

The complaint

Mr S complains that Bamboo Limited acted irresponsibly by granting him a loan that was unaffordable.

What happened

Mr S took out a single loan with Bamboo. Here's a table showing loan details:

Loan	Date Taken	Date Repaid	Number of Monthly Instalments	Loan Amount	monthly repayment*
1	15/11/2019	Not paid	24	£2,000	£123.46

When Mr S complained to Bamboo that the loan was unaffordable it agreed to uphold his complaint. Bamboo offered to waive the amount of ££962.99 which was all the interest that was due under the loan agreement.

Mr S didn't feel this went far enough to address all his concerns. His view was that Bamboo shouldn't have sold the unpaid loan to a third-party debt collection agent and he wants Bamboo to write off the full balance as he says he will never be in a position to repay it.

Mr S also told us that the money Bamboo irresponsibly lent him has directly caused his already poor mental health to deteriorate dramatically. And that the constant insistence on the money being repaid, despite Mr S explaining his health problems and bad financial situation, is destroying his chance of recovery.

Our adjudicator looked into Mr S's concerns and she didn't think Bamboo had acted fairly. Although our adjudicator felt it was fair that Mr S should repay the money he had borrowed and had the use of, her view was that Bamboo should refund all of the interest and charges Mr S paid on his loan.

And our adjudicator also suggested that Bamboo should do the following:

- Purchase the debt back from the third-party debt collection business it sold the loan to (*from now on in my decision I'll refer to this business as 'T'*)
- Remove any negative information recorded on Mr S's credit file regarding the loan.
- Attempt to arrange an affordable/suitable payment plan with Mr S and keep in mind that he has said that he is in extreme financial difficulty.

In response to our adjudicator's view, Bamboo agreed to settle the complaint the way she had suggested – except that it wasn't prepared to buy back the debt it had sold to T. It said that requesting T to adjust the balance and set-up an affordable repayment plan direct with Mr S was the simplest option, as this process was already in place.

Our adjudicator felt that overall this was a fair and reasonable way to settle Mr S's complaint.

Mr S disagreed with our adjudicator's view. In brief summary, he has provided medical evidence which shows that when he took out this loan he was already facing serious mental health problems as a result of being the victim of a violent crime.

Mr S mentioned a phone call with someone at T. I have only seen what Mr S has told me about this – I haven't heard the call so I don't know exactly what was said. But it's clear to me that Mr S had a very distressing experience on the phone with T when he'd been spoken to in a way that he'd found completely unsympathetic. Mr S said this led to him needing to see his doctor and left his mental health in a very poor state.

As a result, Mr S has told us that he will not accept any offer that includes the involvement of T. And he has asked again if Bamboo will write off the debt which it admits having irresponsibly lent which Mr S says has become one of the single biggest factors in the decline of his mental health.

At my request our adjudicator approached Bamboo again to ask if it will reconsider its decision not to buy back the debt from T. Bamboo confirmed it would not change its position on this as it said it has a contractual right to sell a debt and this is transparently stated within its contracts.

The complaint came to me to decide. I issued a provisional decision.

What I said in my provisional decision

Here are some of the main things I said.

"I'd like to reassure Mr S that I've taken carefully into account everything that he's told us. And I'm very sorry to learn about the impact of this debt on him and how difficult his circumstances are. But I must be impartial and act in a way that is fair and reasonable to both Mr S and Bamboo.

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

Both Mr S and Bamboo are in agreement that this loan shouldn't have been provided to Mr S. So, I don't need to look at Bamboo's decision to provide this loan. I simply need to decide whether what it has offered to do to put things right for Mr S is fair and reasonable in all the circumstances.

I've thought about what amounts to fair compensation 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 Bamboo putting Mr S in the position he'd now be in if he hadn't been provided with his loan.

But when it comes to complaints about irresponsible lending this isn't straightforward. Mr S 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 S back in the position he would be in if he hadn't been given the loan in the first place – even if a relatively short period of time has passed – because Mr S doesn't

have the £2,000.00 or so available to return to Bamboo for the agreement to be immediately unwound.

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 the particular circumstances of the case. And I'd like to explain the reasons why I think that it would be fair and reasonable for Bamboo to put things right in the following way.

As we explain on our website (which Mr S and Bamboo have both referred to) where we find, or a lender agrees, credit was provided irresponsibly, we'd typically say it's fair and reasonable to expect the borrower to repay the funds they were lent but not any associated interest, fees or charges. But having given careful thought to the matter before me and the circumstances of this particular case, I don't think that such an award goes far enough here. I think that this is the case for two reasons.

Firstly, it seems to me that Bamboo lent to Mr S at a time when he wasn't working and his only income was from universal credit. And in these circumstances, proportionate checks are likely to have shown he was unable to sustainably repay what he was being lent let alone the associated interest. Bamboo accepts that it shouldn't have lent in these circumstances.

It's also my understanding that Mr S's mental health has worsened due to the current situation and he's unlikely to be returning to work anytime soon. So I think that things will clearly be difficult for him in these times given his current financial position. And it's difficult to see how Mr S will be able to make payments to this loan going forward or repay the outstanding capital within a reasonable period of time, in these circumstances, without experiencing severe financial difficulty.

Bamboo accepts that the available evidence shows Mr S has a mental health condition. And it seems to me that it may have sold Mr S's debt in the knowledge of this.

Bearing this in mind as well as Mr S's current financial position and the amount of distress and inconvenience caused by Bamboo unfairly providing this loan to Mr S in the circumstances it did, I don't think removing the interest fees and charges goes far enough here.

The circumstances of this case and in particular the financial hardship which is likely to be caused by requiring Mr S to pay funds he doesn't have and is unlikely to get, lead me to think that the fair and reasonable thing for Bamboo to do here, given all the circumstances, is to either buy-back the debt and write off the outstanding balance on the loan, or pay T an amount to settle the outstanding balance in full.

As this will result in Mr S having repaid substantially less than the amount he was lent, I'm satisfied that this also encompasses fair compensation for any distress and inconvenience Bamboo's actions in relation to providing this loan and its subsequent decision to sell on the debt to T caused him.

So while I've carefully thought about matters and I may have told Bamboo to pay a significant amount of compensation for the distress and inconvenience its actions in relation to this loan caused Mr S were it not for my direction to write off the outstanding balance, I'm not making an additional award for distress and inconvenience.

I turn now to Mr S's credit file. We'd typically expect a lender to remove any adverse information on a loan, from the borrower's credit file, where a complaint is upheld for irresponsible lending. However, I don't think that doing this would be the fair and reasonable thing to do here given what I'm asking Bamboo to do in terms of the loan balance.

To explain, the basis for Mr S's referral of his complaint to us was and is that the outstanding balance on his loan should be written off because he has no reasonable prospect of

repaying it. I've accepted this is the case and this has played a large part in my intended decision to uphold Mr S's complaint.

As I'm asking Bamboo to do this, removing any adverse information here would require it to record that Mr S's loan was repaid in full and on time. I think that this wholly inaccurate information would increase the chances of Mr S being able to access further funds in circumstances where he says he has no reasonable prospect of repaying. In my view, this would be counterproductive and arguably not in his best interests, or those of any potential lender. And I think that it would be unfair to Bamboo and Mr S, unreasonable its logic and inaccurate if I asked Bamboo to amend Mr S's credit file in this way – as that doesn't reflect what actually happened or will happen here.

So while this isn't a decision that I'm taking lightly, I think it's fair and reasonable for Bamboo to reflect on what I'm asking it to do in relation to the outstanding balance on the loan.

I'm planning to say that in the particular circumstances of this case, Bamboo should either buy back the debt from T and write off the whole outstanding balance or pay T an amount sufficient for the loan to be settled in full. Bamboo should record that it wrote off an outstanding balance on Mr S's credit file should it buy back the debt and take this course of action."

What the parties said in response to my provisional decision

Mr S has accepted what I've said in my provisional decision.

Bamboo has sent me detailed representations – in brief summary, it has mainly said:

- its lending decision wasn't irresponsible as it completed proportionate checks and the credit report it obtained showed Mr S was managing his money well
- it couldn't reasonably have known about Mr S' vulnerability when it provided the loan – but since it found out that Mr S was suffering from poor mental health and in financial hardship it has treated him fairly by removing all interest and putting the account on hold
- T is effectively an extension of Bamboo and Bamboo doesn't have a process to enable it to buy back a debt
- it would like me to explain what Bamboo did wrong which warrants Mr S not having to repay money which he has had the benefit of

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 unaffordable/irresponsible lending complaints on our website and I've kept this in mind while deciding this complaint.

I've taken carefully into account everything that's been said in response to my provisional decision. I'd like to assure Bamboo that I've thought carefully about everything again before coming to my final decision. And whilst I have highlighted above only what seem to me to be the main points of concern they've raised, I have read thoroughly and taken into account everything they have asked me to reconsider.

Bamboo hasn't provided me with any new information that changes what I think about this case. I'd already considered all the main points mentioned above when thinking about my

provisional decision. I have addressed in my provisional decision all the points which have a bearing on the outcome. I appreciate that Bamboo takes a different view to me. But I still think it's fair to uphold this complaint for the reasons I explained more fully in my provisional decision.

Putting things right

Bamboo should now take the following steps:

- A) either buy back from T the debt Mr S owes in relation to the loan Bamboo provided to him and write off the whole outstanding balance or pay T an amount sufficient for the loan to be settled in full.
- B) Bamboo should record on Mr S's credit file that it wrote off this outstanding balance (if it buys back the debt and takes this course of action) or otherwise ensure that T notes on Mr S's credit file that the loan balance was written off.

My final decision

I uphold this complaint and direct Bamboo Limited to take the steps I've set out above to put things right for Mr S.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 4 June 2021.

Susan Webb
Ombudsman