

The complaint

Mr R says Bamboo Limited lent to him irresponsibly.

What happened

Mr R took out a guarantor loan over 36 months from Bamboo on 7 June 2018. It was for £6,000 and the monthly repayments were £292.17. The total repayable was £10,518.22. I understand the loan remains outstanding.

Mr R said Bamboo didn't complete good enough affordability checks, had it done so it would not have agreed to lend to him. His representative also said the lender failed to advise Mr R of other ways of dealing with his circumstances and failed to send its final response within the time limits set by the regulator.

Bamboo disagreed but made a good will offer to waive three months of repayments. Unhappy with this response Mr R brought his complaint to this service.

Our investigator said Mr R's complaint should be upheld. She concluded Bamboo's checks were not proportionate and better checks would have shown it was most likely the loan would not be sustainably affordable for Mr R.

Bamboo disagreed. It made the following points after reviewing Mr R's bank statements for March and April 2018:

- Mr R's salary put him back into credit temporarily in both months, albeit for only a matter of days;
- a large portion of Mr R's spending was discretionary in April 2018 (cash withdrawals, entertainment, clothes);
- his debt was only 50% of the loan advance;
- the loan would have cleared all of his debt and his overdraft;
- the loan would still have been affordable if Mr R didn't settle his existing debts based on the income from his June payslip and expenses from the Office for National Statistics (ONS) expenses; and
- Mr R was making payments to a debt collection agency which maybe why he applied for a loan higher in value than the debt shown on his credit file.

It asked for the case to be passed to an ombudsman for a final decision.

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.

Where the evidence is inconclusive I have reached my decision based on the balance of probabilities. So, based on what I think is most likely given the available evidence and the wider circumstances.

Our approach to unaffordable/irresponsible lending complaints is set out on our website and I've followed it here.

The rules and regulations when Bamboo lent to Mr R required it to carry out a reasonable and proportionate assessment of whether he could afford to repay what he owed in a sustainable manner. This is sometimes referred to as an affordability assessment or an affordability check.

The checks also had to be borrower-focused. So Bamboo had to think about whether repaying the credit sustainably would cause any difficulties or adverse consequences for Mr R. In other words, it wasn't enough for Bamboo to simply think about the likelihood of it getting its money back, it had to consider the impact of the repayments on Mr R.

Checks also had to be proportionate to the specific circumstances of each loan application. In general, what makes up 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 and cost of credit they have applied for. 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 repayments to credit from a lower level of income);
- the higher the amount due to be repaid (reflecting that it could be more difficult to meet higher repayments from a particular level of income);
- the longer the period of time a borrower will be indebted for (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make repayments for an extended period).

There may also be other factors which could influence how detailed a proportionate check should've been for a given application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. I've kept all of this in mind when thinking about whether Bamboo did what it needed to before agreeing to lend to Mr R. So to reach my conclusion I have considered the following questions:

- did Bamboo complete reasonable and proportionate checks when assessing Mr R's loan application to satisfy itself that he would be able to repay the loan in a sustainable way?
- if not, what would reasonable and proportionate checks have shown?
- did Bamboo make a fair lending decision?
- did Bamboo act unfairly or unreasonably in some other way?

I can see Bamboo asked for some information from Mr R before it approved the loan. It asked about his income, residential and employment status, and number of dependents. It also checked Mr R's credit file to understand his current credit commitments and credit history. It checked his declared income using a third-party income verification tool and made some assumptions about his living expenses based on national averages. It asked about the purpose of the loan, which was debt consolidation. From these checks combined Bamboo concluded Mr R had enough monthly disposable income to afford to repay the loan. It later said that even using Mr R's actual salary from his June 2018 payslip (not the total income he declared) the loan was affordable.

I don't think Bamboo's affordability checks were proportionate. Mr R was applying for a loan over a term of 36 months, so I think Bamboo ought to have carried out better checks to ensure it understood Mr R's actual monthly outgoings and overall financial position. I can

see it used his credit file to understand his credit commitments, but in the circumstances I don't think it was enough to make assumptions based on national averages about his other living costs. Given it was deciding if Mr R could sustainably afford to repay a loan over a three-year period I think it needed to complete a fuller financial review.

So, I've looked at what I think proportionate checks would likely have shown. I've looked at Mr R's bank statements before his loan application to try to understand his typical monthly living costs at the time. I am not saying that Bamboo ought to have reviewed his bank statements, but this could have been one way for it to make sure it understood his outgoings before deciding the loan was affordable.

From them I can see that in addition to the £2,891 of unsecured debt that Mr R's credit check reported he was also almost £1,000 overdrawn each month. And he was reliant on this overdraft, only being in credit temporarily after each payday as the lender pointed out.

So there was evidence that he was having problems managing his money and his finances were under pressure. Bamboo argues that the loan would have allowed Mr R to clear all his debt including his overdraft and improve his financial position. But it hasn't evidenced that it checked what debt Mr R was planning to settle, or that it looked into why he was borrowing more than the debt shown on Bamboo's credit check, before making its lending decision. I think it needed to understand this to ensure it had an accurate view of Mr R's current indebtedness and the likely impact of this loan on his financial position. It was significantly increasing his overall indebtedness.

Mr R's June 2018 bank statement shows he settled just over £4,000 of formal debt when his guarantor forwarded the loan advance. The full £6,000 wasn't transferred to Mr R from his guarantor, rather £4,800. Mr R has said this was because he also gave money to the guarantor as well as repaying other debts not held with banks. I appreciate this is information from after Mr R received the loan advance, but it evidences that Mr R had higher debts than the credit check showed and had other informal debts.

And better checks prior to lending would have shown this as the March and April 2018 statements show repayments to more credit accounts than appeared on the lender's credit check, as well as credits into his account from his guarantor. So I think proportionate checks would have shown Bamboo that Mr R's finances were not as it concluded in its affordability assessment.

This is important as Bamboo would most likely then have realised that Mr R was not about to clear his overdraft, and there was a risk he would need to maintain it to repay this loan. As Bamboo knows it needed to check Mr R could afford to repay its loan sustainably to meet its obligations under CONC 5.3.1(G) which, amongst other things, stated:

(6) 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;

Bamboo also argues that Mr R's statements show a high level of discretionary spend. But I am not persuaded this is a fair analysis. I found no transactions on the March 2018 statement that could be classified as discretionary spend. There was some spend on clothing and entertainment in April (four transactions). In both months there were high value cash withdrawals, but I haven't found any evidence to support the conclusion this was discretionary spend as the lender has said. It has not explained what information it relied on

to reach this conclusion so I don't think it can fairly classify the spend as discretionary and discount it to evidence that the loan was affordable for Mr R.

Taking into account Mr R's actual salary from his June 2018 payslip as Bamboo has put forward, and using his living costs based on his direct debits and average monthly food shopping shown on his March and April statements plus the cost of this loan repayment, it seems Mr R would have a theoretical disposable income of just over £50. And this is without considering and/or understanding the £600 he was spending on cash withdrawals on average each month. So I cannot see that had Bamboo completed better checks it would have concluded it was responsible to lend to Mr R.

Overall, I think had Bamboo completed better checks it wouldn't have been satisfied that there wasn't a risk this loan would not be sustainably affordable for Mr R. And so as a responsible lender it would have made a different lending decision.

It follows I think Bamboo was wrong to give the loan to Mr R.

I have not found evidence that Bamboo acted unfairly or unreasonably in some other way. Its online application process points out that its loans may not be right for everyone and all options should be investigated. And I can see from the email communications that Bamboo provided its response to Mr R's complaint of 30 July 2020 on 23 September 2020 – so within the time limit for a final response as set out by the regulator. The Financial Conduct Authority's Dispute Resolution Rule DISP 1.6.2 stipulates that a final response to a complaint needs to be sent by the end of eight weeks after its receipt.

Putting things right

I think it's fair and reasonable for Mr R to repay the capital that he borrowed, because he had the benefit of that money. But he has paid interest and charges on a loan that shouldn't have been provided to him.

If Bamboo has sold the outstanding debt it should buy it back if it is able to do so and then take the following steps. If Bamboo is not able to buy the debt back, then it should liaise with the new debt owner to achieve the results outlined below.

It should:

- Remove all interest, fees and charges from the loan and treat all the payments Mr R made as payments towards the capital.
- If reworking Mr R's loan account results in him having effectively made payments above the original capital borrowed, then Bamboo should refund these overpayments with 8% simple interest calculated on the overpayments, from the date the overpayments would have arisen, to the date of settlement*.
- If reworking Mr R's loan account leaves a capital balance outstanding Bamboo should try to agree an affordable repayment plan with Mr R.
- Remove any adverse information recorded on Mr R's credit file in relation to the loan.

*HM Revenue & Customs requires Bamboo to deduct tax from this interest. Bamboo should give Mr R a certificate showing how much tax it's deducted, if he asks for one.

My final decision

I am upholding Mr R's complaint. Bamboo Loans Limited must put things right as set out

above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 12 January 2022.

Rebecca Connelley
Ombudsman