

Complaint

Mrs B complains that Uncle Buck Finance LLP gave her loans irresponsibly.

Background

This complaint is about two payday loans Uncle Buck provided to Mrs B in October and December 2013, as follows:

Loan No	Amount	Date lent	Loan term	Date repaid
1	£350	3.10.13.	23 days	25.10.13
2	£450	6.12.13	15 days	-

Loan one was repaid on schedule but loan two fell into arrears, was ultimately sold on to a third party and remains outstanding.

Mrs B feels that Uncle Buck was wrong to lend to her. At the time she was suffering with severe mental illness, was gambling and drinking extensively, and she was struggling to manage her finances. She was sectioned under the Mental Health Act during 2014 but, prior to this, had been receiving treatment for her condition.

Our adjudicator didn't uphold Mrs B's complaint. Whilst sympathising with Mrs B's situation, she didn't think that there was anything apparent to Uncle Buck in the results of its checks that should've alerted it to her difficulties.

Mrs B disagreed and the complaint has been passed to me for a 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.

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 Mrs B 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 customer'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).

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

I think it's important for me to start by saying that Uncle Buck was required to establish whether Mrs B could sustainably repay her loans – not just whether the loan payments were affordable on a strict pounds and pence calculation.

Of course the loan payments being affordable on this basis might be an indication a consumer could sustainably make their repayments. But it doesn't automatically follow that this is the case. At the time of the loans the regulator was the Office of Fair Trading whose guidance said that repaying credit in a sustainable manner means being able to repay credit "*out of income and/or available savings*" and without "*undue difficulty*".

So 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 Mrs B's complaint.

Before it lent to her, Uncle Buck asked Mrs B for details of her monthly income – which she declared to be £2,230 - and it verified this to be accurate by undertaking a credit check. It also carried out a work verification check to confirm Mrs B's employment status. Uncle Buck has told us that it carried out credit checks with a credit reference agency before each loan. I haven't seen the full results of those credit checks, but Uncle Buck has said that the results didn't cause any concerns.

The amounts that Mrs B had to repay to Uncle Buck didn't represent a significant proportion of her monthly income. Given that these were the only loans that she took from Uncle Buck, and recognising what was apparent about her circumstances at the time, I don't think it would've been proportionate for Uncle Buck to ask her for the amount of information (such as copies of bank statements etc.) that would've been needed to show that the lending was unsustainable.

In response to the adjudicator's opinion Mrs B sent us copies of her bank statements. From these I can see evidence of extensive gambling and of other short term loan commitments at the time Uncle Buck provided these loans. It's also apparent that Mrs B was receiving regular financial support from her then husband. In the light of this I appreciate that Mrs B's actual financial situation was quite different to what Uncle Buck had understood it to be.

But, this wasn't something she told Uncle Buck when she asked for the loans. And there wasn't anything in the information Mrs B provided, or the information Uncle Buck should've been aware of, which meant it would've been proportionate to start verifying what she was saying. As such, I don't think it would've been proportionate for Uncle Buck to have asked Mrs B for sight of her bank statements. And so I don't see any reason why Uncle Buck should've been aware that Mrs B was experiencing financial difficulties.

I do acknowledge that Mrs B was, at the time the loans were given, receiving treatment for serious health issues that might well have had an impact upon her ability to manage her finances. But she didn't disclose this to Uncle Buck and, here again, I don't think it's reasonable to expect the lender to have been aware of this.

Mrs B also told us that it'd been necessary for her ex-husband to repay the first loan to Uncle Buck on her behalf. She told us that Uncle Buck had been aware of this before it lent to her a second time because he'd personally called Uncle Buck to make the repayment.

Uncle Buck has checked its files and can't see any record of having received a call from Mrs B's ex-husband. And it's told us that it doesn't retain any call recordings from this time. However, from the bank statements that Mrs B provided to us, I can see that the repayment for loan one was made by a debit card from her own, sole bank account. I can also see that there were a number of payments received by Mrs B around that time, apparently from her ex-husband, that do tend to corroborate that Mrs B was financially dependent upon him. But I don't think there's any reason why Uncle Buck should've known this, particularly given the evident source of the repayment of loan one.

In all of these circumstances I can't see anything that would suggest Uncle Buck was aware, or should've been aware, that Mrs B was experiencing financial difficulties, or that she was suffering with ill health that may have impaired her financial management. I'm sorry that it will be a disappointment to Mrs B but I don't think that Uncle Buck was wrong to provide these loans to her.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 17 October 2019.

Richard France
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