

Complaint

Ms M has complained that Bamboo Limited (“Bamboo”) provided her with an unaffordable loans. She says that if Bamboo failed to carry out an effective assessment of affordability and if it had done so it would have seen that it shouldn’t have lent to her.

Background

Bamboo provided Ms M with an initial loan of £3,000.00 in July 2019. The loan was due to be repaid in 12 instalments of around £320. The loan had interest of £830.37 and the total amount to be repaid was £3,830.37. This loan was repaid with some of the proceeds from loan 2, which was for £3,411.55 (£2,511.55 went to settling loan 1) provided in January 2020. The loan was due to be repaid in 12 instalments of around £363. The loan had interest of £944.85 and the total amount to be repaid was £4,356.40.

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 Ms M wasn’t able to sustainably repay these loans. Bamboo accepted our investigators findings on loan 1, but disagreed with his findings on loan 2. So the complaint was passed to an ombudsman for review. As the parties are in agreement that loan 2 wasn’t fairly provided, this decision is only considering whether L2G acted fairly and reasonably when it provided loan 1.

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 Ms M’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 Ms M’s complaint. These two questions are:

1. Did Bamboo complete reasonable and proportionate checks to satisfy itself that Ms M would be able to repay loan 1 in a sustainable way?
 - If so, did it make a fair lending decision?
 - If not, would those checks have shown that Ms M would’ve been able to do so?
2. Did Bamboo act unfairly or unreasonably in some other way?

Did Bamboo complete reasonable and proportionate checks to satisfy itself that Ms M would be able to repay her loan in a sustainable way?

Bamboo provided this loan 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 Ms M’s ability to make the repayments under this agreement. This assessment is sometimes referred to as an “affordability assessment” or “affordability check”.

The checks had to be “borrower” focused – so Bamboo had to think about whether repaying the loan sustainably would cause difficulties or adverse consequences *for Ms M*. In practice this meant that Bamboo had to ensure that making the payments to the loan wouldn’t cause Ms M undue difficulty or adverse consequences. 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 Ms M.

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 Ms M completed an online income and expenditure assessment. It then ran a number of automatic checks against the details Ms M provided. These checks ensured Ms M met its initial lending criteria and included a credit check to ensure she wasn’t insolvent.

Ms M told Bamboo that her monthly income was around £1,977.00. Ms M was also recorded as having monthly expenditure of £517.07. This was made up of a £0 a month figure entered for rent, £388.82 in living expenses (based on Office of National Statistics (“ONS”)) data and

£128.25 for repayments on existing credit. Bamboo says it didn't find it unusual that Ms M wasn't contributing towards the rent as it is likely that her partner was paying. Bamboo concluded that Ms M had around £1,459.84 in disposable income available each month.

I've carefully thought about what Bamboo has said but I have significant concerns about the rigour it applied to its affordability assessment.

To explain, the credit check Bamboo carried out showed that she had 7 active accounts and had opened a new account in previous 6 months despite also having a default. The data also suggested that Ms M had made 3 further applications for credit in the 12 months preceding this loan. The credit check also showed recent missed payments on one account, some recent payday lending and sustained arrears on another account too. I'm also concerned that Bamboo simply assumed that Ms M's rent was covered by her partner simply because she declared that she didn't pay anything.

I have also concerns with Bamboo's use of ONS data to calculate Miss H's living expenses. Bamboo says the FCA's guidance in CONC 5.2A.19G permits the use of statistical data to estimate a prospective borrower's non-discretionary expenditure. I accept that this is the case but it's also 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 Ms M's living expenses. But Bamboo knew, when it lent to Ms M, that it was providing a loan to someone who fell outside this average portfolio. I don't think that using ONS data – which is unlikely to reflect the existing commitments and expenditure of someone in Ms M's circumstances is fair, reasonable and proportionate especially bearing in mind that it took no steps to verify her income – I'm not persuaded that credit reference data would have been able verify Ms M's income.

Furthermore, I'm also concerned how Bamboo seems to have accepted at face value that Ms M had a monthly disposable income of approaching £1,500.00 a month, yet needed to borrow £3,000.00 on such disadvantageous terms. Ms M's credit history did not suggest that she was someone who had such a high disposable income. And 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 Ms M provided.

I want to confirm that I've also seen what Bamboo's initial submission has said about outcomes reached in other unrelated cases confirming that its checks were proportionate. But I don't think that it is appropriate for me to review the conclusions reached by other casehandlers on completely separate and unrelated cases.

In any event, I've already explained that Bamboo was required to carry out a borrower focused check. And it is the particular circumstances of the borrower (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) together with the type, amount and cost of credit being provided that's the main driver in determining whether a check is proportionate. So it's entirely possible that a proportionate check – for similar loan amounts - could look different depending on the individual circumstances of the prospective borrower.

Bearing all of this in mind, as Bamboo didn't take steps to verify Ms M's income and expenditure and instead chose to rely on an over optimistic (and somewhat unrealistic) calculation of her monthly disposable income, I don't think that its checks before providing Ms M with this loan were reasonable and proportionate.

Would reasonable and proportionate checks have indicated to Bamboo that Ms M would have been unable to sustainably repay this loan?

As reasonable and proportionate checks weren't carried out before this loan was 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 Ms M would've been unable to sustainably repay this loan.

Ms M has now provided us with evidence of her financial circumstances at the time she applied for this loan. Of course, I accept different checks might show different things. And just because something shows up in the information Ms M has 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 Ms M's financial circumstances were more likely than not to have been at the time.

As I've already explained, Bamboo was required to establish whether Ms M could make her loan repayments without borrowing further or experiencing significant adverse consequences – 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 make the repayments in this way. 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 Ms M has provided in light of all of this.

The information I've been provided with shows that Ms M's income was out of work at the time she applied for this loan. The information provided also shows that Ms M was making token payments to a debt collector and was regularly borrowing from a payday type lender. Finally, it also shows she was incurring returned direct debits on her current account too. So it seems clear to me that Ms M's ability to make the payments to this loan was always going to result in her borrowing further. And that's what she indeed went on to do.

Bearing all of this in mind, I'm satisfied that reasonable and proportionate checks would more likely than not have demonstrated that Ms M would not have been able to make the repayments to loan 1 (as well as loan 2) without borrowing further and/or suffering significant adverse consequences. And, in these circumstances, I find that reasonable and proportionate checks would more likely than not have alerted Bamboo to the fact that it shouldn't have provided loan 1 to Ms M either.

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

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

Did Ms M lose out as a result of Bamboo unfairly providing her with this loan?

As Ms M has paid interest and charges on a loan that she shouldn't have been provided with, I'm satisfied that she 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 Ms M

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

- refunding all interest, fees and charges Ms M paid on loan 1 (as well as loan 2 as Bamboo has agreed to do);
- adding interest at 8% per year simple on any overpayments, if any, from the date they were made by Ms M to the date of settlement†;
- removing any adverse information recorded on Ms M's credit file as a result of this loan (as well as loan 2).

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

My final decision

For the reasons I've explained, I'm upholding Ms M's complaint. Bamboo Limited should put things right for Ms M in the way 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 8 April 2022.

Jeshen Narayanan
Ombudsman