

## **complaint**

Miss W complains that Uncle Buck Finance LLP irresponsibly gave her a loan which she couldn't afford to pay back.

## **background**

Miss W took out an instalment loan with Uncle Buck in October 2018.

She says she was borrowing to repay existing loans and her credit file shows her use of short term loans. Miss W says she can't now repay the loan and there is a balance outstanding and she is in repayment plans with other creditors.

Our adjudicator considered the complaint and said that information in the credit search done by Uncle Buck was at odds with the information she had declared and Uncle Buck should've seen that she was struggling to manage her money and so further borrowing wasn't sustainable.

Uncle Buck didn't agree with the adjudicator's opinion and in particular said that it didn't agree that there were short term loans evident on the credit file and it wasn't responsible for Miss W's inaccurate declaration which was fraudulent.

## **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 Miss W 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 Miss W 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 this is the case. This is because the Consumer Credit Sourcebook defines 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.

So it follows that a lender should realise, or it ought fairly and reasonably to realise, that a consumer 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 Miss W's complaint. Uncle Buck has told us about the checks it did before lending to Miss W. It asked Miss W for details of her income and normal expenditure. And Uncle Buck carried out checks on Miss W's credit file.

Miss W asked to borrow £400. It was repayable in 4 instalments the highest of which was £170.19. Miss W said her income was £1100 and her outgoings were £640. These figures included food, utilities, rent and transport as well as other regular monthly outgoings and credit commitments. The credit check undertaken by Uncle Buck showed significant repayments due on short term accounts. The picture revealed by the credit file was one of an increasing debt and signs that Miss W was reliant on short term credit and not responsibly managing her money.

For example the credit report showed three recently opened short term accounts together with a regular credit payment account. The repayments for these accounts totaled just over £600. The credit search undertaken by Uncle Buck showed that Miss W had opened 10 credit accounts in the last 6 months.

Because the amount that Miss W owed on her monthly commitments was significantly at odds with what she had told Uncle Buck I think it was reasonable and proportionate for further checks to be carried out. If these checks had been carried out, Uncle Buck would have seen that Miss W wasn't responsibly managing her money and she couldn't afford the repayment. This meant that further borrowing was unsustainable.

Although the loan looked affordable on a strict pounds and pence calculation on the basis of the figures declared by Miss W I think it was reasonable for Uncle Buck to have seen that Miss W wasn't responsibly managing her money from its own credit search and so any further borrowing was unsustainable. And so I think Uncle Buck should've realised that it wasn't reasonable to lend any money to Miss W.

Miss W was unable to repay what she had borrowed which further supports the fact that the loan was unaffordable from the outset and wasn't because of a change of circumstances.

So I'm upholding Miss W's complaint. It appears that there is an outstanding balance but I have expressed the redress on the basis that Miss W may have paid something towards the outstanding balance since this complaint came to me.

**putting things right – what Uncle Buck needs to do**

- A. Add together the total of the repayments made by Miss W towards interest, fees and charges on any loans without an outstanding balance, not including anything it has already refunded.
- B. Calculate 8% simple interest\* on the individual payments made by Miss W which were considered as part of "A", calculated from the date Miss W originally made the payments, to the date the complaint is settled.
- C. Remove all interest, fees and charges from the balance on any upheld outstanding loans, and treat any repayments made by Miss W as though they had been repayments of the principal. If this results in Miss W having made overpayments then these should be refunded with 8% simple interest\* calculated on the overpayments, from the date the overpayments would have arisen, to the date the complaint is settled. Uncle Buck should then refund the amounts calculated in "A" and "B" and move to step "E".
- D. If there is still an outstanding balance then the amounts calculated in "A" and "B" should be used to repay any balance remaining on outstanding loans. If this results in a surplus then the surplus should be paid to Miss W. However if there is still an outstanding balance then Uncle Buck should try to agree an affordable repayment plan with Miss W.
- E. Remove any adverse information about the loan from Miss W's credit file.

\*

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

**my final decision**

My final decision is that I uphold Miss W's complaint in part and direct Uncle Buck Finance LLP to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 27 April 2020.

Emma Boothroyd  
**ombudsman**