

## complaint

Mr C complains that Uncle Buck Finance LLP, trading as Uncle Buck, ("UBF"), gave him loans that he couldn't afford to repay.

## background

Mr C took out three loans with UBF and details of these are shown below. The loans were all repayable by three monthly instalments and have all been repaid.

Loan number	Date	Loan amount	Number of repayments and repayment amount
1.	15/9/2016	£100	2 monthly payments of £45 and one payment of £43.88
2.	10/12/2016	£300	2 monthly payments of £140.10 and one monthly payment of £136.74
3.	1/5/2017	£500	2 monthly payments of £246.92 and one monthly payment of £240.73

Mr C said that the loans trapped him in a debt spiral with repayments taking so much of his wages that he had to borrow again to cover his next month's expenses. Mr C said that his credit report would have shown numerous loans he had already had. There were occasions when he had up to ten loans at the same time.

UBF said that each of Mr C's applications were affordable at the point of application taking into account the income and expenditure information Mr C had provided, and the credit searches it had performed.

UBF also told this service that its credit check includes reports on new account openings, registered defaults, County Court Judgements, and significant changes to existing accounts, such as overdue payments, deferrals, extensions and the like. It also assesses the income and overall indebtedness of a customer, including their unsecured and secured debt, which allows it to confirm their ability to service existing debt, as well as the new loan application. It also checks short term lending information which includes loans which have only just been approved.

## *our adjudicator's view*

The adjudicator didn't recommend that the complaint should be upheld. She noted that Mr C had told UBF that he had an income of £1,875 and expenditure of £1,200 to £1,300. She said that this information suggested that Mr C could sustainably make the repayments he needed to make on the loans. And she didn't think it would've been proportionate for UBF to ask Mr C for additional information to show the lending was unaffordable. She also noted that the loans were repaid early.

Mr C responded to say that the loans hadn't been repaid early. He said that his bank statements would show that the loans had been paid on the contractual dates. Mr C said that when his contractual payments had finished, he'd taken another loan right away to pay other payday lenders for the loans he'd taken to pay UBF's loans. Mr C said that a simple check would have shown how many loans he had at the time plus how much it was going to cost him at the end of the month. And the fact that the lending was becoming back to back and the amounts were increasing each time showed he needed more and more just to cover the costs each month due to the amount of interest he would then need to pay.

The adjudicator responded to say that she'd reviewed Mr C's bank statements and noted that his repayments were made on the contractual dates. But she also said that her outcome remained the same as the monthly instalment amounts were relatively low in proportion to Mr C's declared income of £1,875. And she thought it was fair for UBF to rely on the information Mr C had declared about his income and expenses. She hadn't seen anything that should've prompted UBF to carry out further checks, such as verifying the information Mr C had provided.

#### *my provisional decision*

After considering all the evidence, I issued a provisional decision on this complaint to Mr C and to UBF on 8 March 2019. I summarise my findings:

I'd noted that UBF was required to lend responsibly. It needed to make checks to make sure Mr C could afford to repay each of the loans before it lent to him. Those checks needed to be proportionate to things such as the amount Mr C was borrowing, the length of the agreements and his lending history. But there was no set list of checks UBF had to do.

The Financial Conduct Authority was the regulator at the time Mr C borrowed from UBF. Its regulations require lenders to take "reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences." The regulations define 'sustainable' as being able to make repayments without undue difficulty, and that this meant borrowers should be able to make their repayments on time and out of their income and savings without having to borrow to meet these repayments.

#### *Loan 1*

Loan 1 was repayable by three monthly instalments of around £45. I'd thought about whether UBF's checks were proportionate before Loan 1. UBF told us that before lending to Mr C, it had asked him about his income and outgoings. Mr C had declared a monthly income of £1,875 and living costs of £1,300. His outgoings consisted of food of £100, utilities of £250, travel of £100, store and credit card payments of £500, mortgage payments of £300 and other outgoings of £50. So Mr C's disposable income appeared to be £575 and I could see that the loan repayment amounts for Loan 1 were relatively modest compared to Mr C's declared disposable income.

But I'd also noted that UBF had carried out a credit check and it had provided this service with the results of that check. I noted that the check showed that Mr C's mortgage payment was £278 more than he'd declared. The check also showed a payday loan for £604 to be repaid in a single payment. In addition, the check showed other loan repayments totalling £399 to be made at the same time as Loan 1 as well as credit card repayments. I thought the results of its credit check might have suggested to UBF that Mr C would have insufficient

disposable income to repay Loan 1 sustainably. So in view of the results of its credit check, I thought UBF ought to have gathered a more comprehensive view of Mr C's circumstances and sought some independent verification of these. I couldn't see that it did this.

### *Loan 2*

Mr C borrowed Loan 2 around 12 days after he'd repaid Loan 1. Loan 2 had increased to £300 and was repayable by three monthly instalments of around £140.

Mr C had again declared a monthly income of £1,875 and his living costs had decreased to £1,200. The difference in living costs was attributable to reduced credit and store card payments of £400. So Mr C's disposable income appeared to be £675 and I thought this might have suggested to UBF that the loan repayment amounts for Loan 2 were affordable compared to Mr C's declared disposable income.

But I'd also seen UBF's credit check before Loan 2. I'd noted that the check showed that Mr C's mortgage payment was still £278 more than he'd declared. The check appeared to show two payday loans for £186 and £203 to be repaid in a single payment around the same time as Loan 2. In addition, the check showed other loan repayments totalling £890 to be made around the same time as Loan 2 as well as credit card repayments. I'd thought the results of its credit check might have again suggested to UBF that Mr C would have insufficient disposable income to repay Loan 2 sustainably. So in view of the results of its credit check, I thought UBF ought to have again independently reviewed the true state of Mr C's finances before giving him this loan. I couldn't see that it did this.

### *Loan 3*

Mr C borrowed Loan 3 around two months after he'd repaid Loan 2. Loan 3 had increased to £500 and was repayable by three monthly instalments of around £240.

Mr C had again declared a disposable income of £675 which again would have appeared sufficient for Mr C to repay the repayment amounts for Loan 3.

But I'd again seen UBF's credit check before Loan 3. I'd noted that the check showed that Mr C's mortgage payment was still £278 more than he'd declared. The check appeared to show three payday loans for £1,024, £151 and £248 to be repaid in a single payment around the same time as Loan 3. In addition, the check showed other loan repayments totalling £284 to be made around the same time as Loan 3 as well as credit card repayments. I thought the results of its credit check might have again suggested to UBF that Mr C would have insufficient disposable income to repay Loan 3 sustainably. So in view of the results of its credit check, I thought UBF should have again independently checked Mr C's financial situation before giving Loan 3 to him.

Although I didn't think the checks UBF did for Loans 1 to 3 were sufficient, that in itself didn't mean that Mr C's complaint about these should succeed. I also needed to see whether what I considered to be proportionate checks would have shown UBF that Mr C couldn't sustainably afford the loans. I thought UBF should have been independently checking what Mr C was earning and spending each month. So I'd tried to do this by looking at Mr C's bank statements at the time of these loans. The bank statements might not have shown UBF everything it would've seen by carrying out proportionate checks. But I thought they were the best indication of Mr C's ability to afford the loans at the time they were approved. So I didn't think it was unreasonable to rely on these.

### *Loan 1*

I'd checked Mr C's bank statement for the month before Loan 1 to see what better checks would have suggested to UBF. Had it done so UBF would have seen that Mr C was earning a little less than he'd declared, around £1,735. But, it also would have become aware that Mr C was gambling heavily, spending over £3,000 on gambling. And to support this gambling expenditure, he had taken short term loans that month totalling £700. His regular expenditure was around £1,400. So, if UBF had carried out what I considered to be proportionate checks before Loan 1, I thought it was likely that it would have concluded that Loan 1 wasn't sustainable.

### *Loan 2*

I'd checked Mr C's bank statement for the month before Loan 2 to see what better checks would have suggested to UBF. Had it done so UBF would have seen that Mr C was earning less than declared, around £1,619. But, it also would have seen that Mr C was continuing to gamble heavily, spending over £2,800 on gambling. And to support this gambling expenditure, he had taken short term loans that month totalling £650. His regular expenditure was around £2,100. So, if UBF had carried out what I considered to be proportionate checks before Loan 2, I thought it was likely that it would have concluded that Loan 2 wasn't sustainable.

### *Loan 3*

In the month before Loan 3, I could see that Mr C's financial position worsened. His monthly income was around £1,637. But his gambling expenditure was almost £7,000. And I could see that in the month before Loan 3, Mr C had taken short term lending of £3,700 and his regular expenditure appeared to be around £1,250. So, if UBF had carried out what I considered to be proportionate checks before Loan 3, I thought it was likely that it would have concluded that Loan 3 wasn't sustainable.

In summary I didn't think UBF had done enough checks for any of the loans. I thought proportionate checks would have shown UBF the state of Mr C's finances and that he couldn't afford to sustainably repay the loans.

Subject to any further representations by Mr C or UBF my provisional decision was that I intended to uphold this complaint. I intended to order Uncle Buck Finance LLP, trading as Uncle Buck, to:

1. Refund all the interest and charges that Mr C paid on Loans 1 to 3;
2. Pay interest of 8% simple\* a year on all refunds from the date of payment to the date of settlement; and
3. Remove any adverse information about Loans 1 to 3 from Mr C's credit file.

\*HM Revenue & Customs requires UBF to take off tax from this interest. UBF must give Mr C a certificate showing how much tax it had taken off if he asks for one.

Mr C responded to say that he was happy with my provisional decision and had nothing else to add.

UBF disagreed. It noted that the mortgage I'd referred to was a joint mortgage and so it was reasonable that Mr C had disclosed only his proportion of the repayments. If the mortgage payment was £578, it was likely that the repayments would be split between the borrowers. So Mr C paid £300 and the joint borrower paid £278.

UBF also said that its credit report suggested that Mr C hadn't taken out any short term loans in the previous six months and that he didn't have an outstanding short term loan balance. So the £604 balance I'd referred to might not have been a short term loan.

UBF also noted that I'd referred to credit card commitments. But it said that Mr C had included credit commitments in the expenditure amount he'd declared to UBF.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I note UBF's comments about Mr C's mortgage payments. I wasn't aware the mortgage was a joint mortgage. As UBF says that the mortgage was a joint mortgage, I accept that if Mr C had declared that he was paying £300 for his mortgage, then it was likely to be the case that he was responsible for just £300 of the joint mortgage repayment.

With regard to UBF's comments about the short term loan of £604 I'd seen on UBF's credit check before Loan 1, I note that this was taken out on 5 September 2016. The check notes that the next repayment amount was £604. So I disagree with UBF's statement that its credit report suggested that Mr C hadn't taken out any short term loans in the previous six months.

I note that the credit check also showed other loan repayments. Other short term loans were also shown on UBF's credit checks before Loans 2 and 3 as stated above.

With regard to UBF's comments about credit card commitments, I was aware that Mr C had declared credit card commitments within his declared expenditure to UBF.

But I think that even if the additional mortgage payment of £278 and any credit card repayments not declared by Mr C were disregarded, it was still clear from UBF's credit checks that Mr C had other credit commitments to repay which exceeded his declared disposable income for each of the loans. So, as stated above, I think UBF should have independently checked Mr C's financial situation before giving him the loans. And if it had done so, I think it was likely that it would have concluded that the loans weren't sustainable.

So overall, I am satisfied that the proposed resolution in my provisional decision is fair in all the circumstances, and I find no basis to depart from my earlier conclusions.

### **my final decision**

My decision is that I uphold this complaint. In full and final settlement of this complaint, I order Uncle Buck Finance LLP, trading as Uncle Buck, to:

1. Refund all the interest and charges that Mr C paid on Loans 1 to 3;
2. Pay interest of 8% simple\* a year on all refunds from the date of payment to the date of settlement; and
3. Remove any adverse information about Loans 1 to 3 from Mr C's credit file.

\*HM Revenue & Customs requires UBF to take off tax from this interest. UBF must give Mr C a certificate showing how much tax it had taken off if he asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 28 April 2019.

Roslyn Rawson  
**ombudsman**