

The complaint

Mr S complains that Bamboo Limited trading as Bamboo Loans acted irresponsibly when it agreed loans for him. He's represented in his complaint by a claims management company, but for ease, I'll refer to Mr S only.

What happened

Mr S has had three loans with Bamboo.

	Start date	End date	Amount	Term	Repayment
Loan 1	12 Jan 2018	26 Feb 2018	£3,800	48 months	£162
Loan 2	13 Mar 2018	19 Apr 2018	£2,600	36 months	£122
Loan 3	3 July 2018		£2,300	48 months	£93

Mr S says at the time these loans were granted, he was reliant on credit and was gambling excessively. He says that if Bamboo had properly assessed his applications it would have seen this and ought to have done more to check the payments were affordable for him.

Bamboo looked into Mr S's complaint. It said it believed appropriate and proportionate checks had been carried out before it agreed to lend on each occasion.

Mr S was unhappy with Bamboo's response and referred his complaint to us. One of our investigators looked into it. He said it was evident from Mr S's credit file that he was relying heavily on credit which ought to have prompted Bamboo to carry out further checks. Had it done so, our investigator felt it should have refused to lend to Mr S. He asked Bamboo to put things right.

Mr S accepted our investigator's opinion, but Bamboo didn't. As there was no agreement, this complaint has been passed to me for a decision to be made.

What I've decided – and why

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 approach to complaints about high cost credit on our website – including the key relevant rules, guidance, good industry practice and law. I've considered this approach when deciding this complaint.

Bamboo needed to take reasonable steps to ensure that it didn't lend irresponsibly to Mr S by carrying out reasonable and proportionate checks. I think there are key questions I need to consider in order to decide what is fair and reasonable in the circumstances of this complaint:

- Did Bamboo carry out reasonable and proportionate checks to satisfy itself that Mr S was in a position to sustainably repay the loan?

- If not, what would reasonable and proportionate checks have shown at the time, and did Bamboo make a fair lending decision?
- Did Bamboo act unfairly or unreasonably towards Mr S in some other way?

Bamboo was required to carry out a borrower focussed assessment. This assessment is sometimes referred to as an 'affordability check' or 'affordability assessment'. The purpose of the checks is for Bamboo to think about whether repaying the loan sustainably would cause difficulties or adverse consequences for Mr S. In other words, it wasn't about Bamboo assessing the likelihood of it being repaid, but it had to consider the impact of the loan repayments on Mr S. The fact that the loan was guaranteed by a third party and the potential for Bamboo to pursue the guarantor instead of Mr S doesn't alter or lessen the obligation.

Bamboo had to carry out reasonable and proportionate checks to satisfy itself that Mr S would be able to repay the loan sustainably. There was no set list of checks that it had to do, but it could take into account several different things such as the amount and length of the loan, the amount of the monthly repayments and the overall circumstances of the borrower. Taking all that into account, I think a reasonable and proportionate check ought generally to have been more thorough where:

- a customer has a low income (because it may make it more difficult to make loan payments of a set amount from a low level of income);
- the higher the amount due to be repaid (because it may be more difficult to meet a higher repayment for a particular level of income);
- the longer the term of the loan (because the total cost of the credit is likely to be higher, and the customer is obliged to make payments for a longer 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 (because of the risk of repeated refinancing may signal that the borrowing has become or was becoming unsustainable).

Did Bamboo carry out reasonable and proportionate checks?

Bamboo carried out its usual checks on Mr S's income, employment and searched his credit file. It says it saw nothing of concern and Mr S had sufficient monthly disposable income to make the repayments.

I've thought carefully about what Bamboo has said and considered the evidence it relied on in reaching its decision. Mr S quoted his income as being £1,500 per month for each of the loan applications and, based on what he'd told it, Bamboo calculated his living expenses as being £253 per month. Using the data it collected from credit reference agencies, for Loan 1 Bamboo calculated he spent £649 per month on servicing his existing debt. For loan 2 that amount was £743 and Loan 3 £396. This left him with a monthly disposable income of £598, £504 and £851 respectively for each loan. So I can see why Bamboo thought the loans were affordable for him based on those figures.

I've looked closely at Mr S's credit file that Bamboo used to reach its decision to lend. Having done so, I think there are signs Bamboo should have seen that Mr S was in financial difficulty and therefore should have made further checks.

The rules lenders must follow are set out by the industry regulator, the Financial Conduct Authority, in its Consumer Credit Sourcebook (CONC). CONC 1.3 sets out some circumstances which may indicate that someone is in financial difficulty. One of these examples, set out in CONC 1.3.1 (4), is the customer's *"inability to meet repayments out of disposable income...the customer having to borrow further to repay existing debts..."*.

Mr S's credit file shows that in the previous year, he'd had four personal loans and had opened 24 new accounts (many of which were payday loans) in the six months leading up to the application. He was over the credit limit on his credit card. While he hadn't missed payments on the majority of the debts (he'd missed one payment on his credit card – the most recent), I think the number of loans and payday loans at least ought to have been of concern enough to ask further questions.

A few of the payday loans taken within a few months of Mr S's application for Loan 1 were for small sums – around £50 – which indicates to me that he was struggling to manage on his income alone and was relying on credit to make ends meet. It seems unlikely that Bamboo's calculations suggesting that Mr S had a disposable income of between £500 and £850 were accurate.

Mr S had other larger loans too which were often repaid early coinciding with the taking of a new loan. This indicates he was regularly borrowing to repay other debts. The loans requested from Bamboo are all listed as being for debt consolidation. But at the time of the application for Loan 1 for £3,800, his credit file was reporting almost £8,000 of debt. It's not clear which debts Mr S was looking to consolidate, but the amount requested was unlikely to be sufficient to repay his existing debt.

Loan 1 was repaid within six weeks of being drawn, and yet within a further two weeks or so, Mr S had returned to Bamboo requesting to borrow further money – again for debt consolidation. While the amount he requested from Bamboo for Loan 2 had fallen, by this time his credit report was showing his outstanding debt as being in excess of £14,000. Again, it's not clear what debt he was looking to consolidate and what he was seeking to borrow would be unlikely to resolve things for him.

Loan 2 was again repaid within a few weeks and it was only a couple of months until Mr S was asking for a further debt consolidation. While the debt outstanding on his credit report had by then fallen to £5,000, the amount requested for Loan 3 was again in sufficient to repay what he had outstanding.

Bamboo says that based on what Mr S told them and the information it obtained, it thinks the loans were affordable. But as I said earlier, a lender is required to ensure a loan can be repaid *sustainably*; that is, the borrower should be able to repay the credit without undue difficulty, while being able to meet other commitments and without having to borrow further.

It seems to me Mr S was relying on short term loans to repay other loans and fulfil his usual spending habits and refinance other credit. Although by the time of Loan 3, his situation appears to have improved, the history of Mr S's borrowing appeared volatile as can be seen from his credit file. I don't think the circumstances here are indicative of someone in control of their finances or with the ability to sustainably repay debt.

For these reasons, I think Bamboo ought to have carried out further checks in order to gain a deeper understanding of Mr S's financial circumstances.

What would reasonable and proportionate checks have shown at the time and did Bamboo make a fair lending decision?

I've outlined above some of the circumstances which I think ought to have led Bamboo to carry out further checks on Mr S's finances. Different checks are likely to show different things and Bamboo was already aware from those it had carried out, that Mr S had taken numerous payday loans and had recently acquired further credit. As I've said, this doesn't indicate a customer in control of their finances with an ability to sustainably repay the

borrowing he had at the time. In my view, casts doubt on whether he'd be able to sustainably repay the new loans. In light of this, I think it would have been reasonable for Bamboo to get a more detailed understanding of Mr S's circumstances, for example by asking to see several months of his bank statements from Mr S.

Mr S has provided us with copies of his bank statements for a few months leading up to his applications to Bamboo. I've looked at those to consider what Bamboo might have learned from more detailed checks.

I think if Bamboo had carried out what I consider to be proportionate checks – perhaps by asking for his bank statements - it would have seen for example, that Mr S was regularly gambling a large percentage of his income. The statements show Mr S was regularly gambling in excess of £1,000 per month through numerous small transactions.

I think Bamboo ought reasonably to have realised that Mr S was having difficulties managing his finances and that he was most likely borrowing as a result of his gambling. I think it ought reasonably to have realised that it was unlikely that Mr S would be able to sustainably repay these loans, so it should have concluded it was not appropriate to lend to him. It follows that I don't think it reached a fair decision to lend to him.

Did Bamboo act unfairly or unreasonably towards Mr S in some other way?

I've carefully read, listened to and thought about all the evidence provided by each party to this complaint. Having done so, I don't think Bamboo has acted unfairly or unreasonably towards Mr S in some other way.

But I do think Bamboo should have refused to lend to Mr S, so I am upholding his complaint about the loans.

Putting things right

When I find that a business has done something wrong, I'd normally direct that business to put the complainant in the position they would be in now if the mistake it made hadn't happened, as far as is reasonably practical.

In this case, that would mean putting Mr S in the position he would be in now if he hadn't been given the loans. Mr S was given the loans and used the money, so it's right that he should repay what he's spent. So, I think Bamboo should:

- Calculate the total amount Mr S received from Bamboo and deduct from that figure the repayments he's made to each loan.
 - If this results in Mr S having repaid more than he received, any overpayments should be refunded to him. Interest at a rate of 8% simple per year should be added to any overpayments from the date they were made until the date of settlement*.
 - If the calculation means there's still a balance for Mr S to pay, Bamboo should let Mr S know how much is outstanding and reach a suitable, affordable payment plan with him. I remind Bamboo of its obligation to treat customers fairly.
- Remove any negative information recorded on Mr S's credit file regarding each loan.

*If Bamboo considers that it's required by HM Revenue & Customs to deduct income tax

from that interest, it should tell Mr S how much it's taken off. It should also give Mr S a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons I've explained above, I'm upholding Mr S's complaint. Bamboo Limited trading as Bamboo Loans should put things right for Mr S as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 9 December 2021.

Richard Hale
Ombudsman