

The complaint

Mr K complains that loans given to him by Bamboo Limited trading as Bamboo Loans were unaffordable for him. He's complained using a representative, but I'll only refer to Mr K.

What happened

Mr K applied for and received the following loans from Bamboo:

	Date	Amount	New Money	Monthly repayment	Term
Loan 1	9 July 2019	£1,000	£1,000	£109.72	12 months
Loan 2	6 November 2019	£1,356.08	£532.40	£144.36	12 months
Loan 3	10 August 2020	£1,069.29	£509.03	£113.75	12 months

Mr K says Bamboo failed to carry out effective affordability assessments for the loans. If it had carried out sufficient checks, Mr K says Bamboo ought to have refused to lend to him.

Bamboo looked into Mr K's complaint and rejected it. It said it had undertaken its usual processes and noted he had no defaulted accounts or County Court Judgments registered on his credit file. It used electronic means and statistical data to check Mr K's income and expenditure and felt the loans had been affordable for him at the time. Overall, it felt it had reached a reasonable decision to lend to Mr K on each occasion.

Mr K didn't agree and referred his complaint to us. One of our investigators looked into it. She felt that the information Bamboo obtained during the application process for the loans ought to have led it to carry out further checks. Had it done so, our investigator said Bamboo ought to have realised that increasing Mr K's indebtedness was likely to be unsustainable, so it was unfair for it to have agreed to lend. She upheld Mr K's complaint and asked Bamboo to put things right for him.

Mr K accepted what our investigator said, but Bamboo didn't. It said (in summary) that Mr K's *"demographics were strong and stable"* and it had no reason to ask for further evidence. It said the bank statements our investigator had obtained from Mr K during her investigation, supported its view that the loans were affordable. As there was no agreement, Mr K's 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.

Bamboo needed to carry out reasonable and proportionate checks to ensure that it didn't lend to Mr K irresponsibly. 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 Mr K was in a position to sustainably repay the loan?
- If not, what would reasonable and proportionate checks have shown at the time?
- Did Bamboo make a fair lending decision?
- Did Bamboo act unfairly or unreasonably towards Mr K in some other way?

Bamboo had to carry out reasonable and proportionate checks to satisfy itself that Mr K 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 Mr K.

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.

Did Bamboo carry out reasonable and proportionate checks?

When Mr K applied for each loan, Bamboo searched his credit file, used its "*detailed credit model and decision-making engine*" and used information provided by a third party to verify his income, as well as information taken from his application. It said it didn't take into account any payments to his payday loans as he'd confirmed they would be repaid in the next two months.

The rules lenders must follow are set out by the industry regulator, the Financial Conduct Authority, in its Consumer Credit Sourcebook (CONC). CONC 5.2A.12 says that a lender should consider the borrower's ability to make repayments under the agreement as they fall due over the life of it without having to borrow to meet the repayments. The borrower should be able to meet the repayments without them having a significant impact on their finances.

For Loan 1, it calculated Mr K had £428.90 disposable income which it said left plenty of room for the repayment of £109.77. Bamboo reached its figure based on Mr K's stated (and verified) income of £2,900 per month less his stated expense for accommodation, an amount for living expenses calculated by its credit model and a figure for debt repayments (excluding payday loans) based on his credit file. The debt repayments when Mr K applied for Loan 1 totalled £1,700 – roughly 60% of his income.

Based on this calculation, I can understand why Bamboo felt Loan 1 was affordable. But I'm not persuaded of the accuracy of the calculation. For example, Bamboo acknowledged Mr K had payday loans, but didn't include those.

When Loan 1 was taken, his credit file showed two open payday loans. One was under an 'arrangement to pay' with a contractual monthly payment of £257, and another – taken out two months prior to this application – had a monthly repayment of £202. But Bamboo didn't take these loans into account when it calculated Mr K's disposable income of £428.90, and yet the repayments to the payday loans were £459. So it's clear that it would be difficult for Mr K to meet the first repayment at least without having to borrow further.

Mr K's credit file showed he had ten active credit accounts and he'd taken five of them in the last six months. He'd missed payments to some lenders and was up to his limits on his credit cards. I think these factors show he wasn't fully in control of his finances.

When Mr K applied for Loan 2 four months after Loan 1 was drawn, Mr K's income had increased to £3,500, his accommodation costs remained the same, his debt repayments had fallen to £1,620 and Bamboo's calculation of his living expenses had fallen to £398 (although

his living situation appears the same in his application). So according to Bamboo's figures, this left Mr K with a monthly disposable income of £1,185. Despite this calculation, Mr K was seeking to borrow a further £530 at a relatively high rate of interest.

According to his credit file, during the four months since Loan 1, Mr K had taken three new loans and a further payday loan. I don't think this is indicative of someone in control of their finances or with a monthly disposable income in excess of £1,100. The new loans were fairly evenly spread across the four-month period, indicating he may have been requiring further finance to meet regular bills.

If Mr K really had a £1,185 monthly disposable income prior to this loan being drawn, why would he be borrowing the sums he had in a short space of time? Bamboo had relied on a statistical figure to estimate his expenditure which may or may not have been accurate for his specific circumstances. Given he was refinancing a loan he'd drawn just a few months earlier, and had taken further credit in the meantime, it would seem sensible to have asked Mr K for evidence of his expenditure, rather than assuming it was in line with averages.

When Mr K applied for Loan 3 in August 2020, his income and expenditure (according to Bamboo) appeared fairly similar. His debt repayments had fallen to £1,435 and his income remained the same, leaving a disposable income of £1,367. Given this, it's not clear why Mr K would have been looking to borrow £509 at a relatively high rate of interest. He'd taken another loan within the last six months, a credit card and a further payday loan. Again, if he really had £1,367 disposable income why would he be looking to borrow a relatively small amount? I think it would have been sensible to ask further questions about his expenditure.

I think the information outlined above, together with the frequency with which Mr K was borrowing ought to have prompted Bamboo to look more closely at Mr K's finances to ensure he could sustainably repay the loans. I don't think the checks it carried out were reasonable and proportionate.

What would reasonable and proportionate checks have shown at the time? 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 Mr K's finances. I think it would have been reasonable for it to get a detailed understanding of his expenditure, for example by asking to see several months of his bank statements in light of what appears to be a reliance on credit.

Mr K's provided us with copies of his bank statements for periods shortly before each loan was taken. The bank statements show payday lenders that don't appear on his credit file, returned direct debits and overdraft fees. He was regularly up to his £2,000 overdraft limit on his current account and exceeded it from time to time.

It's clear from his statements coupled with his credit file that Mr K was living on credit. It seems he was unable to meet his existing commitments and living expenses without borrowing on a regular basis. I think it ought to have been evident to Bamboo that Mr K would not be able to repay the loans on a sustainable basis. It follows that I don't think Bamboo reached a fair decision to lend to Mr K on each occasion.

Did Bamboo act unfairly or unreasonably towards Mr K in some other way?

I've carefully read and thought about all the evidence provided by each party to this complaint. Having done so, I don't think Bamboo acted unfairly or unreasonably towards Mr K in some other way. But I do think Bamboo should have refused to lend to him, so I am upholding his complaint about the loans.

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 Mr K in the position he would be in now if he hadn't been given the loans. But Mr K was given the loans and used the money. So, I think Bamboo should:

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

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 25 October 2022.

Richard Hale
Ombudsman