

complaint

Mr M complains Uncle Buck Finance LLP (“UBF”) lent to him irresponsibly.

background

The background to Mr M’s complaint, and my preliminary findings on it, can be found in my provisional decision which is attached to and forms a part of this final decision.

In brief however, Mr M took 9 loans from UBF between August 2015 and May 2017. I concluded in my provisional decision that UBF had failed to carry out proportionate checks before giving any of these loans to Mr M. Had it done so, it would have discovered he couldn’t afford to repay loan 1 sustainably, and that it was irresponsible to lend to him from loan 2 onwards due to large amounts he was spending on gambling and repaying other short-term loans.

Mr M said he agreed with my provisional decision. UBF asked for some more time to respond, which I granted, but it hasn’t been in contact since and the deadline has now passed, so the case has been passed back to me to review.

my findings

I’ve considered again 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 hasn’t offered any new evidence or arguments to support the position it had taken prior to me issuing my provisional decision. I’ve also not seen anything else in my review of the case to suggest that I should now come to a different outcome, so I see no reason to depart from the findings I made in my provisional decision.

It follows that I don’t think UBF should have agreed any of the loans it gave Mr M.

putting things right

UBF shouldn't have given Mr M any of the loans included in this complaint. So it's not right that he should have had to pay interest, fees or charges on these. To put things right I direct UBF to:

- A) Calculate the total amount Mr M has paid in interest, fees and charges on loans 1 to 8. To each amount Mr M has paid, 8% simple interest* per year should be added calculated from the date Mr M originally made the payment, to the date the complaint is settled.
- B) Remove any unpaid interest, fees and charges from loan 9 and treat any repayments Mr M has made as though they had been repayments of the loan principal, had the loan been interest-free.

If this results in Mr M having made an overpayment then 8% simple interest* per year should be added to this overpayment calculated from the date at which it would have arisen had the loan been interest-free, to the date the complaint is settled.

If there is no overpayment and Mr M still owes a balance on loan 9 then the amount calculated in "A" should be used to pay off that balance. Anything left over from "A" should then be paid to Mr M. If however, after the amount in "A" has been used Mr M still owes a balance on loan 9 then UBF should attempt to arrange an affordable repayment plan with Mr M for the remaining amount.

- C) Remove any adverse information it has recorded in relation to loans 1 to 9 from Mr M's credit file.

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

my final decision

For the reasons explained above and in the attached provisional decision, I uphold Mr M's complaint and direct Uncle Buck Finance LLP to take the actions outlined in the "putting things right" section of this final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 10 September 2018.

Will Culley
ombudsman

COPY OF PROVISIONAL DECISION**complaint**

Mr M complains Uncle Buck Finance LLP ("UBF") lent to him irresponsibly.

background

Mr M took out nine three-month instalment loans with UBF between August 2015 and May 2017. He did not repay his last loan and a balance remained outstanding as of the date he made his complaint. I've set out some of the information we've received about Mr M's loans in the table below.

Loan	Date	Date Repaid	Loan Amount	Highest Repayment	Declared Expenditure
1	14/08/2015	14/08/2015	£500.00	£228.96	£650.00
2	22/08/2015	30/09/2015	£675.00	£356.68	£695.00
3	20/10/2015	30/10/2015	£200.00	£88.43	£695.00
4	31/10/2015	22/01/2016	£450.00	£218.98	£725.00
5	23/01/2016	16/05/2016	£650.00	£341.10	£700.00
6	03/09/2016	25/11/2016	£300.00	£146.80	£629.00
7	27/11/2016	20/12/2016	£225.00	£113.02	£900.00
8	20/04/2017	27/04/2017	£275.00	£119.20	£900.00
9	20/05/2017	Outstanding	£225.00	£120.32	£905.50

In August 2017 Mr M complained to UBF that it had lent to him irresponsibly. UBF disagreed and set out its position at some length. However, to summarise, UBF stated that it carried out credit checks and asked Mr M about his income and expenditure before agreeing each of his loans. Based on what it had seen at the time, it had no reason to believe Mr M could not afford his loans. It noted that Mr M had sometimes repaid his loans early, which it considered a sign that he could afford them. It also pointed out that it had often offered smaller loans to Mr M than he'd requested, to ensure he could repay them comfortably. It didn't consider this to be a sign of irresponsible lending.

Mr M was dissatisfied with UBF's response to his complaint, and so he referred it to this service where it was looked into by an adjudicator. He concluded UBF shouldn't have given Mr M loans 2 to 5, and 8 or 9. He recommended UBF provide appropriate redress.

UBF disagreed with our adjudicator. It said it had carried out more thorough checks than our adjudicator had suggested, especially in relation to Mr M's other short-term borrowing. It noted that as a high risk lender, the presence of adverse information on Mr M's credit file would not necessarily cause it to decline to lend to him. It also said it didn't believe that Mr M's pattern of borrowing was suggestive of him having a dependency on short-term loans.

As no agreement could be reached, 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 Mr M's applications for borrowing to check if he could afford to pay back the amounts he proposed to borrow 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 – Mr M could afford to make his loan repayments in a

sustainable way. UBF's regulator has issued guidance which explains repayments are sustainable if they're made from income or savings, and while maintaining other reasonable commitments.

were UBF's checks proportionate?

UBF has provided detailed information about the checks it carried out before lending to Mr M. It used reports from credit reference agencies to collect various pieces of relevant information about Mr M, including his income level and his level of debt elsewhere. UBF has said its reports used information which was essentially real-time, so it could be satisfied the information it got about Mr M's situation was up to date.

In addition to its use of credit reports, UBF also asked Mr M to declare his income and his regular expenditure across several categories. Mr M reported an income of £1,300 for all loans except his first (for which he declared £1,350). UBF sometimes allowed Mr M to input his expenditure data on a web application (or simply to confirm the most recent figures he'd given were correct), or it spoke to him on the phone to get these details. The expenditure Mr M declared can be found in the table of loans earlier in this decision.

In my view, UBF's checks were not proportionate for any of the loans Mr M applied for.

Whilst I appreciate UBF's point that a default on a potential customer's credit file would not necessarily put it off lending to them, there were other features of Mr M's credit file which I think should have concerned a responsible lender.

When Mr M applied for loan 1, UBF discovered he had opened 17 other accounts in the last six months. The type of accounts are not specified, but as the majority of accounts added to credit files involve some form of borrowing, it would have been reasonable to assume that most if not all of these accounts were loans or other forms of credit. As UBF's reports showed Mr M only had 11 accounts open at the point of his application, this indicated Mr M had both opened *and* settled a large number of accounts recently. This is a pattern which is suggestive of short-term borrowing.

So I think it should have appeared to UBF, when Mr M made his first loan application, that Mr M had opened almost three accounts per month over the last six months, many of which were likely to be short-term loans. I think a responsible lender would already have had concerns about potential dependency on short-term borrowing. So, like our adjudicator, I think UBF should have made some more detailed enquiries at this time around what Mr M was committed to pay in terms of other short-term borrowing.

Mr M applied for loan 2 less than a week after applying for (and repaying) loan 1. It was for a larger amount than loan 1 and the repayment represented over a quarter of his declared income. When this is combined with the information which UBF had already gathered from Mr M's credit reports suggesting he may have problems with short-term lending, I think it should have led a responsible lender to make robust and very detailed enquiries to determine Mr M's true financial position. One way in which UBF could have done this would have been by reviewing Mr M's bank statements.

Unlike our adjudicator, I think UBF should have kept up this highly-detailed level of checks for all of Mr M's remaining loans. In my view there was not a significant enough gap between any of the loans to suggest that UBF should have relaxed the checks it was carrying out. And even when there were breaks in Mr M's borrowing, it appears he was still applying to UBF for loans (and being declined) on a regular basis.

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

As I don't think UBF needed at this stage to carry out the kind of highly detailed enquiries which would have established Mr M's actual financial position, I think it was entitled to rely – for the most part – on what Mr M had said about his situation at the point he applied for his first loan. That's to say that his

income was £1,350 and his total expenditure was £650, leaving him with £700 to meet his instalments of £228.96.

Had UBF carried out better checks into Mr M's other short-term borrowing however, it would have discovered he had at least £460 committed to pay other lenders during the same period as his prospective loan 1 repayments. This left him with only a very small amount of "headroom" over after making his repayment to UBF – meaning any small fluctuation in his income or expenditure could result in repayments becoming unsustainable. While I appreciate the UBF repayments were technically affordable, given the high risk of harm to Mr M I don't think it was responsible of UBF to agree loan 1.

Had UBF established Mr M's true financial situation when he applied for loan 2, I think it would have discovered important information which it would have found relevant to its decision to lend.

UBF would have discovered Mr M's regular income was more or less as he'd stated. His salary appeared to fluctuate a little but his overall income came to around £1,320 per month.

In terms of regular financial commitments, Mr M paid around £300 per month to his local council, about £52 per month for telecoms services, £2 for his bank account and £20 to a credit card company. He was also paying £191 per month into a debt management plan. If an allowance is made for food, I think a responsible lender would have concluded Mr M's regular commitments came to between £650 and £700 per month.

However, I think a responsible lender would have considered it fairly clear that Mr M was spending far more than he could afford to on transactions at gaming and betting websites. In the month leading up to his application for loan 2, Mr M spent nearly £5,000 in this way – nearly four times his regular income.

While some of Mr M's gambling appears to have been funded by reinvestment of winnings, he seems to have made up the shortfall by borrowing (mainly from short-term lenders). I don't think any reasonable lender which had become aware of this situation would have considered it responsible to continue lending to Mr M in these circumstances. It follows that I find UBF's decision to give Mr M loan 2 was irresponsible.

what would proportionate checks have found for loans 3 to 5?

Had UBF carried out proportionate checks before agreeing loans 3 to 5, it would have found much the same situation as was present when it granted loan 2. Mr M was still spending several times more than his income on gambling (up to about £6,000 in the month preceding his application for loan 5), and funding this through a combination of reinvested winnings and more borrowing.

I don't consider it to have been responsible of UBF to lend in these circumstances.

what would proportionate checks have shown for loans 6 to 9?

Mr M's gambling reduced in between him taking loan 5 and applying for loan 6. It also appears his sources of credit were becoming more restricted as UBF's credit checks showed he was opening progressively fewer accounts. His credit file shows he began to enter arrangements to pay with several lenders at around this time.

Mr M's regular financial commitments at the time of his application for loan 6 included his usual payments to the council of £300 (although he was beginning to fall into arrears), £130 in personal and household telecoms bills, £38 for subscriptions and £5 for his bank account. Mr M had other commitments (for example, his credit cards), but these were not being paid. His gambling had reduced to around £385 in the previous month. In terms of outstanding short-term loans, Mr M owed about £560 to be repaid imminently across three lenders. As Mr M's income remained unchanged this meant he did not have enough money available to meet even his existing financial commitments and

did not have capacity to take on any further borrowing. In light of this I don't think UBF was right to grant him loan 6.

This financial situation remained more or less the same across loans 7 to 9. Mr M's identifiable regular commitments remained relatively modest, however he still spent between about £250 and £450 per month on gambling, and his outstanding short-term loan commitments ranged from between about £590 and £850. At all relevant times the combination of these two categories came to over £1,000 per month, leaving Mr M with no more than about £300 to cover his regular commitments and any repayments to UBF.

I don't think a responsible lender would have agreed loans 7 to 9 had it appreciated this situation – which I think it would have done had it carried out proportionate checks. It follows that I don't think UBF should have given Mr M these loans.

putting things right

UBF shouldn't have given Mr M any of the loans included in this complaint. So it's not right that Mr M should have had to pay interest, fees or charges on these. To put things right I intend to direct UBF to:

- A) Calculate the total amount Mr M has paid in interest, fees and charges on loans 1 to 8. To each amount Mr M has paid, 8% simple interest* per year should be added calculated from the date Mr M originally made the payment, to the date the complaint is settled.
- B) Remove any unpaid interest, fees and charges from loan 9 and treat any repayments Mr M has made as though they had been repayments of the loan principal, had the loan been interest-free.

If this results in Mr M having made an overpayment then 8% simple interest* per year should be added to this overpayment calculated from the date at which it would have arisen had the loan been interest-free, to the date the complaint is settled.

If there is no overpayment and Mr M still owes a balance on loan 9 then the amount calculated in "A" should be used to pay off that balance. Anything left over from "A" should then be paid to Mr M. If however, after the amount in "A" has been used Mr M still owes a balance on loan 9 then UBF should attempt to arrange an affordable repayment plan with Mr M for the remaining amount.

- C) Remove any adverse information it has recorded in relation to loans 1 to 9 from Mr M's credit file.

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

my provisional decision

For the reasons explained above, I intend to uphold Mr M's complaint in full and direct Uncle Buck Finance LLP to take the steps outlined in the "putting things right" section of this provisional decision.

I now invite both parties to the complaint to respond to my provisional findings. They should make sure anything they want me to consider reaches me by 25 July 2018.

Will Culley
ombudsman