

The complaint

Mr R complains Bamboo Limited (trading as Bamboo Loans) lent to him irresponsibly.

What happened

In March 2015 Mr R applied for, and was given a guarantor loan for £5,000, which was repayable over a period of 48 months. Bamboo paid the loan funds to the guarantor for onward transfer to Mr R. The loan repayments were around £213 a month, and in total Mr R agreed to pay back just over £10,240 over the four years, after interest was added. Mr R fell behind on his repayments and Bamboo transferred the loan to a third party in August 2018.

Mr R says Bamboo shouldn't have given him the loan because it wasn't affordable for him nor his late mother, who stood as the guarantor. Bamboo says it did check whether the loan was affordable, and it also checked Mr R's credit file before agreeing to lend the money to him. Bamboo reviewed its decision to lend to Mr R after he complained and in hindsight, it agreed it ought to have looked into Mr R's credit file more closely. So Bamboo agreed to uphold Mr R's complaint.

To put matters right, Bamboo agreed to reduce the balance of Mr R's loan account by removing all interest and charges from it. This left Mr R owing around £3,300. Bamboo also agreed to remove any negative information recorded about the loan on repayment of this remaining balance.

Mr R doesn't think Bamboo's redress has gone far enough. He thinks Bamboo should clear the remaining balance. He says that his late mother (and guarantor to the loan) did not pass on the loan funds to him. He argues that he hasn't had benefit of the money. Mr R explains that he took out the loan to support his mother during her ill-health because she was unable to get a loan in her own right.

Our investigator thought Bamboo's actions to put matters right were fair and he didn't think it needed to do more. Mr R didn't agree so this complaint has been passed to me to make a 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.

We've set out our approach to complaints about unaffordable and irresponsible lending on our website. And I've taken this into account in deciding Mr R's complaint. Having done so, I agree with the outcome put forward by the investigator and for much the same reasons.

Bamboo needed to take reasonable steps to ensure that it didn't lend to Mr R irresponsibly. It should have completed reasonable and proportionate checks to satisfy itself that Mr R would be able to pay the loan in a sustainable way.

Bamboo did complete some checks to see if the loan was affordable. But I agree that given the amount of money Mr R was borrowing, the information he had provided about his income and expenditure, together with the information on his credit file, Bamboo's checks weren't good enough.

With this being the case, I think that reasonable and proportionate checks are likely to have demonstrated that Mr R would not have been able to make his repayments sustainably. And if Bamboo knew, as it now concedes that it ought to have, that Mr R wasn't able to repay the borrowing sustainably, I'm also not persuaded that it should have lent to him.

Putting things right

Although both parties now agree it was irresponsible for Bamboo to lend, they disagree on how to right the situation. On the one hand, Bamboo has followed the approach to complaints about unaffordable and irresponsible lending set out on our website. It has offered to remove all fees and charges so that Mr R only repays the cash he borrowed. On the other hand, Mr R argues that he hasn't had benefit of the money, and so the lender should clear his debt in its entirety.

Mr R says he took out the loan because his mother was unable to get a loan in her own right. I'm not persuaded by this, and I'll explain why. If his mother couldn't get a loan without a guarantor, then I'd expect Mr R to have stood as guarantor. But the loan agreement clearly shows he was the borrower. The role of the guarantor is to promise to pay in the event the borrower cannot. And as we now know, his credit history meant Mr R was unlikely to have been accepted as guarantor. His mother, however, was accepted as guarantor to his loan and so I think it is just as likely that she could have got a loan in her own right.

Mr R explains that he took out the loan to support his mother during her ill-health and she did not pass on the loan funds to him. He has supplied copies of his bank statements from the time but these show transactions only up until February 2015 and he took out the loan in March. In any event, I think we would need to see his late mother's account statements showing the credit of the loan funds by Bamboo and her subsequent transactions. But I note Mr R's conversations with our investigator about his power of attorney and access to his mother's bank account ending when she died (and so he cannot provide copies of her account statements). So, on the strength of the evidence before me, I cannot reasonably say Mr R did not have benefit of the loan funds – particularly as it seems his power of attorney gave him access to his mother's bank account before she passed away – and so I cannot reasonably ask Bamboo to clear his debt.

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

In this case, that would mean putting Mr R in the position he would now be in if he hadn't entered the loan agreement in question. However, this isn't straightforward in this case. I can't undo what's already been done. So, it isn't possible to put Mr R back in the position he would be in if he hadn't taken out the loan.

Instead, I must consider another way of putting things right fairly and reasonably given the circumstances of this complaint. I think the overarching principle here is that neither party should profit from the irresponsible lending. So Bamboo cannot benefit by adding interest to the debt. And in the same way, Mr R cannot benefit from the funds he/his late mother received – he has had the money for the purpose he borrowed and it's fair that he should pay it back.

The approach to complaints about unaffordable lending set out on our website includes how to put things right. It explains that if a borrower has a complaint upheld and there's still an outstanding balance on the credit, we'll usually tell the lender to remove all the interest and charges applied from the start. This effectively is what Bamboo has agreed to do and it leaves Mr R owing around £3,300. I'm satisfied this is a fair way to settle this complaint.

I also think it is fair for Bamboo to remove adverse information recorded about the loan agreement in question. So, once Mr R has repaid the outstanding balance, Bamboo should remove any negative information recorded on Mr R's credit file as a result of the unaffordable lending.

In summary, Bamboo should remove all interest and charges from the debt if it hasn't done so already. Once the debt is settled, it should remove any negative information recorded on Mr R's credit file.

My final decision

For the reasons I've explained, I uphold Mr R's complaint and direct Bamboo Limited (trading as Bamboo Loans) to put things right for Mr R in the way I've 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 14 March 2022.

Stefan Riedel
Ombudsman