

complaint

Mr C says Uncle Buck Finance LLP irresponsibly lent to him.

background

Uncle Buck gave Mr C four payday loans between June and August 2014. He repaid the first three loans. But loan 4 wasn't paid and the debt collection agency that took on this loan obtained a court judgement against Mr C.

Here's a table showing details of these loans:

Loan	Date	Date Repaid	Instalment	Amount	Repaymen
1	12/06/2014	30/06/2014	1	£100.00	£134.95
2	30/06/2014	31/07/2014	1	£250.00	£337.38
3	31/07/2014	29/08/2014	1	£500.00	£674.75
4	29/08/2014	debt sold	1	£525.00	£708.49

Mr C complained that Uncle Buck shouldn't have given him loans that weren't affordable. He told us he'd taken out new loans to pay existing loans and that his finances were in a poor state. He's been very worried about his financial situation, especially the court judgment and says this has been affecting his health.

Our adjudicator thought that Uncle Buck shouldn't have provided any of the above loans to Mr C. He gave some detailed instructions about the way he thought Uncle Buck should settle the complaint.

Uncle Buck said it didn't accept our adjudicator's view. But it also said it understood that being in a position of financial difficulty wasn't easy and it showed concern that Mr C had complained about being physically ill with worry.

To settle the case, Uncle Buck offered to work with the debt collection agency it sold the debt to with a view to getting the court judgment set aside. Uncle Buck said it wasn't prepared to refund any charges over and above the initial amount lent as these weren't within its control and Mr C had already had an opportunity to respond to efforts to agree a repayment plan before the debt was sold.

Mr C didn't feel that Uncle Buck's offer to settle his complaint went far enough.

The complaint came to me to decide. I issued a provisional decision.

what I said in my provisional decision

Here are some of the main things I said.

“Uncle Buck needed to take reasonable steps to ensure that it didn’t lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mr C could repay the loans in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and the consumer’s income and expenditure. With this in mind, in the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate.

But certain factors might point to the fact that Uncle Buck should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors include:

- the lower a consumer’s income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);*
- the higher the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);*
- the greater the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).*

Uncle Buck may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

Uncle Buck was required to establish whether Mr C could sustainably repay his loans – not just whether the loan payments were affordable on a strict pounds and pence calculation.

Loan payments being affordable on this basis might be an indication a consumer could sustainably make their repayments. But it doesn’t automatically follow this is the case. This is because the relevant regulations define sustainable as being without undue difficulties and in particular the customer should be able to make repayments on time, while meeting other reasonable commitments; as well as without having to borrow to meet the repayments. And it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower won’t be able to make their repayments sustainably if they’re unlikely to be able to make their repayments without borrowing further.

I’ve carefully considered all of the arguments, evidence and information provided in this context and what this all means for Mr C’s complaint.

I’ve taken into account that Uncle Buck says it’s a short term, high risk lender and a customer having defaults on their credit file would not result in the application being immediately declined. And I recognise that many of its customers apply for short term credit as they are unable to obtain other forms of traditional credit.

I’ve also looked at what it appears Mr C had told Uncle Buck about his financial circumstances and the information it obtained about his finances. Uncle Buck made a number of checks before it lent to Mr C. It asked him for details of his income and expenditure. Mr C told Uncle Buck that his net monthly income was £2000 and that he was living with his parents. He said his monthly expenditure was around £250 – leaving him with £1750 to spend on all the things he had to pay for.

Uncle Buck also checked Mr C's credit file before agreeing to the loans and it has provided us with copies of its checks.

Bearing in mind the information Uncle Buck could see about Mr C, I don't think it was reasonable to think that the lending it provided to Mr C when he applied for loan 1 was likely to be sustainable.

I accept that the loan amount looked like it should've been comfortably affordable for Mr C given his income and his very modest outgoings. But looking at the credit checks Uncle Buck has provided, I think that Uncle Buck would've been aware that Mr C was already facing problems managing his finances.

Bearing in mind Mr C's declared income and expenditure, and the fact he was living at home with his parents, I think the evidence it could see of other short term lending should have rung alarm bells for Uncle Buck. I agree with our adjudicator that the number and extent of his other credit commitments, and particularly his active debt with other payday lenders when he asked Uncle Buck for loan 1, should've made Uncle Buck realise that he was having money problems and his actual financial circumstances were at odds with what he'd told Uncle Buck about his situation.

I think it should've been apparent to Uncle Buck that Mr C probably wasn't asking it for a loan just to provide a short term fix for his cash flow problems or to cover an unexpected expense. Instead, to my mind the information Uncle Buck had available suggested that Mr C was reliant on taking out expensive credit – and he likely wanted this loan to be able to pay for his borrowing elsewhere. So it was unlikely that Mr C was going to be able to repay loan 1, or any of the loans that followed in a sustainable way.

And I think it's fair to say this is borne out by what happened after Uncle Buck provided loan 1 to Mr C. He took out each new loan the same day he repaid the previous loan and the amounts he asked to borrow kept on going up. Uncle Buck told us he'd asked to borrow more than it was prepared to lend when he applied for loans 3 and 4. Despite this, within just a couple of months, by loan 4, Mr C was borrowing more than five times the amount he'd first asked Uncle Buck for.

So for these reasons I'm planning to uphold Mr C's complaint.

I've taken into account that although Uncle Buck has offered to liaise with the third party debt collection agency to get the court judgment set aside, it may not be possible to achieve this.

And this complaint is about Uncle Buck – the debt collection agency that has obtained the judgement against Mr C isn't the subject of this complaint. So I won't be able to tell the debt collection agency what it should do when deciding what needs to be done to put things right for Mr C. And as it isn't a party in this complaint it isn't bound by any decision, if accepted by Mr C, that I make.

I'm only able to look at the actions of Uncle Buck – and tell Uncle Buck what to do. So here's what I think Uncle Buck needs to do – and can do - in order to put things right for Mr C.

I understand from Mr C that the judgement was fully paid on 28 August 2018."

what the parties said in response to my provisional decision

Both parties have confirmed they've received 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. We've set out our general approach to complaints about short-term lending - including all of the relevant rules, guidance and good industry practice - on our website.

Having done so, and as no further comments have been received in response to my provisional decision (save for acknowledging safe receipt) I still think it's fair to uphold this complaint for the reasons I explained in my provisional decision.

putting things right – what the lender should do

Loans 1,2 and 3

Uncle Buck should rework Mr C's loan accounts as follows:

- refund all interest, fees and charges Mr C paid on loans 1,2, and 3
- pay interest of 8% simple a year on any refunded interest and charges from the date they were paid (if they were) to the date of settlement†
- pay this money to Mr C
- remove any adverse information recorded on Mr C's credit file in relation to loans 1,2 and 3

Loan 4

I think a fair way to try and put Mr C, as far as possible, in the position he would've been had Uncle Buck not unfairly provided loan 4 to him, is to make sure that Mr C repays no more than the principal sum he borrowed for loan 4, taking into account any repayments he may have made to the debt collection agency and the court – and to ensure his credit file doesn't show adverse information as a result of what's happened.

So I think it's reasonable that Uncle Buck should ensure that Mr C isn't out of pocket as a result of any court costs incurred (including any costs setting aside the judgement) and any charges or fees added to the debt or otherwise passed on to Mr C by the debt collection agency.

To achieve this outcome, Uncle Buck should:

- rework Mr C's loan account to remove any outstanding interest and charges from loan 4 and treat **any and all** repayments made by Mr C for loan 4 as payments towards the capital. This would include any fees and charges paid to the debt collection agency and any payments made to the court in respect of this loan
- normally I'd say that when Uncle Buck works out what it owes Mr C, it could first apply this towards offsetting the outstanding capital balance Mr C owes on loan 4. But that's not helpful here because Uncle Buck sold the debt on – and I understand the judgement is now settled
- so instead, Uncle Buck should first liaise with the third party debt collection agency to try and get the court judgment set aside (I think Uncle Buck was right to offer to do this – so it should now do this if it hasn't already)
- Uncle Buck should ensure Mr C doesn't have to pay anything over and above the amount of the capital balance he owes on his reworked loan 4 account – if necessary covering any shortfall itself that it can't agree with the debt collection agency to achieve the overall objective of reducing Mr C's debt to just the amount of unpaid capital balance on loan 4
- if there is a surplus after reworking Mr C's loan 4 account then Uncle Buck should return this to Mr C plus 8% simple a year from the date his account would've been paid if all his payments had been applied towards the capital balance to the date of settlement†
- when the court judgment is set aside, liaise with the debt collection agency to remove any adverse information about loan 4 it may have put on Mr C's credit file
- Uncle Buck should remove any adverse information about loan 4 it put on Mr C's credit file.

Otherwise, if Uncle Buck isn't able to successfully get the judgement set aside, then

- it should pay Mr C an amount that covers him for the full amount he paid to settle the judgement debt less the unpaid capital balance Mr C owed on loan 4
- to be clear, the payment Uncle Buck needs to make will include unpaid interest and charges, court fees and any charges the debt collection agency added on to the debt
- this will mean that Mr C will have been responsible only for paying to the court the capital balance he owed – and he's had the benefit of loan 4 so it's fair that he should repay that part of the debt.
- as above, Uncle Buck should liaise with the debt collection agency to remove any adverse information about loan 4 it put on Mr C's credit file
- Uncle Buck should remove any adverse information about loan 4 it put on Mr C's credit file

- if the record of the court judgment remains on Mr C's credit file (and I have no power to say this mustn't happen) then Mr C can put a 'notice of correction' on his credit file to explain that the judgment was obtained by a third party in respect of a loan that the Financial Ombudsman Service found afterwards was unfair and shouldn't have been provided – and creditors should take this information into account when he makes any credit application.
- I've thought about whether these steps are sufficient to compensate Mr C for what's happened – bearing in mind that he's had the worry of court proceedings. I've taken into account that Mr C told us he made no repayments towards the principal sum. So I think in those circumstances that the steps I've set out are fair and reasonable overall. And I'm not awarding any further payment over and above the amount I've told Uncle Buck to pay above.

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

my final decision

I uphold this complaint and direct Uncle Buck Finance LLP to pay Mr C as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 6 March 2020.

Susan Webb
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