

## **complaint**

Miss E says Uncle Buck Finance LLP irresponsibly lent to her.

## **background**

This complaint is about five instalment loans Uncle Buck provided to Miss E between August 2017 and April 2018. The amounts Miss E borrowed ranged between £100 and £600. The loans were to be repaid in three or six monthly instalments. Loans one to three were repaid early but Miss E then borrowed again the same day generally for larger amounts. Loan four was the largest amount borrowed, £600. Miss E exercised her right to withdraw from loan five. Miss E repaid all her loans.

Our adjudicator upheld Miss E's complaint in part and thought loans four and five shouldn't have been given. Uncle Buck disagreed. It said there was no legal requirement to obtain consumers' bank statements to verify information. It said Miss E had continued to borrow until she complained. And so the complaint was passed to me for a final 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 that Miss E 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 that it is important for me to start by saying that Uncle Buck was required to establish whether Miss E 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 ("CONC") 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. And 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 Miss E's complaint.

Uncle Buck asked Miss E for information about her income and expenditure and it carried out credit checks. Miss E said she earned £1,900 a month and Uncle Buck said it verified this. Miss E said her monthly outgoings ranged between £850 and £650.

For loans one to three, given the loan amounts, what was apparent about Miss E's circumstances at the time and her history with Uncle Buck, I don't think it would've been proportionate to ask her for the amount of information needed to show the lending was unsustainable. There wasn't anything in the information Miss E then provided or the information Uncle Buck should've been aware of, which meant it would've been proportionate to start verifying what Miss E was saying. From Miss E's stated disposable income and what Uncle Buck saw in its credit checks, I can't say it was wrong to provide loans one to three.

But I think Miss E's borrowing history should have prompted Uncle Buck to make better checks for loan four. Miss E had been borrowing continuously for five months. Loan four was for a substantially larger amount. So I think Uncle Buck should have checked what Miss E was telling it about her circumstances. There was no legal obligation to obtain bank statements, but I think these are one way that Uncle Buck could have verified Miss E's situation.

As our adjudicator explained, a proportionate check for loans four and five would most likely have shown that Miss E was having difficulty managing her money:

- She was gambling heavily and bet £1,340 in the month before she asked for loan four;
- This should have raised concerns about Miss E's ability to meet her ongoing monthly repayments.

Uncle Buck said gambling was a lifestyle choice and it couldn't tell a consumer how to spend her disposable income. But I think that if Uncle Buck had seen the extent of Miss E's gambling by making proportionate affordability checks then it would have queried whether she could repay her loans sustainably. I don't think Miss E's continued requests for loans until she complained shows that the loans were sustainable for her.

So I think if Uncle Buck had made better checks on loan four it would have seen that Miss E would be unlikely to sustainably repay this loan and any subsequent loan. So I'm upholding the complaint about loans four and five and Uncle Buck should put things right.

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

- refund all interest and charges Miss E paid on loans four and five;
- pay interest of 8% simple a year on any refunded interest and charges from the date they were paid (if they were) to the date of settlement†;
- remove any negative information about loans four and five from Miss E's credit file;

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

**my final decision**

For the reasons given above, my final decision is that I partially uphold Miss E's complaint. I require Uncle Buck Finance LLP to pay Miss E compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss E to accept or reject my decision before 23 September 2019.

Phillip Berechree  
**ombudsman**