DRN-1719712

Complaint

Mr M has complained that Advancis Limited ("Buddy Loans") irresponsibly provided him with an unaffordable guarantor loan. He has said that Buddy Loans provided him with a loan which was clearly unaffordable.

Background

Buddy Loans provided Mr M with a guarantor loan in March 2018. The loan was for £5,000 and it was due to be repaid over 60 months. The monthly payments were around £197. The total amount to be repaid was £11,934.14.

One of our adjudicators reviewed Mr M's complaint. He told Buddy Loans that the checks it carried out before providing Mr M with this loan weren't reasonable and proportionate and if such checks had been carried out it would have seen that Mr M wasn't in a position to make the payments to this loan in a sustainable manner.

So he thought that Buddy Loans shouldn't have provided Mr M 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.

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. We've set out our general approach to complaints about unaffordable and irresponsible lending - including the key relevant rules, guidance and good industry practice - on our website.

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 M 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 M 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 M and that he 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 M would be able to repay his loan in a sustainable way?

The rules and regulations at the time Buddy Loans lent to Mr M 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 M*. In practice this meant that Buddy Loans had to ensure that making the payments to the loan wouldn't cause Mr M 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 M. The existence of a guarantee and the potential for Buddy Loans to pursue the guarantor instead of Mr M, 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 M. Mr M confirmed he received £1,018 a month, had living expenses of £545 and would have credit commitments of £278. Buddy Loans compared Mr M's declared expenditure against averages using data from the Office of National Statistics and was satisfied that the amounts declared were reasonable.

Taking all of this into account Mr M would be left with around £195 a month once all of his living costs and credit commitments (including the payments from this loan) were deducted from his income. Buddy Loans also says that it obtained a recent bank statement from Mr M which showed that he was in receipt of the declared income.

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 M had defaulted on a previous credit commitment not too long before this application. So I think it's fair to say that Buddy Loans would have been aware that Mr M had had previous difficulties with credit.

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. And in this case, Buddy Loans was providing an expensive loan while also being aware Mr M had a relatively recent default and his income was wholly made up of out of work benefits. I'm not saying that this in itself means that Buddy Loans shouldn't have lent to Mr M. But Buddy Loans ought to have been aware that Mr M's ability to increase his payments in the event he fell behind or had difficulty repaying was limited bearing in mind his fixed-income and it not being likely he'd be returning to work soon.

I accept that Buddy Loans might have been prepared to accept this credit risk because the existence of Mr M'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 M 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 make-up of Mr M's income, Buddy Loans needed to get a thorough understanding of Mr M'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 M about the details of his income and expenditure, I think that Buddy Loans needed to verify what it was being told by Mr M, rather than relying on what Mr M declared for his monthly expenditure. It could have done this by properly scrutinising the bank statement Mr M provided and then following up on the discrepancies or by asking for copies of bills. As there's no evidence that Buddy Loans did properly scrutinise the information provided, or that it asked Mr M 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 M with this loan.

Would reasonable and proportionate checks have indicated to Buddy Loans that Mr M 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 M would've been unable to sustainably repay this loan.

Mr M 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 M 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 M'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 M could sustainably make his 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 M has provided in light of all of this. Buddy Loans did obtain a bank statement from Mr M. But having reviewed it it's clear to see that there was no expenditure going out from the account statement provided. So I think that Buddy Loans ought to have done more to find out if and how Mr M was making his payments to his living costs and existing expenditure. And if Buddy Loans had done this as I think it was reasonable and proportionate to then it would have learnt Mr M was gambling significant sums of money.

In truth, this is more likely than not the reason for the difficulties with previous credit shown on his credit file, rather than any administrative error. In any event, whether or not this is the case, Mr M's statements suggest to me that his ability to repay his loan would in large part come down to his success as a gambler. And I don't think that this was conducive to him being able to sustainably repay this loan.

Bearing all of this in mind, I'm satisfied that reasonable and proportionate checks would more likely than not have demonstrated that Mr M would not have been able to make the 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 M would not be able to sustainably make the repayments to this loan.

Did Buddy Loans act unfairly or unreasonably towards Mr M 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 M in some other way.

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

Conclusions

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

- Buddy Loans *didn't* complete reasonable and proportionate checks on Mr M to satisfy itself that he was able to repay his loan;

- reasonable and proportionate checks *would* more likely than not have shown Mr M was unable to sustainably make the repayments for this loan;

- Buddy Loans *didn't* also act unfairly or unreasonably towards Mr M in some other way.

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

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

I accept that the monthly payments were broadly similar to the existing guarantor loan Mr M was consolidating with this one. Nonetheless I think that this loan had the effect of unfairly increasing Mr M's indebtedness as it led to him being provided with additional credit and he now had to make payments for longer. So I find that Mr M will eventually suffer adverse consequences and as a result will lose out because Buddy Loans unfairly provided him with this loan.

What Buddy Loans needs to do to put things right for Mr M

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 M 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 M *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 M 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 loan

As I've explained, Buddy Loans lending to Mr M, in these circumstances, left him in a position where his debt was increasing. And in these circumstances we'd typically say that Buddy Loans should remove all of the interest applied to the loan from the outset. The payments Mr M made would then be deducted from the £5000 he was initially lent and Buddy Loans would then arrange a suitable repayment plan for the remaining amount outstanding to be collected.

Mr M says that this doesn't go far enough and that the payments he's made should be refunded to him and he should be given additional time to repay the £5000 he was initially lent. He's said he's struggling financially and he should be allowed to use the funds he wants refunded to pay other debts which are more important.

I've given a lot of thought to what Mr M's told us. But I don't think that what Mr M is asking me to tell Buddy Loans to do is fair. I appreciate that Mr M is in a difficult financial position. And I do sympathise with him. But as I've explained it's the interest and charges that will cause Mr M harm here and as Mr M hasn't repaid anywhere near the amount he was lent he hasn't paid any interest and charges yet. If I were to do as Mr M asks here, I'd effectively be telling Buddy Loans to lend Mr M more money, even though Mr M shouldn't have been given this loan in the first place and he's now saying that he can't pay back what he owes.

I've also thought about what Mr M has said about the distress and inconvenience caused. But the monthly payments on this loan are roughly the same as the guarantor loan he already had (it's the increased term and indebtedness that causes Mr M loss but that won't happen now the interest and charges are being removed) and so it's difficult to say that making the payments to this loan caused Mr M additional distress. And by his own admission Mr M was already in a difficult financial position when he applied for this loan so was in a position to know his ability to make payments. I think it's fair and reasonable for me to consider this in any additional distress and inconvenience caused as a result of this loan being provided.

Mr M has referred to his guarantor. But he isn't entitled to be compensated for any loss, or distress and inconvenience that his guarantor may have suffered. Indeed if Mr M's guarantor is unhappy they will have to make their own complaint to Buddy Loans.

So overall and having carefully considered everything, I think the resolution proposed by our adjudicator is fair and reasonable in the circumstances of this case. And I'm not asking Buddy Loans to pay Mr M any money. That said, as Mr M says he's struggling financially, I'd remind Buddy Loans of its obligation to exercise forbearance when collecting any remaining balance once all the interest and charges have been removed.

Mr M'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 M's credit file as a result of the interest and charges on this loan, as Mr M 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 I think it would be fair and reasonable in all the circumstances of Mr M'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 M has made should be deducted from the new starting balance;

- removing any adverse information recorded on Mr M's credit file as a result of the interest and charges associated with this loan.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 4 June 2020.

Jeshen Narayanan
Ombudsman