

## **complaint**

Mr U has complained that Advancis Limited (“Buddy Loans”) irresponsibly provided him with an unaffordable guarantor loan. He has said that if Buddy Loans had carried out proper checks it would have seen that he had defaults, he was in financial difficulty and that he had a gambling addiction.

## **background**

Buddy Loans provided Mr U with a guarantor loan in May 2018. The loan was for £3,000 and it was due to be repaid in 24 instalments of around £185. The total amount to be repaid was £4,445.99.

One of our investigators reviewed Mr U’s complaint. She told Buddy Loans that the checks it carried out before providing Mr U with this loan weren’t reasonable and proportionate and if such checks had been carried out it would have seen that it Mr U wasn’t in a position to sustainably make the repayments.

So she thought that Buddy Loans shouldn’t have provided Mr U with this loan and upheld the complaint. Buddy Loans disagreed with our adjudicator’s assessment and asked for an ombudsman’s decision. So the complaint has now been passed to me for a final decision.

## **the regulatory framework**

Buddy Loans provided Mr U with this loan when it was authorised by the Financial Conduct Authority. This meant that it was subject to the FCA rules and regulations.

- *the FCA Principles for Business (“PRIN”)*

The FCA’s Principles for Business set out the overarching requirements which all authorised firms are required to comply with.

PRIN 1.1.1G, says

*The Principles apply in whole or in part to every firm.*

The Principles themselves are set out in PRIN 2.1.1R. And the most relevant principle here is PRIN 2.1.1 R (6) which says:

*A firm must pay due regard to the interests of its customers and treat them fairly.*

- *the Consumer Credit sourcebook (“CONC”)*

This sets out the rules and guidance which apply to guarantor loan providers like Buddy Loans when providing loans. CONC 5 sets out a firm’s obligations in relation to responsible lending.

It’s clear there is a high degree of alignment between the OFT’s *Irresponsible Lending Guidance* (“ILG”) and the rules set out in CONC 5. As is evident from the following extracts, the FCA’s CONC rules specifically note and refer back to sections of the OFT’s ILG on many occasions.

Section 5.2.1R(2) of CONC sets out what a lender needs to do before agreeing to give a borrower a loan. It says a firm must consider:

- (a) *the potential for the commitments under the regulated credit agreement to adversely impact the customer's financial situation, taking into account the information of which the firm is aware at the time the regulated credit agreement is to be made; and*

**[Note: paragraph 4.1 of ILG]**

- (b) *the ability of the customer to make repayments as they fall due over the life of the regulated credit agreement, or for such an agreement which is an open-end agreement, to make repayments within a reasonable period.*

**[Note: paragraph 4.3 of ILG]**

CONC also includes guidance about 'proportionality of assessments'. CONC 5.2.4G(2) says:

*A firm should consider what is appropriate in any particular circumstances dependent on, for example, the type and amount of credit being sought and the potential risks to the customer. The risk of credit not being sustainable directly relates to the amount of credit granted and the total charge for credit relative to the customer's financial situation.*

**[Note: paragraph 4.11 and part of 4.16 of ILG]**

CONC 5.3 contains further guidance on what a lender should bear in mind when thinking about affordability.

CONC 5.3.1G(1) says:

*In making the creditworthiness assessment or the assessment required by CONC 5.2.2R (1), a firm should take into account more than assessing the customer's ability to repay the credit.*

**[Note: paragraph 4.2 of ILG]**

CONC 5.3.1G(2) then says:

*The creditworthiness assessment and the assessment required by CONC 5.2.2R (1) should include the firm taking 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.*

**[Note: paragraph 4.1 (box) and 4.2 of ILG]**

CONC 5.3.1G(6) goes on to say:

*For the purposes of CONC "sustainable" means the repayments under the regulated credit agreement can be made by the customer:*

- (a) *without undue difficulties, in particular:*

- (i) the customer should be able to make repayments on time, while meeting other reasonable commitments; and*
- (ii) without having to borrow to meet the repayments;*

*(b) over the life of the agreement, or for such an agreement which is an open-end agreement, within a reasonable period; and*

*(c) out of income and savings without having to realise security or assets; and*

*“unsustainable” has the opposite meaning.*

**[Note: paragraph 4.3 and 4.4 of ILG]**

In respect of the need to double-check information disclosed by applicants, CONC 5.3.1G(4) has a reference to paragraphs 4.13, 4.14, and 4.15 of ILG and states:

- (a) it is not generally sufficient for a firm to rely solely for its assessment of the customer’s income and expenditure on a statement of those matters made by the customer.*

And CONC 5.3.7R says that:

*A firm must not accept an application for credit under a regulated credit agreement where the firm knows or ought reasonably to suspect that the customer has not been truthful in completing the application in relation to information supplied by the customer relevant to the creditworthiness assessment or the assessment required by CONC 5.2.2R (1).*

**[Note: paragraph 4.31 of ILG]**

CONC also contains the additional obligations owed by guarantor loan providers to guarantors when providing a guarantor loan. The additional requirements in relation to an assessment of the guarantor’s circumstances are contained in CONC 5.2.5R.

As the guarantor isn’t a party to this complaint, I don’t think that it’s necessary to set out all the rules and guidance relating to the additional obligations owed to guarantor in this decision. That said I do think it’s useful for me to set out CONC 5.2.6G which says:

- (2) The provision of the guarantee or indemnity (or both), and the assessment of the guarantor under CONC 5.2.5R, does not remove or reduce the obligation on the lender to carry out an assessment of the borrower under CONC 5.2.1R or CONC 5.2.2R. Firms are reminded of the rule in CONC 5.3.4R that the assessment of the borrower must not be based primarily or solely on the value of any security provided by the borrower.*

#### Section 140 of the Consumer Credit Act 1974

Mr U’s loan was provided after Section 140 of the Consumer Credit Act came into force on 6 April 2007. Section 140A sets out circumstances where the court may determine that the relationship between a creditor and a debtor is unfair to the debtor.

Section 140A says:

## **140A Unfair relationships between creditors and debtors**

- (1) *The court may make an order under section 140B in connection with a credit agreement if it determines that the relationship between the creditor and the debtor arising out of the agreement (or the agreement taken with any related agreement) is unfair to the debtor because of one or more of the following—*

  - (a) *any of the terms of the agreement or of any related agreement;*
  - (b) *the way in which the creditor has exercised or enforced any of his rights under the agreement or any related agreement;*
  - (c) *any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement).*
- (2) *In deciding whether to make a determination under this section the court shall have regard to all matters it thinks relevant (including matters relating to the creditor and matters relating to the debtor).*
- (3) *For the purposes of this section the court shall (except to the extent that it is not appropriate to do so) treat anything done (or not done) by, or on behalf of, or in relation to, an associate or a former associate of the creditor as if done (or not done) by, or on behalf of, or in relation to, the creditor.*
- (4) *A determination may be made under this section in relation to a relationship notwithstanding that the relationship may have ended.*
- (5) *An order under section 140B shall not be made in connection with a credit agreement which is an exempt agreement [for the purposes of Chapter 14A of Part 2 of the Regulated Activities Order by virtue of article 60C(2) of that Order (regulated mortgage contracts and regulated home purchase plans)]*

Section 140B sets out the types of order the court could make should it determine that the relationship between the creditor and debtor is unfair to the debtor. Section 140B says:

## **140B Powers of court in relation to unfair relationships**

- (1) *An order under this section in connection with a credit agreement may do one or more of the following—*

  - (a) *require the creditor, or any associate or former associate of his, to repay (in whole or in part) any sum paid by the debtor or by a surety by virtue of the agreement or any related agreement (whether paid to the creditor, the associate or the former associate or to any other person);]*
  - (b) *require the creditor, or any associate or former associate of his, to do or not to do (or to cease doing) anything specified in the order in connection with the agreement or any related agreement;*
  - (c) *reduce or discharge any sum payable by the debtor or by a surety by virtue of the agreement or any related agreement;*

- (d) direct the return to a surety of any property provided by him for the purposes of a security;*
- (e) otherwise set aside (in whole or in part) any duty imposed on the debtor or on a surety by virtue of the agreement or any related agreement;*
- (f) alter the terms of the agreement or of any related agreement;*
- (g) direct accounts to be taken, or (in Scotland) an accounting to be made, between any persons.*

### **other relevant publications**

CONC set out the regulatory framework that authorised lenders have to adhere to. But the rules and guidance represent a minimum standard for firms. And I'm also required to take into account any other guidance, standards, relevant codes of practice, and, where appropriate, what I consider to have been good industry practice.

#### *the FCA's Portfolio Strategy Letter to firms providing high cost lending products*

On 6 March 2019, The FCA wrote a 'Dear CEO' letter to the Chief Executive Officer of all the firms it allocated to its 'High Cost Lenders' portfolio. The letter set out the FCA's view of the key risks that High Cost Lenders pose to consumers and the markets they operate in. On page two of this letter, the FCA sets out its view of the key causes of harm. It says:

*"To assess how firms in the High Cost Lenders portfolio could cause harm, we analysed their strategies and business models. We considered a wide range of information and data, including firms' regulatory histories, the number and nature of complaints, and findings from the HCCR. We also carried out diagnostic work on guarantor lenders, which involved issuing a data request to firms in October 2018.*

*Following our analysis, we see two key ways that consumers may be harmed across the High Cost Lenders portfolio:*

- a high volume of relending, which may be symptomatic of unsustainable lending patterns*
- firms' affordability checks may be insufficient, leading to loans that customers may not be able to afford".*

*We also see an additional potential harm from guarantor lending:*

- the proportion of loan repayments that guarantors make has risen considerably, which could indicate that affordability on the part of the borrowers is falling*

On page three of the letter, in the section entitled '**Complaints**' it says:

*"We expect firms to fulfil all relevant obligations, including analysing the root causes of complaints and taking into account the Financial Ombudsman Service's relevant decisions. We gave further detail about what we expect from firms' complaint-handling procedures in the Dear CEO letter we issued to HCSTC firms in October 2018. This is equally relevant to all firms in the portfolio".*

Further detail in relation to the FCA's future work was provided on page four of the letter. The section entitled '**Additional focus for firms providing guarantor lending**' said:

*As well as the areas of focus above, we will also prioritise our supervisory work with firms that provide guarantor loans in the following area:*

**Payments made by guarantor:**

*Our diagnostic work on guarantor lending showed that many guarantors make at least one repayment and the proportion of guarantors making payments is growing. We want to understand the root causes for this increase, and whether firms are conducting adequate affordability assessments. We are also concerned that guarantors may not fully understand how likely it is that they will be called upon to make a payment. So, as well as our broad portfolio-wide work on relending, we will start a piece of complementary work on guarantor lending. This will establish whether potential guarantors have enough information to understand the likelihood and implications of the guarantee being enforced.*

*the FCA's Dear CEO letter on affordability of High-Cost Short-Term Credit ("HCSTC") loans*

On 15 October 2018, the FCA wrote a 'Dear CEO' letter to the Chief Executive Officer of all HCSTC providers. The letter was about the issues surrounding the increase in complaints about unaffordable lending.

The third paragraph of this letter said:

*"We note that the Ombudsman has recently published four examples of determinations of individual complaints about payday loans to illustrate its approach to the issues raised in those complaints (see: <https://www.financial-ombudsman.org.uk/publications/technical.htm>). If relevant, firms should take these examples of determinations into account as part of establishing their own effective procedures for complaints handling (see DISP 1.3.1R)".*

Paragraph eight of the letter went on to say:

*"We would highlight in particular the risks in relation to repeat borrowing. These were flagged in our price cap proposals in CP14/10, in July 2014, in which we said that we were concerned that repeat borrowing could indicate a pattern of dependency on HCSTC that is harmful to the borrower. We noted that rigorous affordability assessments were key to avoiding harm in this area, and firms should ensure they are making responsible assessments of the sustainability of borrowing".*

*the FCA Executive Director of Supervision's (Retail and Authorisations) speech at the Credit Summit, London, on 21 March 2019*

The FCA's Executive Director of Supervision gave a speech at the Credit Summit, which took place on 21 March 2019, entitled "What can the consumer credit sector expect from the FCA?".

The speech reiterated much of what was said in the High Cost Credit portfolio strategy letter (set out above) issued on 6 March 2019. And in his speech the Executive Director of Supervision said:

*“Over the last few years we have seen a dramatic increase in the use of guarantor loans by consumers. Balances on guarantor loans are fast approaching £1 billion and these have more than doubled since 2016.*

*While these products provide an opportunity for those with thin credit files - poor or limited credit history - we do have concerns. Concerns about affordability. Recent work we have done in this area showed that many guarantors are making at least 1 payment and the proportion of guarantors making these payments is growing.*

*There is also growing anecdotal evidence that guarantors may not understand how likely it is that they will be called upon to make a payment. Our work will therefore focus on affordability and on understanding whether potential guarantors have enough information to understand the likelihood and implications of the guarantee being enforced.*

*We have already amended certain rules to ensure that the protections they provide to borrowers also extend to guarantors, for example rules requiring forbearance, pre-contractual explanations and fair treatment. In assessing creditworthiness, we have clarified that firms must undertake a reasonable assessment of the potential for the guarantor’s commitment to have a significant adverse impact on their financial situation.*

*And if the guarantor is called upon, we have published guidance on our view of what constitutes ‘enforcement’ of the guarantee under the CCA – in practice this means we expect firms to provide guarantors with adequate notice before exercising a Continuous Payment Authority (CPA).*

*There are also questions over the level of interest rates charged on these products considering that these guarantors are deemed to be credit worthy, we will therefore be considering this and the business models of these firms”.*

## **my findings**

I have read and considered all the evidence and arguments available to me from the outset, in order to decide what is, in my opinion, fair and reasonable in all the circumstances of the case.

Taking into account the relevant rules, guidance, good industry practice and law, I think there are two overarching questions I need to consider in order to decide what’s fair and reasonable in the circumstances of this particular complaint.

These two overarching questions are:

- Did Buddy Loans complete reasonable and proportionate checks to satisfy itself that Mr U would be able to repay his loan in a sustainable way?
  - If so, did it make a fair lending decision?
  - If not, would those checks have shown that Mr U would’ve been able to do so?
- Did Buddy Loans act unfairly or unreasonably in some other way?

If I determine that Buddy Loans didn’t act fairly and reasonably in its dealings with Mr U and that she has lost out as a result, I will go on to consider what is fair compensation.

*Did Buddy Loans complete reasonable and proportionate checks to satisfy itself that Mr U would be able to repay his loan in a sustainable way?*

The rules and regulations at the time Buddy Loans lent to Mr U required it to carry out a reasonable and proportionate assessment of whether he could afford to repay his loan in a sustainable manner. Buddy Loans was required to carry out this borrower focused assessment in addition to a similar one on the guarantor. This assessment is sometimes referred to as an “affordability assessment” or “affordability check”.

The checks had to be “borrower” focused – so Buddy Loans had to think about whether repaying the loan sustainably would cause difficulties or adverse consequences *for Mr U*. In practice this meant that Buddy Loans had to ensure that making the payments to the loan wouldn’t cause Mr U undue difficulty or adverse consequences.

In other words, it wasn’t enough for Buddy Loans to simply think about the likelihood of it getting its money back, it had to consider the impact of loan repayments on Mr U. The existence of a guarantee and the potential for Buddy Loans to pursue the guarantor instead of Mr U, for the loan payments doesn’t alter, lessen, or somehow dilute this obligation.

Checks also had to be “proportionate” to the specific circumstances of the loan application. In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different applications.

In light of this, I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- 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 *longer* the term of the loan (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make payments for an extended period); and
- 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 also be other factors which could influence how detailed a proportionate check should’ve been for a given loan application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances.

I’ve carefully thought about all of the relevant factors in this case.

*Were Buddy Loans' checks reasonable and proportionate?*

Buddy Loans says it completed an income and expenditure assessment with Mr U. And Mr U confirmed he received £1286.16 a month, had living expenses of £814.01, and would have credit commitments (when this loan was included) of £301. Although the telephone call with Buddy's representative suggests that Mr U was making substantially reduced payments to his existing creditors.

Taking all of this into account Mr U would be left with £170.70 once all of his living costs and credit commitments were deducted from his income. Buddy Loans also says that it received a payslip from Mr U which confirmed his income and that it carried out a credit check.

I've carefully thought about what Buddy Loans has said. But simply obtaining information from and/or about a borrower doesn't, on its own, mean that a lender will have carried out a borrower focused assessment of the borrower's ability to sustainably repay a loan.

The credit check Buddy Loans carried out showed that Mr U was at 189% of the credit limits on his revolving credit accounts. The credit check also showed that Mr U had defaulted on accounts. Indeed, there is a section on the credit search entitled "*Impaired Credit History*". And, in this section, there a number of statements with Yes or No responses next to them to indicate whether any of them apply to Mr U. There are Yes answers to the an impaired credit history being detected and loan accounts with payments that are, at least, three months late having been found.

So while I've seen what Buddy Loans has said about it complying with CONC 5.2.4G by using some of the sources of information listed, I think that Buddy Loans would have been aware that Mr U had had previous difficulties with credit. And, in these circumstances, I don't think that it enough here as it ought fairly and reasonably to have taken steps to verify Mr U's monthly expenditure.

I say this while especially mindful of the fact that the rules themselves provide guidance on the proportionality of affordability/creditworthiness assessments. The rules and guidance suggest that the risk of any credit not being sustainable directly relates to the amount of credit granted and the total charge for credit relative to the customer's financial situation. This was an expensive loan and the credit search carried out on Mr U showed she may not have been in the healthiest financial position.

I accept that Buddy Loans might have been prepared to accept this credit risk because the existence of Mr U's guarantor might have given it more confidence that the payments would be made, But I don't think that the existence of the guarantor, on its own, meant that Mr U himself would be able to sustainably make the payments given what the credit file showed.

Indeed I also think that it might also be helpful for me to explain that a less detailed affordability assessment, without the need for verification, is only really likely to be fair, reasonable and proportionate in circumstances where the amount to be repaid is relatively small, the consumer's financial situation is stable and they will be indebted for a relatively short period.

But, in circumstances – such as here - where a customer's finances are showing telling signs of possible strain and distress, they are expected to maintain payments for a longer period of time and there is the potential that a guarantor will be required to step in and make payments, I think it's far more likely that any affordability assessment would need to be more

detailed and contain a greater degree of verification, in order for it to be fair, reasonable and proportionate.

In my view, bearing in mind the term of the loan, the cost of the credit, what Buddy Loans had seen or ought to have seen in the information gathered and the potential implications for the guarantor, Buddy Loans needed to get a thorough understanding of Mr U's financial position in order to properly assess whether he'd be able to sustainably make the loan payments he was being asked to commit to.

So as well as asking Mr U about the details of his income and expenditure, I think that Buddy Loans needed to verify what it was being told by Mr U, rather than relying on what Mr U declared for his monthly expenditure. It could have done this by asking for information such as bank statements or copies of bills. And when it obtained this information it needed to properly scrutinise it and ensure that Mr U did have enough funds to be able to make the payments.

As there's no evidence that Buddy Loans did properly scrutinise the information provided, or that it asked Mr U to provide documentary evidence to support the expenditure declarations made, I find that it didn't complete fair, reasonable and proportionate affordability checks before providing Mr U with this loan.

*Would reasonable and proportionate checks have indicated to Buddy Loans that Mr U would have been unable to sustainably repay this loan?*

As reasonable and proportionate checks weren't carried out before this loan was provided, I can't say for sure what they would've shown. So I need to decide whether it is more likely than not that a proportionate check would have told Buddy Loans that Mr U would've been unable to sustainably repay this loan.

Mr U has now provided us with evidence of his financial circumstances at the time he applied for this loan. Of course, I accept different checks might show different things. And just because something shows up in the information Mr U has provided, it doesn't mean it would've shown up in any checks Buddy Loans might've carried out.

But in the absence of anything else from Buddy Loans showing what this information would have shown, I think it's perfectly fair, reasonable and proportionate to place considerable weight on it as an indication of what Mr U's financial circumstances were more likely than not to have been at the time.

As I've already explained, Buddy Loans was required to establish whether Mr U could sustainably make her loan repayments – not just whether the loan payments were technically affordable on a strict pounds and pence calculation.

Of course the loan payments being affordable on this basis might be an indication that a consumer could sustainably make the repayments. But it doesn't automatically follow that this is the case. And as a borrower shouldn't have to borrow further in order to make their payments, it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower won't be able to sustainably make their repayments if it is on notice that they are unlikely to be able to make their repayments without borrowing further.

I've carefully considered the information Mr U has provided in light of all of this.

The information I've been provided with shows Mr U was making token payments of £1 a month to his existing creditors. In my view, this was indicative of someone who was unable to repay or manage their existing credit commitments, let alone be able to take on new ones.

Indeed I have to question the reasonableness of Buddy Loans accepting this level of risk – in terms of lending a further substantial amount to an individual who was making token payments to existing creditors. I can only assume that it accepted this risk because it knew that it would be able to pursue the guarantor for payments.

Be that as it may, as I've already explained, the existence of the guarantee doesn't mean that it is fair and reasonable to lend to a prospective borrower that is clearly unable to repay. And in this case, I'm satisfied that reasonable and proportionate checks would more likely than not have shown that Mr U would not have been able to repay this loans – especially as I can also see that he was gambling large sums of money.

Bearing all of this in mind, I'm satisfied that reasonable and proportionate checks would more likely than not have demonstrated that Mr U would not have been able to make the loan repayments to this loan without borrowing further and/or suffering undue difficulty. And, in these circumstances, I find that reasonable and proportionate checks would more likely than not have alerted Buddy Loans to the fact that Mr U would not be able to sustainably make the repayments to this loan.

*Did Buddy Loans act unfairly or unreasonably towards Mr U in some other way?*

I've carefully thought about everything provided. Having done so, I've not seen anything here that leads me to conclude Buddy Loans acted unfairly or unreasonably towards Mr U in some other way.

So I find that Buddy Loans didn't act unfairly or unreasonably towards Mr U in some other way.

**conclusions**

Overall and having carefully thought about the two overarching questions, set out on page eight of this decision, I find that:

- Buddy Loans *didn't* complete reasonable and proportionate checks on Mr U to satisfy itself that he was able to repay his loan;
- reasonable and proportionate checks *would* more likely than not have shown Mr U was unable to sustainably make the repayments for this loan;
- Buddy Loans *didn't* also act unfairly or unreasonably towards Mr U in some other way.

The above findings leave me concluding that Buddy Loans unfairly and unreasonably provided Mr U with a guarantor loan in May 2018.

*Did Mr U lose out as a result of Buddy Loans unfairly and unreasonably providing him with his guarantor loan?*

I think that this loan had the effect of unfairly increasing Mr U's indebtedness as it led to him being provided with expensive credit for a significant sum. This loan was expensive and the monthly payment, which also included interest and charges, took up a significant proportion of Mr U's income at a time where he was already struggling to make ends meet. So I find that Mr U did suffer adverse consequences and as a result lost out because Buddy Loans unfairly provided him with this loan.

### **fair compensation – what Buddy Loans needs to do to put things right for Mr U**

I've carefully thought about what Buddy Loans should do to put things right in this case.

Where I find that a business has done something wrong, I'd normally expect that business – in so far as is reasonably practicable – to put the consumer in the position they *would be in now* if that wrong hadn't taken place. In essence, in this case, this would mean Buddy Loans putting Mr U in the position he'd now be in if she hadn't been given this loan.

But when it comes to complaints about irresponsible lending this isn't straightforward. Mr U was given the loan in question and he used the funds. So, in these circumstances, I can't undo what's already been done. And it's simply not possible to put Mr U back in the position she would be in if she hadn't been given this loan in the first place.

As this is the case, I have to think about some other way of putting things right in a fair and reasonable way bearing in mind all the circumstances of the case. And I'd like to explain the reasons why I think that it would be fair and reasonable for Buddy Loans to put things right in the following way.

#### *interest and charges on the loans*

As I've explained, Buddy Loans lending to Mr U, in these circumstances, left him in a position where his debt was increasing. And Mr U kept having to find additional funds to pay the monthly payments on his Buddy Loans loan. In reality it's the interest and on this loan that led to Mr U's indebtedness increasing and his financial position worsening.

So to start with Buddy Loans should refund any interest and charges that has Mr U paid on this loan. It should do this by removing all of the interest applied to the loan from the outset. The payments Mr U has made should then be deducted from the new starting balance of £3000. If and when the payments Mr U has already made to this loan are enough to have cleared the amount he was lent anything over this amount should be treated as an overpayment. These overpayments, should there be any, should be refunded to Mr U.

Mr U will also have lost the use of the funds he will have used to make any overpayments that Buddy Loans need to refund to him. As Mr U will have lost the use of these funds, I think he should be compensated if she made any interest payments.

We normally ask a business to pay 8% simple interest where a consumer hasn't had the use of funds because its actions resulted in something having gone wrong. Bearing in mind my conclusions in the paragraph above, I see no reason to depart from our usual approach here and I think awarding 8% per year simple interest, on overpayments made (from the date they were made), is fair and reasonable in the circumstances of this case.

### *Mr U's credit file*

Generally speaking, I'd expect a lender to remove any adverse information recorded on a consumer's credit file as a result of the interest and charges on the loans they shouldn't have been given. After all it's the interest and charges that the consumer is being refunded and the expectation is they will have repaid, or they should repay what they owe.

So I think that Buddy Loans should remove any adverse information recorded on Mr U's credit file as a result of the interest and charges on this loan, as Mr U wasn't in a position to sustainably repay this loan and he shouldn't have had to pay those interest and charges in the first place.

All of this means that I think it would be fair and reasonable in all the circumstances of Mr U's complaint for Buddy Loans to put things right by:

- removing all interest, fees and charges applied to the loan from the outset. The payments Mr U has made should be deducted from the new starting balance. Buddy Loans should treat any payments made once the new starting balance has been cleared as overpayments. And any overpayments should be refunded to Mr U;
- adding interest at 8% per year simple on any overpayments from the date they were made by Mr U to the date of settlement†;
- removing any adverse information recorded on Mr U's credit file as a result of this loan.

† HM Revenue & Customs requires Buddy Loans to take off tax from this interest. Buddy Loans must give Mr U a certificate showing how much tax it has taken off if he asks for one.

### **my final decision**

For the reasons I've explained, I'm upholding Mr U's complaint. Advancis Limited should put things right for Mr U in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr U to accept or reject my decision before 9 September 2019.

Jeshen Narayanan  
**ombudsman**