

The complaint

Ms M complains about a loan given to her by Bamboo Limited.

What happened

In December 2014, Ms M applied for a loan of £5,000 with Bamboo. It was agreed on the basis that it would be repaid by 60 monthly instalments of approximately £216. Ms M complains that Bamboo didn't carry out sufficient checks before agreeing to the loan. She says if it had, it would have seen the loan was unaffordable for her and should have refused to lend to her.

Bamboo looked into her complaint. It said it had obtained proof of her income, checked her credit file and used statistics to calculate her expenditure. It felt on that basis the loan was affordable for her and rejected her complaint. Bamboo offered Ms M £750 in an attempt to resolve her complaint, which it later raised to £1,950.

Ms M didn't agree so referred her complaint to our service. One of our investigators looked into it and felt that Bamboo had lent to Ms M irresponsibly. She asked Bamboo to put matters right.

Ms M accepted what our investigator said, but Bamboo didn't. As there was no agreement, the complaint has been passed to me for 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 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.

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 Ms M 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 Ms M in some other way?

Bamboo had to carry out reasonable and proportionate checks to satisfy itself that Ms M would be able to repay the loan sustainably. It's not about Bamboo assessing the likelihood of it being repaid, but it had to consider the impact of the loan repayments on her. The fact that the loan was guaranteed by a third party and the potential for Bamboo to pursue the guarantor instead of Ms M doesn't alter or lessen the obligation.

There is 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 unsustainable).

Did Bamboo carry out reasonable and proportionate checks?

As it has said, Bamboo conducted its usual checks regarding income, expenditure and Ms M's credit file so I can understand why it felt its checks were reasonable and proportionate. But it's not sufficient simply to carry out the checks, Bamboo needed to consider what it found as a result in order to reach a fair decision to lend.

Ms M's application shows her income as £1,471 and Bamboo obtained a payslip to support this. But the payslip shows an income for the month prior to the loan of £1,385 – a difference of almost £90 per month. Bamboo used the higher figure for its affordability calculations.

Ms M lived with her partner and three children, and declared she paid £400 per month toward rent. Bamboo used figures supplied by the Office for National Statistics (ONS) to calculate her living expenses. It came to a figure of £493.50 per month, representing half of what Bamboo said the ONS has calculated as a reasonable figure. Bamboo also used her credit file to calculate a monthly amount of £40.10 to other creditors. This left a monthly disposable income for Ms M of £537 from which she would need to pay £216 to this loan, leaving a surplus of £320 or so (£230 using the figure given on Ms M's payslip). So on the face of it, I can see why – even with the lower income figure – Bamboo felt the loan would be affordable on a pounds and pence basis.

Bamboo also considered Ms M's credit file. It noted she had a relatively low level of outstanding commitments – around £2,200 – so it says her borrowing raised no concerns. But I note the majority of that debt had been taken in the last six months. She'd opened four new credit facilities and was close to the limit on each. She'd also used a number of 'advance against income' (AAI) facilities in that time.

So while the level of debt Ms M had at the time was relatively low, it had been taken recently and I think ought to have prompted Bamboo to look more closely at Ms M's financial circumstances.

If Ms M really had a £537 monthly disposable income prior to this loan being drawn, why would she be borrowing the sums she had in a short space of time? Bamboo had relied on statistical evidence from the ONS to estimate her expenditure which may or may not have been accurate for her specific circumstances. Given an increasing reliance on credit and that she was applying for a substantial loan over a long period of time, it would seem sensible to have asked Ms M for details of what she thought her expenditure was, rather than simply

assuming it was in line with the national average.

It follows that I don't think Bamboo carried out reasonable and proportionate checks - Ms M was now looking to borrow a significant sum over a long period of time, and Bamboo had a duty to ensure she'd be able to manage it sustainably over the whole period.

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 Ms M's finances. I think it would have been reasonable for Bamboo to get a more detailed picture of Ms M's expenditure, for example by asking to see several months of her bank statements from Ms M in light of what appears to be a fairly sudden increase in her reliance on credit.

Ms M has provided us with copies of some of her bank statements for three months or so leading up to the loan being taken. While they don't provide a full picture as Ms M had accounts elsewhere, they show her income going in and provide some useful information which raises further concerns about her financial circumstances.

They show Ms M's income to be £1,384 per month – not the figure Bamboo used in its assessment. It's evident too that she was relying on an AAI to prevent her current account from going overdrawn. In the first of the three months, there were a few transactions to gambling companies, but by November 2014 (just before the loan was taken) the vast majority of the transactions on the account were gambling related.

Putting the statements together with what Bamboo had discovered during its checks, they show a picture of a consumer who has recently begun to take on credit and is gambling more on month by month basis. A consumer who is now looking for a substantial loan over a longer period of time. If Bamboo had asked further questions at the time of Ms M's application, it would have seen that her financial situation was not as steady as it may have first appeared and ought to have refused to lend to her. I don't think it reached a fair decision to lend to her.

Did Bamboo act unfairly or unreasonably towards Ms M 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 Ms M in some other way.

But I do think Bamboo should have refused to lend to Ms M, so I am upholding her complaint about the loan.

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 Ms M in the position she would be in now if she hadn't been given the loan. But Ms M was given the loan, used the money so it's right she should repay what she borrowed.

So, I think Bamboo should:

- Calculate the total amount Ms M received from Bamboo and deduct from that figure the repayments she's made to the loan.
 - If this results in Ms M having repaid more than she received, any overpayments should be refunded to her. 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 Ms M to pay, Bamboo should let Ms M know how much is outstanding and reach a suitable, affordable payment plan with her. I remind Bamboo of its obligation to treat customers fairly.
- Remove any negative information recorded on Ms M'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 Ms M how much it's taken off. It should also give Ms M a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold this complaint and Bamboo Limited should settle it as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 9 May 2022.

Richard Hale
Ombudsman