DRN-2880056

Financial Ombudsman Service

Complaint

Mr O has complained that Bamboo Limited ("Bamboo") irresponsibly provided him with unaffordable guarantor loans.

Background

Bamboo provided Mr O with an initial loan of £4,000.00 in June 2015. The loan was secured by way of a guarantee and indemnity agreement and was due to be repaid in 36 instalments of around £195.00. The loan had an APR of 49.7% interest of £3,012.14 and the total amount to be repaid was £7,012.14. Mr O settled this loan early in August 2016.

In November 2016, Bamboo provided Mr O with a second loan of £4,000.00. This loan was also secured by way of a guarantee and indemnity agreement. But this time it was due to be repaid in 24 instalments of around £247.00. The loan also had an APR of 49.7% but the shorter term meant interest of £1,925.99 was due to be repaid and this meant that the total amount to be repaid was £5,925.99.

Bamboo also provided Mr O with a third loan in November 2020. But that loan doesn't form part of this complaint and so isn't being considered in this decision.

One of our investigators looked at this complaint and thought that Bamboo hadn't carried out proportionate checks before lending and that such checks would more likely than not have shown Bamboo Mr O wasn't able to sustainably repay these loans. Bamboo disagreed with our investigator and asked for an ombudsman to review this complaint.

My findings

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 general approach to complaints about unaffordable/irresponsible lending - including the key rules, guidance and good industry practice - on our website. And I've referred to this when deciding Mr O's complaint.

Having carefully thought about everything, I think that there are two overarching questions that I need to answer in order to fairly and reasonably decide Mr O's complaint. These two questions are:

1. Did Bamboo complete reasonable and proportionate checks to satisfy itself that Mr O would be able to repay his loans in a sustainable way?

    - If so, did it make a fair lending decision?
    - If not, would those checks have shown that Mr O would've been able to do so?

2. Did Bamboo act unfairly or unreasonably in some other way?

<u>Did Bamboo complete reasonable and proportionate checks to satisfy itself that Mr O would be able to repay his loans in a sustainable way?</u>

Bamboo provided these loans while it was authorised and regulated by the Financial Conduct Authority ("FCA"). The rules and regulations in place required Bamboo to carry out a reasonable and proportionate assessment of Mr O's ability to make the repayments under these agreements. The assessment is sometimes referred to as an "affordability assessment" or "affordability check".

Any checks had to be "borrower" focused – so Bamboo had to think about whether repaying the loan sustainably would cause difficulties or adverse consequences *for Mr O*. In practice this meant that Bamboo had to ensure that making the payments to the loan wouldn't cause Mr O undue difficulty, adverse consequences or require him to borrow further to make payments.

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 loan repayments on Mr O. The existence of a guarantee and the potential for Bamboo to pursue the guarantor instead of Mr O, 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 Bamboo's checks reasonable and proportionate?

Bamboo says that Mr O completed an online income and expenditure assessment. Mr O told Bamboo that his monthly income was £1,636.00 at the time of loan 1 and £2,169.00 at the time of loan 2 and that he didn't pay any rent as he was living at home with his parents. Bamboo ran a number of automatic checks against the details Mr O provided, including cross-referencing his income declaration against bank account data.

Mr O was also recorded as having monthly expenditure of £1,104.30 at the time of loan 1 and £454.49 at the time of loan 2. This was made up of living expenses (based on Office of National Statistics ("ONS")) data and repayments on existing credit calculated from the results of the credit searches.

In Bamboo's view these checks showed Mr O "*had enough monthly disposable income to comfortably maintain the Bamboo loan repayments with a good buffer to ensure that he would be financially resilient against a financial shock, such as an unexpected expense".* And all of this meant it was reasonable to lend.

I've carefully thought about what Bamboo has said but I have significant concerns about the rigour it applied to its affordability assessment, in light of the other information it gathered and had to hand.

To explain, the credit checks Bamboo carried out showed that he Mr O had significant difficulties repaying credit in the period leading up to these applications. Indeed the data suggested regular missed payments, repeated applications of short-term loans and indications Mr O might have been borrowing further to repay previous loans.

I have also concerns with Bamboo's use of ONS data to calculate Mr O's living expenses. While the FCA's guidance in CONC 5.2A.19G (which was brought in after these loans were taken out but nonetheless provides a reasonable indication on the regulator's thoughts on the use of such data) permits the use of statistical data to estimate a prospective borrower's non-discretionary expenditure, it's fair to say this provision also states that it is unfair to rely on such data where it is unlikely to be reasonably representative of the prospective borrower's situation.

Bamboo used ONS data, which was based on the finances and expenditure of the average consumer, to estimate Mr O's living expenses. But Bamboo knew, when it lent to Mr O, that it was providing a loan to someone who fell outside this average portfolio. Indeed Bamboo says that it often lends to consumers who have an impaired credit history, so it seems odd to be relying on data from those who are unlikely to fall within this portfolio.

I don't think that using ONS data – which is unlikely to reflect the existing commitments and expenditure of someone in Mr O's circumstances is fair, reasonable and proportionate especially bearing in mind that Bamboo took no steps to actually verify his income – I'm not persuaded that cross checking against credit reference data was verifying Mr O's income.

Furthermore, I'm also concerned how Bamboo seems to have accepted at face value that Mr O had a monthly disposable income of over £500 a month at the time of loan 1 and over £1,500.00 a month at the time of loan 2, yet needed to borrow £4,000.00 on such disadvantageous terms and also involve a guarantor. So I'm satisfied that Bamboo's checks threw up a number of questions which meant that it would have been reasonable and proportionate for Bamboo to verify the income and expenditure Mr O provided.

Bearing all of this in mind, as Bamboo didn't take steps to verify Mr O's income and expenditure and instead chose to rely on what appears to have been obviously over-optimistic (and somewhat unrealistic) calculations of his monthly disposable income, I don't think that its checks before providing Mr O with these loans were reasonable and proportionate.

Would reasonable and proportionate checks have indicated to Bamboo that Mr O would have been unable to sustainably repay these loans?

As reasonable and proportionate checks weren't carried out before these loans were 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 Bamboo that Mr O would've been unable to sustainably repay these loan.

Mr O has now provided us with evidence of his financial circumstances at the time he applied for these loans. Of course, I accept different checks might show different things. And just because something shows up in the information Mr O has now provided, it doesn't mean it would've shown up in any checks Bamboo might've carried out.

But in the absence of anything else from Bamboo 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 O's financial circumstances were more likely than not to have been at the respective times.

As I've already explained, Bamboo was required to establish whether Mr O 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 O has provided in light of all of this.

The information I've been provided with shows that that Mr O was in a cycle of unsustainable borrowing where he was borrowing from a number of high-cost creditors in order to try and stay afloat. And the reason for Mr O's financial issues was because he was gambling unsustainable amounts of money. In these circumstances, I don't think that Bamboo would have lent if it knew, as I think it ought to have, that Mr O difficulties managing credit was mainly because of his gambling. And that his ability to repay this loan would, to in all intent and purpose, be based on his success as a gambler.

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

Did Bamboo act unfairly or unreasonably towards Mr O 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 that Bamboo acted unfairly or unreasonably towards Mr O in some other way.

So I find that Bamboo didn't act unfairly or unreasonably towards Mr O in some other way.

Did Mr O lose out as a result of Bamboo unfairly providing him with these loans?

As Mr O paid interest and charges on loans that he shouldn't have been provided with, I'm satisfied that he has lost out as a result of what Bamboo did wrong.

So I think that Bamboo needs to put things right.

Fair compensation – what Bamboo needs to do to put things right for Mr O

Having thought about everything, I think it would be fair and reasonable in all the circumstances of Mr O's complaint for Bamboo to put things right by:

- refunding all interest, fees and charges Mr O paid as a result of having been provided with these loans;

- adding interest at 8% per year simple on any refunded amounts from the date they were paid by Mr O to the date of settlement†

- removing any adverse information recorded on Mr O's credit file as a result of these loans.

† HM Revenue & Customs requires Bamboo to take off tax from this interest. Bamboo must give Mr O a certificate showing how much tax it has taken off if he asks for one.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 16 March 2022.

Jeshen Narayanan
Ombudsman