

## **complaint**

Mr T complains that Uncle Buck Finance LLP was irresponsible to lend to him. He asks that it admits this and compensates him.

## **background**

Mr T took out seven loans with Uncle Buck between January 2015 and January 2016 as follows:

- loan 1 for £400 taken out on 26 January 2015, repaid on 20 February 2015;
- loan 2 for £675 taken out on 25 February 2015, repaid on 20 March 2015;
- loan 3 for £675 taken out on 27 March 2015, repaid on 20 April 2015;
- loan 4 for £675 taken out on 28 April 2015, repaid on 20 May 2015;
- loan 5 for £350 taken out on 30 May 2015, repaid on 20 June 2015;
- loan 6 for £600 taken out on 9 July 2015, to be repaid by three instalments of £266, repaid on 5 August 2015; and
- loan 7 for £1,000 taken out on 10 January 2016, to be repaid by three instalments of up to £438.84, repaid on 20 January 2016.

Our investigator recommended that the complaint should be upheld. She said while Uncle Buck made adequate checks before offering loan 1 and loan 7, it should have made further checks before the other loans. Uncle Buck offered to refund interest and charges on loans 4 and 5. The investigator said if Uncle Buck had made proper checks, it would have known that loans 2, 3 and 6 were unaffordable. The investigator said Uncle Buck should refund interest and charges on these loans and remove adverse information about them from Mr T's credit file.

Uncle Buck didn't agree. It said the income and expenditure information Mr T provided suggested the loans were affordable and it did credit checks which didn't suggest any problems. It said Mr T provided his bank statements when he raised his complaint and these don't evidence the loans being unaffordable. Uncle Buck said Mr T used short term loans as a lifestyle choice, not because he was reliant on them.

## *my provisional decision*

I didn't agree with all of the investigators recommendations. So I sent a provisional decision to the parties to explain why. In summary, I thought Uncle Buck should have made further checks before offering loans 2 to 7 and that, if it had, it would have known they weren't affordable. Mr T agreed and didn't have further comments. Uncle Buck didn't agree. It provided detailed comments. I've addressed its comments and, where appropriate, changed or expanded my findings from those set out in my provisional 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. 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.

*loan 1 (January 2015)*

When Mr T applied for loan 1 he told Uncle Buck his monthly income was £2,500 and his monthly expenditure was £1,450, which included £300 for credit commitments. I think, given this was Mr T's first loan, these checks were proportionate. The information Uncle Buck received suggested the loan was affordable.

*loans 2 and 3 (February and March 2015)*

Mr T applied for loan 2 a few days after repaying loan 1. He told Uncle Buck his monthly income was £2,500. Mr T told Uncle Buck his monthly expenditure was £1,550, which included utilities (£100), transport (£100), food (£100), mortgage and fixed loans (£800), store/credit cards (£300) and other (£100).

After meeting his stated expenditure, Mr T was left with £950 to meet the repayment of £805 for loan 2. Mr T gave Uncle Buck similar information about his income and expenditure when he applied for loan 3, with an increase in some items of expenditure which meant it added up to £1,610. This left him with £890 to meet the repayment for loan 2 of £810.

Uncle Buck says Mr T was left with £146 after meeting the repayment for loan 2, which it says is enough for any unexpected expenses. Uncle Buck says it did a credit check and this didn't show any defaults or county court judgements. It says the credit check suggested Mr T's only short term commitment was his previous loan from Uncle Buck and he didn't have any late or rolled over payments.

But I'd said in my provisional decision that the credit check showed Mr T had credit commitments of about £26,000 in addition to his mortgage. This included about £13,000 of revolving credit and about £12,500 of other loans. Uncle Buck says it was entitled to rely on the information provided by Mr T and its credit check. I think it should have considered whether the indebtedness in the credit check was consistent with Mr T's stated monthly expenditure on credit commitments.

Uncle Buck says Mr T's mortgage was in joint names. And the majority of his unsecured indebtedness is a joint loan. I agree that it's possible the monthly cost of the mortgage and loan was shared. But, so far as I can tell, Uncle Buck didn't ask Mr T this or ask about household income, so it can't have known whether this was the case.

While lenders are, generally, entitled to assume information provided by a customer is correct, I don't think it's reasonable for Uncle Buck to rely on information when there's an unexplained inconsistency. If Uncle Buck had reason to doubt the information it received – as is the case here – it should ask for further information, an explanation or evidence to support what the customer says.

When Mr T applied for loans 2 and 3 he asked for £1,000. In both cases, he applied only a few days after repaying the previous loan. I think this, the indebtedness shown in the credit check and the amount of loans 2 and 3 should have prompted Uncle Buck to make more checks. I think Uncle Buck should have considered whether Mr T's stated expenditure on his credit commitments was consistent with its credit check. I think it should have asked for more information about Mr T's credit commitments, including any short term commitments.

Mr T's bank statements show monthly mortgage payments of £809. He made payments to credit card accounts of £470 (February 2015), £290 (March 2015) and £350 (April 2015). He

made monthly payments for what appear to be personal loans or loans from instalment lenders totalling about £849 (February 2015), £817 (March 2015) and £797 (April 2015).

I think Mr T had regular monthly credit commitments of about £1,900. After meeting his regular credit commitments and living expenses he wouldn't have enough income left to meet the repayments for loans 2 and 3.

Mr T also had short term commitments: he made payments to short term lenders of £1,200 (February 2015), £1,300 (March 2015) and £1,890 (April 2015) in addition to the payments he made to Uncle Buck.

Uncle Buck says it can't take into account information it doesn't have. It says it doesn't have to obtain bank statements. And it says its credit check didn't show excessive short term commitments. I agree. But I think the information it had should have alerted it to the need for more checks – in particular relating to Mr T's indebtedness and the monthly cost of his credit commitments. It didn't have to get bank statements to do this, but I haven't seen evidence that it did this in another way.

Uncle Buck says it would cause offense if it asked customers whether they were borrowing to fund their gambling. I haven't said that it should have asked Mr T this.

Uncle Buck also says it could only obtain bank statements issued prior to lending. But Mr T's bank statements for January 2015 show a similar picture of Mr T's monthly credit payments. He made payments for personal loans of more than £1,000. He took out a loan from an instalment lender of £5,500. He received loans from short term lenders of about £1,900 and made payments to short term lenders of nearly £3,000.

Mr T also provided copies of his bank statements to Uncle Buck. It made a number of comments on the bank statements, some of which refer to Mr T's income later in the year. I said in my provisional decision that I didn't think Mr T's income in mid-2015 was relevant to loans 2 and 3 – and Uncle Buck has said it agrees. Uncle Buck's comments haven't persuaded me that loans 2 and 3 were affordable.

#### *loans 4 and 5 (April and May 2015)*

Uncle Buck offered to refund interest and charges on loans 4 and 5 before the complaint was brought to us, saying *"some of your loans were funded within quick succession of each other. I consider we ought to have been aware that you were becoming reliant on our loans, as a result of this"*. I won't comment further on these loans.

#### *loan 6 (July 2015)*

Mr T took out loan 6, of £600, in July 2015 less than three weeks after he'd repaid loan 5. Loan 6 was to be repaid by three instalments of £266. This was Mr T's sixth loan without a significant break in borrowing. I think his pattern of borrowing should have alerted Uncle Buck to a possible problem, such as dependency on short term loans. I think Uncle Buck should have asked for information to gain a full understanding of Mr T's financial circumstances. While there are different ways of doing this, one is to look at his bank statements.

Uncle Buck says it spoke to Mr T before loan 6 and went through his income and expenditure. It says Mr T must have given inaccurate information. It says if it's required to

use bank statements for evidence, then it should be entitled to rely on income which Mr T stated during the discussion. But, for the reasons I've already given, Uncle Buck needed to ask for information to get a full understanding of Mr T's circumstances. I'm not persuaded by the evidence it provided that its discussion with Mr T achieved this.

Mr T's monthly income varied: £3,020 (May 2015), £3,150 (June 2015), £3,280 (July 2015) and £3,170 (August 2015). He received an additional payment of £640 from his employer in July. I'm not sure what this was for, but it wasn't a regular payment. Uncle Buck agreed that this doesn't suggest Mr T had regular monthly income of £3,926. Nor do I think it's reasonable to include in Mr T's income amounts paid into his account in cash or from Mr T's other accounts unless the evidence suggests these payments are regular income.

Uncle Buck says Mr T made monthly credit payments of about £2,400. I think it's about £3,000. Mr T's bank statements show monthly mortgage payments of £809. He made monthly payments to loan accounts and instalment lenders of about £680. He made payments to credit card accounts of £1,000 in June 2015. During June 2015, Mr T received about £1,300 from short term lenders. He made payments to short term lenders of £600 (June 2015) and £1,730 (July 2015) (not including payments to Uncle Buck).

Mr T would also have had to meet his living expenses. I don't think further borrowing was affordable or sustainable.

Uncle Buck says it's not fair to say that it should take account of all the costs of Mr T's lifestyle, including loans, leisure and other activities, but not additional income unless it's regular. But I don't see how Uncle Buck could fairly assess affordability on another basis. I've said more about this below.

#### *loan 7 (January 2016)*

Mr T took out loan 7, of £1,000, in January 2016. Loan 7 was to be repaid over three instalments, the largest being about £440. Mr T had repaid loan 6 in August 2015. Given Mr T's previous pattern of borrowing, I don't consider the five months break in borrowing to be enough for Uncle Buck to disregard his borrowing history. Given this, and the amount of the loan, I think Uncle Buck should have asked for information to gain a full understanding of Mr T's financial circumstances.

Mr T's monthly income was £2,800 in December 2015 and January 2016.

Mr T had monthly mortgage payments of £809, although his January payment was made late after the end of the month. He also made monthly payments of £245 to an instalment lender – again the January payment was made late. Mr T made payments to credit card accounts of £475 (December 2015) and £650 (January 2016). Uncle Buck has noted that it appears Mr T also missed or was late with another loan repayment.

During December 2015, Mr T received about £2,100 from short term lenders. He borrowed another £2,700 from short term lenders in early January 2016, before taking out loan 7. Mr T made payments to short term lenders of £717 (December 2015), £4,300 (January 2016) and £2,280 (February 2016) (not including payments to Uncle Buck).

Mr T would also have had to meet his living expenses. I don't think further borrowing was affordable or sustainable.

Uncle Buck says it couldn't have known when it offered Mr T loan 7 that he would pay £4,300 to short term lenders. It says it couldn't have known what would happen in February 2016, after the loan was taken out. So it was entitled to rely on the information provided by Mr T and the credit check. I'm not persuaded by this. If Uncle Buck had made proportionate checks, it would have known that Mr T took out short term loans of about £2,100 in December 2015 and another £2,700 in early January 2016, before taking out loan 7. Mr T would have owed interest on these loans. I think Uncle Buck would have had a clear indication of the likely cost of repaying these loans and that further borrowing wasn't affordable or sustainable.

*other comments from Uncle Buck*

Uncle Buck says while Mr T used short term loans his bank statements suggest they were repaid when due. It says Mr T derived a monetary benefit from the loans which augmented his income. It says Mr T used short term lending as a lifestyle choice. It says his bank statements evidence payments to a number of betting and gambling institutions and Mr T could have chosen to prioritise debt repayments instead.

I agree that Mr T's bank statements show evidence of gambling throughout the period he borrowed from Uncle Buck. I think he was borrowing to fund a gambling problem – and to repay the resulting debts. I don't think it's reasonable to say this is a lifestyle choice and Mr T could have chosen to prioritise debt repayments instead.

Uncle Buck doesn't agree that all of Mr T's expenditure should be taken into account. It says if it weren't for gambling and the funding and repayment of loans Mr T wouldn't be in financial difficulty. And it considers some of Mr T's spending to be discretionary. It says it can't know that someone is gambling. But I think if Uncle Buck had carried out proportionate checks, it would have known about Mr T's use of short term loans (and other indebtedness) and that further borrowing wasn't affordable or sustainable.

Uncle Buck says Mr T's bank statements show transfers between accounts and cash deposits. Uncle Buck says it isn't fair to say it has to take all expenditure into account but not these credits when assessing Mr T's income. But I don't think it's reasonable to treat these credits as income without knowing where they come from – that they are genuine income and not loan deposits.

I think it's likely these transfers and cash transactions are related to Mr T's gambling and loans. Mr T may, at times, have won when gambling, although some or all of the deposits could be loan proceeds. But I don't think it's reasonable to rely on possible gambling wins when assessing whether borrowing is affordable and can be repaid in a sustainable way.

Uncle Buck says loans were repaid on time or early. I don't agree that this proves the loans were affordable. While Mr T repaid short term loans he also took out new loans each month. Mr T's pattern of borrowing suggests he was repaying debts by taking out new loans. This isn't a sustainable way to meet debt repayments.

Having considered Uncle Buck's comments, I don't think Uncle Buck should have offered loans 2 to 7 to Mr T. So it should:

- Refund all interest and charges that Mr T paid on loans 2 to 7;
- 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 2 to 7 from Mr T's credit file.

\*HM Revenue & Customs requires Uncle Buck to take off tax from this interest. It must give Mr T a certificate showing how much tax it's taken off if he asks for one.

**my final decision**

My decision is that I uphold this complaint. I order Uncle Buck Finance LLP to amend Mr T's credit file and pay the compensation as described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 12 March 2019.

Ruth Stevenson  
**ombudsman**