove adverse information relating to loans 3 to 6 from Mrs A's credit file.

*HM Revenue & Customs requires UBF to take off tax from this interest. It must give Mrs A a certificate showing how much tax it's taken off, if Mrs A asks for one.

**If UBF has sold the debt owed under loan 6, it should buy this debt back. If it doesn't buy the debt back then it must not use any of the refund it owes Mrs A to reduce the debt. It must pay the whole refund calculated in "1" to Mrs A.

my provisional decision

I intend to uphold Mrs A's complaint for the reasons I've explained above, and direct UBF to take the actions outlined in the "putting things right" section.

Will Culley
ombudsman