

## **complaint**

Miss B's unhappy that Uncle Buck Payday Loans LLP wouldn't accept her offer of payment or enter into her debt management plan.

## **background**

Miss B took out ten payday loans with Uncle Buck in a roughly nine month period. The amount she borrowed increased in the first couple of months and then remained largely the same for the remaining months. All the loans were repaid on time except for the last one. There is still an outstanding balance owing. Some four months after the first loan Miss B told Uncle Buck that she was experiencing financial difficulties. But she hadn't told it before then about her debt management plan. It obtained details of her income and expenditure. As a result it asked her to repay £134 a month out of her disposable income of just over £190. She said that was too much as the information she provided didn't include anything for unexpected expenditure. She offered £50 a month.

Our adjudicator recommended this complaint should be upheld. He considered that:

- Uncle Buck should've considered whether each of the loans was affordable. It's said it completed a credit search and considered Miss B's income and expenditure before agreeing to the first loan. This showed she'd about £675 a month of disposable income.
- The first and second loans for £100 and £200 were affordable. They could be repaid by her in one payment. But the third loan for £500 was repayable by a payment of about £674. This was almost all of her disposable income. Miss B was also borrowing more each time to repay the previous loan. This should've indicated to Uncle Buck that it was likely she was unable to repay the balance owing. So, when the third loan was applied for on 1 March 2014 Uncle Buck should've realised the loan wasn't affordable and the lending was irresponsible.
- Uncle Buck should therefore refund all interest and charges paid on all loans from and including 1 March 2014 plus interest. It should also write off all interest and charges owed on the last loan taken out on 30 September 2014. But as the capital of £550 hasn't been paid off on that last loan it may take this amount from the above settlement. Uncle Buck should pay Miss B £50 compensation for the distress and inconvenience caused. It should also remove all information about the loans from 1 March 2014 from her credit file.

Uncle Buck doesn't agree. In summary it says Miss B's complaint isn't about the affordability of the loans. She didn't tell Uncle Buck she'd a debt management plan. If she had it wouldn't have continued lending to her. Once told it wasn't obliged to join the plan. Its suggestion she repay £134 a month was reasonable. It doesn't accept any suggested remedial action after May 2014. But it's prepared to reduce her balance by £354.57 and accept £90 repayment a month.

Our adjudicator responded by pointing out that this service has an inquisitorial remit. This means we can, where appropriate, look further than the issues presented to us. In this case the root cause of Miss B's problems was that some of the loans were unaffordable.

## **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 agree with the adjudicator's conclusions for broadly the same reasons

Uncle Buck clearly assessed the affordability of the first loan. It concluded that it and the later second loan were affordable. I think that was reasonable given the relatively small amounts being borrowed and Miss B's ability to repay the loans in one payment from her disposable income.

It's not entirely clear what checks it carried out into the affordability of the subsequent loans. But whatever level of checks, if any, Uncle Buck carried out at the relevant times I think Miss B's account history should've alerted it to the fact that she may have been in financial difficulty, the loans may have been unaffordable and she was becoming increasingly reliant on short term lending. The amount borrowed on the first three loans increased in about six weeks from £100 to £500. The third loan was also only repayable by the use of all Miss B's monthly disposable income.

I agree with the adjudicator that it would've been reasonable for Uncle Buck to have reached this conclusion when Miss B applied for the third loan on 1 March 2014. Had it done so it would've been appropriate for it to have asked for more information from her and carried out more thorough affordability checks. I think that would most likely have led it to conclude that she was at that time in financial difficulties, the loans were unaffordable and she was reliant on short term lending. I think this would reasonably have led to the loans from 1 March 2014 not being granted. I also note that the amounts lent from the third loan onwards remained, with one exception, consistent in the amounts of £500 and later £550. Consequently, I think that the lending on and after 1 March 2014 was unaffordable and irresponsible.

I accept that Miss B could've told Uncle Buck of her debt management plan somewhat earlier than she did in May 2014. As a result it now says it doesn't accept any suggested remedial action after this date. But I don't think this alters the fact that Uncle Buck should reasonably have been aware of the unaffordability of the loans and irresponsibility of the lending from 1 March 2014.

Overall, I agree with the adjudicator's recommendation that it's a fair and reasonable resolution of this complaint for Uncle Buck to refund all interest and charges paid from 1 March 2014. But as the adjudicator has said Miss B has had the benefit of the money that was subsequently loaned to her and its fair Uncle Buck deducts the £550 principal sum lent on the last loan from any refund it makes to her. If after that a balance still remains outstanding I think Uncle Buck should agree a reasonable and affordable repayment plan with Miss B. I would urge her to co-operate with it by providing details of her incomings and outgoings if required.

Uncle Buck wasn't obliged to join Miss B's debt management plan or accept her offer of repayment. But I think it could've done more to work and co-operate with her appointed representative - the debt management company - and to try to agree an affordable repayment plan. In other respects it did in many ways respond positively and sympathetically to her once she mentioned her difficulties and the plan. It asked for details of her incomings and outgoings and proposed a repayment plan.

Furthermore, as the loans taken out on and after 1 March 2014 shouldn't have been made I think it's reasonable for all record of them to be removed from Miss B's credit file.

So, overall I see no compelling reason to change the proposed outcome in this case.

**my final decision**

For the reasons I've discussed above my decision is that I uphold this complaint and I require Uncle Buck Payday Loans LLP:

1. To refund to Miss B all interest and charges paid on all loans from and including 1 March 2014 plus simple interest on them at the rate of 8% a year from the date each was paid until the date of settlement;
2. To write off all interest and charges owed on the loan taken out on 30 September 2014;
3. But as the capital of £550 hasn't been paid off on the last loan Uncle Buck may take this amount from any sums payable to Miss B as set out above. If a balance remains outstanding it should agree a reasonable affordable repayment plan with Miss B;
4. To remove all information about all loans taken out on and after 1 March 2014 from Miss B's credit file; and
5. To pay Miss B £50 compensation for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 10 July 2015.

Stephen Cooper  
**ombudsman**