

complaint

Mr B complains that Uncle Buck Finance LLP gave him loans that were unaffordable.

background

During 2015 and 2016 Mr B borrowed ten loans from Uncle Buck, as follows:

loan	Amount	loan date	loan type	Repayment date
1	£150	9.2.15	Payday	26.2.15
2	£100	3.3.15	Payday	13.3.15
3	£150	16.3.15	Payday	24.3.15
4	£345	25.3.15	Instalment	15.5.15
5	£150	22.5.15	Instalment	15.7.15
6	£300	15.7.15	Instalment	15.10.15
7	£100	3.2.16	Instalment	15.4.16
8	£200	16.4.16	Instalment	17.6.16
9	£300	22.6.16	Instalment	15.9.16
10	£400	15.9.16	Instalment	28.10.16

The earlier loans were payday loans, but loans 4 to 10 were instalment loans repayable by equal instalments over three months. All the loans have been repaid.

Mr B complains that at the time he borrowed from Uncle Buck he had other loans outstanding and, with low disposable income, he was forced to continue borrowing to pay off earlier loans. He was, he says, caught in a cycle of dependency upon borrowing. Also, he's told us he was gambling in an effort to clear his debts.

Uncle Buck has said that, each time it lent, it asked Mr B for details of his monthly income and expenditure and carried out credit checks. It also verified his employment status. It was satisfied that its checks showed the loans to be affordable, and there was nothing to indicate that Mr B was experiencing financial difficulties.

Mr B's complaint has been assessed by one of our adjudicators. He thought that the checks Uncle Buck carried out before giving Mr B the first three loans had been proportionate. But he thought it should have done more checks before giving Mr B the other loans. And he thought that better checks would have shown that Mr B couldn't afford to repay his borrowing from loan 4 onwards. So he asked Uncle Buck to pay Mr B some compensation.

Uncle Buck didn't agree with our adjudicator's assessment and so 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. I've also taken into account the law, any relevant regulatory rules and good industry practice at the time the loans were offered.

Uncle Buck was required to lend responsibly. It needed to make checks to see whether Mr B could afford to pay back the loans before it lent to him. Those checks needed to be

proportionate to things such as the amount Mr B was borrowing and his lending history, but there was no set list of checks that Uncle Buck had to do.

The Financial Conduct Authority was the regulator at the time Mr B borrowed from Uncle Buck. Its regulations for lenders are set out in its consumer credit sourcebook (generally referred to as "CONC"). These 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.*" - CONC 5.3.1(2). CONC 5.3.1(7) defines 'sustainable' as being able to make repayments without undue difficulty. And it explains that this means 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.

So, the fact that the Mr B managed to repay the loans in full and on time, doesn't necessarily mean the loans were affordable for him and that he managed to repay them in *a sustainable manner*. In other words I can't assume that because Mr B managed to repay his loans he was able to do so out of his normal means without having to borrow further.

Uncle Buck has told us about the checks it did before lending to Mr B. It asked him for details of his income and expenditure before agreeing each loan. And it checked Mr B's credit file each time too - Uncle Buck has given us a summary of the key factors those checks revealed. Also, it used its internal risk scorecard to ensure that its loans were affordable.

Loans 1 to 3

The amounts that Mr B needed to repay for loans 1-3 were relatively low in comparison to his declared disposable income. Each was a short term payday loan. For loan 1 he'd declared his net monthly income to be £1,750. I can see that Uncle Buck questioned this as it appeared higher than it would've expected given his occupation. Mr B provided a payslip to confirm its validity.

Each of the applications indicated that the requested loans could be comfortably repaid from within Mr B's disposable income. In these circumstances I think that the information Uncle Buck requested, and the checks it carried out, were proportionate to the loans being given. I don't think it needed to do any further checks and so I don't think it was wrong to provide these loans.

Loan 4

Mr B applied for a loan of £500 and confirmed his income and expenditure to be as before, with monthly disposable income of £1,550. However, having assessed its affordability to Mr B, Uncle Buck offered him only a reduced loan of £345, repayable by three monthly instalments. It's not apparent from the lender's file notes what its rationale was for reducing the sum lent.

Given this was Mr B's fourth loan application within a period of only six weeks, and that it was made for a significantly increased amount on the day after loan three was repaid, I think that Uncle Buck should've been considering whether there was any emerging dependence upon payday and short term borrowing. In these circumstances, and with declared monthly disposable income of £1,550, I think that the lender ought to have wondered why Mr B needed to borrow in this way, initially via payday loans and now over a three month term.

I think that, in addition to asking for details of income and expenditure (including regular financial commitments), Uncle Buck should've asked explicitly for details of any other short-term financial commitments.

In response to our adjudicator's suggestion that Uncle Buck's credit checks didn't show the type of active credit accounts that Mr B had, nor the amount of monthly repayments he had to make on them, it's provided us with some additional information that it had obtained from the credit checks. This suggests that, at that time, Mr B had a total of £569 outstanding under short term loan balances and that he'd only had 4 new short term loan accounts across the preceding 50 days.

I can't see that Uncle Buck's credit checks provided it with any information about what Mr B's repayment commitments were. Uncle Buck contends that, even if all of the outstanding credit fell due for repayment in the following month, that would still have been affordable to Mr B based upon the income and expenditure information that he'd provided. However, I'm conscious that credit files don't always show a complete picture, particularly in relation to payday loans and other short term borrowings. As such, I don't think it's reasonable for Uncle Buck to have relied upon this information alone. And I think that, in light of the emerging pattern of borrowing, it ought to have asked more questions of Mr B.

Uncle Buck has told us that it *did* ask Mr B for information about any other short term loans. It said that its online application form requested details of 'monthly credit commitments' and that the associated explanatory notes indicate this should include 'all monthly credit repayments, eg loans and credit card payments'. In its view, this is sufficient to demonstrate that that it did ask the Mr B to provide details of all of his credit commitments, be they long term or short term.

I haven't seen the application form, nor a pro forma of it, but I do feel that the wording of the question as described by Uncle Buck isn't sufficiently explicit and leaves potential room for ambiguity. I say this because it's quite possible that some people might not associate short term loans, particularly payday loans, as 'monthly credit repayments'. As such I concur with our adjudicator that more specific questioning around this issue was warranted.

I've looked at Mr B's bank statements and can see that:

- at the date loan 4 was granted he had commitments to make repayments under short term loans amounting to over £2,000 in the following month;
- there were aggregate receipts into his bank account of over £3,500 in the month preceding loan 4, from ten other short term lenders.

All of this represents a significant divergence from what Uncle Buck had understood following its credit checks and suggests that the data it relied upon was not comprehensive. I think that, had it done better checks that I consider to be proportionate, it would've seen that this loan wasn't affordable on a sustainable basis.

Loans 5 to 10

Uncle Buck has shown us that it telephoned Mr B on a number of occasions to verify his income and expenditure. It also asked him to confirm that he wasn't involved in any debt management arrangements, and that the loans weren't to repay other debts. However, by

the time Mr B asked for his fifth loan I think Uncle Buck should have realised that it could no longer rely on the information he was providing about his financial situation. He continued to declare a healthy disposable income each month, but needed to borrow regularly. So I think that, from this point onwards, Uncle Buck should've been independently verifying the true state of Mr B's finances. There are a number of ways in which it could have done this, such as asking for copies of bills or bank statements, but I can't see that it did so.

I can see from Mr B's bank statements that in the month preceding loan 5 he made payments to gambling companies of over £2,000. And, in the month immediately following him receiving loan 5, he had commitments to make repayments to an array of other short term lenders amounting to over £1,750. So I think that, had Uncle Buck undertaken what I consider to be proportionate checks, it would've seen that loan 5 wasn't affordable to Mr B on a sustainable basis.

I've also reviewed Mr B's bank statements for around the time of each of the subsequent loans and can see that his financial circumstances don't appear to have improved at all across that period.

I have considered what Uncle Buck has said about its instalment loans being designed to ensure that consumers weren't drawn into a loan cycle, by forcing breaks of two or three months between each loan being taken out. But, in reality, Mr B was borrowing from Uncle Buck almost constantly for over 18 months (with the sole exception of a break between loans 6 and 7). I think that Uncle Buck should've remained concerned about the regular nature of Mr B's borrowing and considered whether he was using other lenders alongside its own loans. I think that is what proportionate checks would have helped to discover.

It follows that I don't think Uncle Buck was right to provide loans 5 to 10 inclusive to Mr B as I don't consider them to have been sustainably affordable to him. Uncle Buck should therefore pay Mr B some compensation to put things right.

my final decision

My final decision is that I uphold Mr B's complaint in part. To put things right Uncle Buck Finance LLP should:

- refund all interest and charges Mr B paid on loans 4 to 10;
- pay interest on these refunds at 8% simple* per year from the dates of payment to the date of settlement;
- remove any adverse information about these loans from Mr B's credit file.

*HM Revenue & Customs requires Uncle Buck Finance LLP to take off tax from this interest. Uncle Buck Finance LLP must give Mr B a certificate showing how much tax it's taken off if he asks for one.

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

Richard France
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