

## **complaint**

Mr T complains about Uncle Buck Finance LLP. He says his complaint is about:

- breach of complaints procedure
- harassment
- breach of written contract regarding a repayment plan
- attempts to 'syphon' money from him
- breach of the loan agreement

Mr T has also said his complaint is about irresponsible lending – but I've not considered that issue, as I'll explain again below.

## **background**

I sent both parties my provisional decision on 11 June 2019. A copy is attached and it forms part of this final decision. I explained why I wasn't planning to uphold the complaint and asked Uncle Buck and Mr T to let me know whether they had anything to add. Uncle Buck didn't send me anything else to consider. Mr T didn't accept my provisional decision and made further submissions. I've considered these alongside everything previously submitted and have set out my findings below.

## **my findings**

I've again 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, good industry practice and any relevant regulations at the time.

Having considered everything, I've not been persuaded to depart from my provisional findings. I'll explain why.

I'll start by reaffirming that I'm not able to consider the allegations of irresponsible lending. I haven't seen that Mr T raised this issue with Uncle Buck and under our rules he'd be required to do that before I could consider this matter.

Under the 'complaint' heading above I've set out almost verbatim what Mr T told this service his complaint was about when he referred his complaint to us (the points are taken from his complaint form). There is no allegation of irresponsible lending on the complaint form and it isn't addressed in Uncle Buck's final response letter either. I've also reviewed Mr T's emails to Uncle Buck and haven't seen that he told it he thought it had lent to him irresponsibly. In fact, almost all of Mr T's emails in some way relate to repaying the debt – which isn't what I'd expect to see if Mr T thought the lending was irresponsible.

Mr T has questioned whether I relied on a credit report from Uncle Buck which he hasn't seen. I can confirm I haven't – such evidence would only really be pertinent to a complaint about irresponsible lending, which as I've said above isn't something I can consider.

I reiterate that whether Uncle Buck properly complied with any request Mr T made under the General Data Protection Regulations (or the Data Protection Act 2018) is a matter for the Information Commissioner's Office.

Mr T says Uncle Buck treated him unfairly by not agreeing to reduce the amount of interest payable on the loan. He says that Uncle Buck should've considered suspending or reducing interest – which is one of the examples of forbearance given in the regulator's consumer credit sourcebook (CONC).

I don't agree that Uncle Buck was necessarily required to reduce the amount of interest payable on Mr T's loan.

CONC 7.3.4R (a rule, which Uncle Buck should follow) says, *"A firm must treat customers in default or in arrears difficulties with forbearance and due consideration."*

CONC 7.3.5G (which is guidance) then goes on to provide *examples* of forbearance. The first of these – as Mr T says – includes suspending interest and charges. But I think it's important to read that example as a whole (the underlining is mine):

*"...considering suspending, reducing, waiving or cancelling any further interest or charges (for example, when a customer provides evidence of financial difficulties and is unable to meet repayments as they fall due or is only able to make token repayments, where in either case the level of debt would continue to rise if interest and charges continue to be applied)"*

In Mr T's case, the level of debt would not continue to rise, as the loan was at a fixed rate of interest and the interest was all applied at the start. The most Mr T would ever have to pay towards his debt would be the amount originally due under the contract. Uncle Buck wasn't proposing to add any extra charges or otherwise increase Mr T's debt.

CONC 7.3.6G says: *"Where a customer is in default or in arrears difficulties, a firm should allow the customer reasonable time and opportunity to repay the debt."*

CONC 7 goes on to say (again, the underlining is mine) that a firm will likely *not* have treated a customer fairly if it *"...does not allow for alternative, affordable payment amounts to repay the debt due in full, where the customer is in default or arrears difficulties and the customer makes a reasonable proposal for repaying the debt..."*

From what I've seen Mr T first proposed to pay Uncle Buck £30 a month towards the debt on 6 July 2018. Uncle Buck agreed to accept £30 a month on 10 July 2018. In doing so, I think Uncle Buck acted fairly and reasonably. It accepted an affordable alternative payment amount towards the outstanding debt and showed forbearance.

I do not agree that Uncle Buck accepted Mr T's offer of £30 a month towards the debt on the basis that this was contingent on it also agreeing the outstanding balance at that time was £465. Mr T mistakenly stated that this was the balance, but that was his error. One of Uncle Buck's emails sent on 16 July 2018 set out payments totaling £597.20, so it was clear Uncle Buck didn't accept the outstanding balance was £465.

Mr T has drawn my attention towards emails sent between 5 and 15 October 2018. He says Uncle Buck refused to accept affordable payments. I don't agree with this interpretation.

The continuing dispute between Uncle Buck and Mr T wasn't really over what he could afford to pay each month but was about how much Mr T was willing to pay in total. For example, in Mr T's email of 8 October 2018 he proposed to pay £276.40 in full and final settlement of the loan – far less than the outstanding balance at that time. Uncle Buck didn't accept Mr T's proposal – but I've seen nothing to suggest it wanted Mr T to make unaffordable monthly

payments towards the outstanding balance. It just wasn't accepting Mr T's proposals to pay less than he owed.

On the same day, Mr T goes on to say: *"I will agree a payment plan with [Uncle Buck] once the full and final settlement figure of £276.34 is agreed. Failure to agree to this amount as full and final settlement will result in cease of communication (sic)..."* In a later email, Mr T told Uncle Buck to *"take or leave"* this offer.

Clearly, given his financial difficulties, I can understand why Mr T wanted Uncle Buck to write off a portion of his debt. But for all the reasons I've set out above, that's not something Uncle Buck was required to do to show forbearance. On Mr T's own figures, he could afford to pay £30 a month towards the balance – and Uncle Buck accepted this proposal. I can't therefore reasonably find that Uncle Buck acted unfairly.

I reiterate that I've not seen that Uncle Buck's agent, C, refused to negotiate with Mr T in respect of affordable monthly payments. It seems that the issues with C were much the same as they were with Uncle Buck – Mr T wanted a reduction in the balance before agreeing to monthly payments. If no agreement was reached, I think it's simply because C also didn't accept a reduction of the outstanding balance on Uncle Buck's behalf.

Uncle Buck has told this service it is willing to try again to set up a repayment plan with Mr T. I hope both parties can have a constructive conversation about this.

For the sake of completeness, I need to reiterate that this service is not a financial regulator. I cannot therefore say whether Uncle Buck breached its own complaint procedures. From what I've seen, it responded to Mr T within the prescribed time limits. I have also taken a step back and looked more broadly at how Uncle Buck dealt with Mr T's requests for forbearance. And for the reasons I've given above, I don't think Uncle Buck acted unfairly in this respect.

### **my final decision**

I do not uphold this complaint against Uncle Buck Finance LLP.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 26 July 2019.

Matthew Bradford  
**ombudsman**

## **COPY OF PROVISIONAL DECISION**

### **complaint**

Mr T says his complaint concerns the following issues:

- breach of complaints procedure and regulatory rules
- harassment
- breach of written contract in relation to a payment plan
- breach of loan agreement
- failure to respond to a request under the General Data Protection Regulation (GDPR)
- the actions of Uncle Buck's appointed debt collection agent

He wants Uncle Buck to write off his debt and remove the default and all other negative information from his credit file.

### **background**

Mr T took out a £500 loan from Uncle Buck in April 2018, which was repayable in six monthly instalments. The total amount payable was set out in the loan contract as £989.48.

On 2 July 2018 Mr T contacted Uncle Buck and told it his financial circumstances had changed and that he needed to set up a repayment plan. There then followed a long chain of emails back and forth between Uncle Buck and Mr T. The contents of the correspondence will be familiar to both parties, so I won't reiterate it all here. But in simple terms, Mr T and Uncle Buck did not come to a mutually agreeable repayment plan.

Mr T made his complaint to Uncle Buck on 17 July 2018 and it sent its final response on 10 September 2018, in which it rejected his complaint. Mr T referred his complaint to this service where it was considered by an adjudicator, who did not recommend it should be upheld. Our adjudicator didn't think Uncle Buck had treated Mr T unfairly.

Mr T didn't agree; he said the adjudicator hadn't taken into account the actions of Uncle Buck's debt collection agent and that Uncle Buck had also lent to him irresponsibly.

As there was no agreement, the complaint was 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, good industry practice and any relevant regulations at the time.

I'll start by setting out which issues I am able to deal with in my decision. Mr T's complaint about the way in which Uncle Buck dealt with his proposed repayment plan is covered by its final response letter and a number of the other issues he raises are linked to that (such as allegations of harassment and breaches of alleged agreements). Those are all issues I can consider.

I also think I can consider the actions of Uncle Buck's agent (which I'll call "C") in attempting to collect the debt and issuing a default notice, which happened after the final response letter was sent. That's because Mr T continued to repeatedly express his dissatisfaction towards C in his correspondence with it – and so Uncle Buck had sufficient time to consider those matters. The issues are also very closely linked with Mr T's original complaint.

I will not comment on the matter of Mr T's GDPR request. Whether or not Uncle Buck complied with the relevant regulations in that respect is a matter for the Information Commissioner's Office. I also won't be making a finding on whether Uncle Buck lent irresponsibly to Mr T. I can't see that Mr T has ever raised a complaint of this nature with Uncle Buck and he would need to give it the opportunity to consider such a complaint first. Finally, whether or not Uncle Buck is in breach of the regulatory rules for complaint handling isn't something I can decide.

In dealing with Mr T's complaint, I have summarised some of his complaint points or set them out using my own words. I'd like to make it clear I have, however, read everything he has sent to us. But I will focus on the points I consider are material to his complaint.

*did Uncle Buck treat Mr T unfairly in respect of his repayment proposals?*

I can see Mr T feels strongly about this aspect of his complaint, but I do not consider Uncle Buck treated Mr T unfairly when trying to come to a repayment arrangement.

What's clear from the majority of the correspondence between Mr T and Uncle Buck is that Mr T was only prepared to come to an arrangement with Uncle Buck if it agreed to write off some of the interest contractually due on the loan, or otherwise accept some form of partial settlement.

I think Uncle Buck was clear enough in most of its correspondence with Mr T that it wasn't prepared to agree to accept less than the full amount contractually due. On occasion, Uncle Buck was silent on Mr T's comments about the outstanding balance – but I do not consider that means it accepted Mr T's figures.

I don't agree with Mr T that Uncle Buck accepted his repayment proposal of £30 a month on the basis of a balance of £465 in July 2018. I've seen nothing in Uncle Buck's emails to suggest it accepted this interpretation of the outstanding balance. In fact, its email of 16 July 2018 (timestamped 11:27) sets out a repayment plan of 20 monthly repayments totalling £597.20. Mr T may not have thought this was correct, but I can't see that Uncle Buck was unclear or acted unfairly when setting out its position on the amount of the outstanding balance.

What Uncle Buck was required to do, once it knew Mr T's circumstances has changed, was to treat him positively and sympathetically. This doesn't necessarily mean it had to write off some of the interest Mr T owed under his loan agreement – but if the contractual monthly repayments were now unaffordable, Uncle Buck did need to take action.

I think Uncle Buck did take appropriate action. It asked Mr T to provide up-to-date information about his income and expenditure and then agreed, upon receipt of this, to accept £30 a month towards the debt. I think it acted reasonably by agreeing to accept this amount, which was affordable based on Mr T's changed circumstances.

With this in mind, I don't think Uncle Buck treated Mr T unfairly, or failed to negotiate with him, or requested unaffordable payments.

*did Uncle Buck or C harass Mr T?*

There is a large amount of correspondence between Mr T, Uncle Buck and C. But most of it is two-way and involves Mr T making payment proposals and Uncle Buck responding to those proposals. I don't think anything I've seen amounts to harassment and I've seen no evidence of an inappropriate amount of contact by Uncle Buck or C.

I note that Mr T has said C should've put his account on hold as he'd bought a complaint to this service. In some circumstances that might be appropriate but it isn't something that happens automatically. In any event, I understand Uncle Buck has since taken back management of the debt from C and I hope progress will be made towards arranging a payment plan.

*did Uncle Buck breach the loan agreement?*

Mr T hasn't expanded much on what he means when he says Uncle Buck breached the loan agreement. He is free to do so in response to this decision. But I take it to mean (as our adjudicator thought) that he is referring to the ability to settle the loan early and receive a rebate of interest. As our adjudicator explained, this refers to *full* early repayment of the loan, before the original final payment date. If this is what Mr T is referring to, I have nothing to add to what the adjudicator said on this point. Mr T didn't settle the loan early.

*was Uncle Buck (and/or C) right to issue a default notice/start legal action?*

I've seen that Uncle Buck issued a default notice on 2 January 2019 and that a default is recorded on Mr T's credit file as of 28 January 2019. The guidance for the recording of defaults includes that they are ordinarily recorded between three and six months after the relationship between borrower and lender has broken down.

In Mr T's case, I think it's clear the relationship had broken down and the default was recorded within an appropriate amount of time. There was still no agreed repayment plan in place as of 2 January 2019, so it was appropriate for Uncle Buck to consider the loan to be in default.

I note that Mr T made a number of new offers, but as before these came with caveats unacceptable to Uncle Buck (such as an offer to pay, but only commencing in May 2019) or were offers for less than the balance due.

Again, I do not think Uncle Buck acted unfairly by insisting Mr T repay the contractual amount due. I've seen that it continued to be clear this is what it expected. And I haven't seen any correspondence suggesting Uncle Buck wanted the balance to be repaid in one payment (which would likely be unaffordable to Mr T) but continued to be willing to accept instalments. For example, C's email of 9 January 2019 for example says, "*We would be more than happy to agree an affordable repayment plan...*"

I have noted C's emails do refer to 'no settlements being available' (as Mr T has pointed out) but it's clear from their context that this refers to the rejection of a partial settlement of the debt proposed by Mr T, rather than a rejection of a monthly payment plan.

As it continued to be the case that an agreement could not be reached, I do not think Uncle Buck or its agent acted unfairly by issuing a default notice or by suggesting it was prepared to take legal action. It wouldn't be right for Uncle Buck to allow the issue of the outstanding balance to drag indefinitely. As informal discussions had failed, taking more formal steps to resolve the matter was not an unreasonable step.

I understand Uncle Buck has again agreed to come to come to a payment arrangement with Mr T. I would urge both parties to enter into a constructive dialogue about the way forward.

### **my provisional decision**

For the reasons given above, I am not planning to uphold this complaint against Uncle Buck Finance LLP.