

## The complaint

Mr S complained that Bamboo Limited irresponsibly provided him with unaffordable loans.

## What happened

Bamboo provided Mr S with loans as follows:

Date loan taken	Loan amount	Typical loan repayment	Term	Total amount repayable	Loan status
18/04/2019	£1,000	£106.41	12 months	£1,276.96	Repaid by loan 2
04/09/2019	£1,571.26	£123.89	18 months	£2,230.06	

When Mr S complained to Bamboo it didn't agree it had done anything wrong. But, as a gesture of goodwill, it offered to reduce the outstanding loan balance on loan 2 by an amount equal to one month's interest, in full and final settlement of his complaint.

Mr S didn't feel this went far enough and so he brought his complaint to this Service.

Our investigator upheld Mr S's complaint and she set out the steps Bamboo needed to take to put things right.

Mr S would like to settle the complaint in the way our investigator recommended.

Bamboo disagreed with our investigator's view.

In brief summary, it said that the information Mr S declared about his income and expenditure was supported by its own background checks and it saw nothing on his credit report to suggest it needed to do more checks. He had never defaulted on any line of credit, had any county court judgements or missed any repayments. Bamboo said it had no reason not to believe what Mr S said and his credit report showed that he was managing his money well.

Bamboo said it didn't consider it would've been proportionate to ask Mr S to provide bank statements, especially as he had no adverse information showing and there was no sign that his financial situation had deteriorated between the loans.

Bamboo asked for an ombudsman to review the case so the complaint comes to me to decide.

## 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 unaffordable/irresponsible lending complaints on our website and I've kept this in mind while deciding this complaint. Like our investigator, and for broadly similar reasons, I don't think Bamboo should've provided the loans. I'll explain why I say this.

There are some general principles I will keep in mind and questions I need to think about when deciding whether to uphold Mr S' complaint.

Before agreeing to lend, lenders must work out if a borrower can afford the loan repayments alongside other reasonable expenses the borrower also has to pay. This should include more than just checking that the loan payments look affordable on a strict pounds and pence calculation. A lender must take reasonable steps to satisfy itself that the borrower can sustainably repay the loan – in other words, without needing to borrow elsewhere.

The rules don't say what a lender should look at before agreeing to lend. But reasonable and proportionate checks should be carried out. For example, when thinking about what a borrower has left to spend on a new loan after paying other expenses, as well as taking into account the loan amount, the cost of the repayments and how long the loan is for, a proportionate check might mean a lender should also find out the borrower's credit history and/or take further steps to verify the borrower's overall financial situation.

If reasonable and proportionate checks weren't carried out, I need to consider if a loan would've been approved if the checks had been done. If proportionate checks were done and a loan looked affordable, a lender still needed to think about whether there was any other reason why it would be irresponsible or unfair to lend. For example, if the lender should've realised that the loan was likely to lead to more money problems for a borrower already struggling with debt that can't be repaid in a sustainable way.

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 repayments to credit from a lower level of income)
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet higher repayments from a particular level of income)
- the *longer* the period of time a borrower will be indebted (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make repayments for an extended period).

Bearing all of this in mind, in coming to a decision on Mr S' case, I have considered the following questions:

- Did Bamboo complete reasonable and proportionate checks when assessing Mr S' loan application to satisfy itself that he would be able to repay the loan in a sustainable way? If so, did Bamboo then make a fair lending decision?
- If not, what would reasonable and proportionate checks have shown?
- Did Bamboo act unfairly or unreasonably in any other way?

Bamboo asked Mr S some questions about his income and did its own checks, which included obtaining information about his credit history. Bamboo also relied on statistical information about how much someone in Mr S' position typically spent each month on living costs.

For loan 1, Bamboo recorded a figure of £1,440 for Mr S' take home pay. Using national average figures to reflect his living costs (approximately £369) and allowing for accommodation costs (£398) and Mr S spending around £154 on his other credit commitments, Bamboo worked out that Mr S should still have around £518 spare cash left in order to make the monthly repayments for this loan. So the loan looked comfortably affordable for him.

I've taken into account what Bamboo has said about how it calculated the affordability of this loan before it agreed to lend to Mr S. But, I don't think Bamboo made a fair lending decision when it lent to Mr S based on the information it had gathered because I don't think its checks were proportionate.

I say this because Mr S had very recently taken out a £1,500 loan with another provider of high cost credit and it wasn't clear why he would have needed to borrow a further £1,000 in such a short space of time. Potentially at least, I think this apparent need for expensive credit was a sign of possible money problems.

Of course, there could have been a number of reasons why Mr S might've urgently needed to obtain cash quickly – for instance, to help with a large unforeseen cost or a one-off expense. But I can't see that Bamboo enquired about the loan purpose or that it took any steps to find out why Mr S was now starting to borrow significantly when his circumstances and financial situation up until then appeared to have been relatively stable for at least the last 12 months or so.

As well as this, I think Bamboo should've realised that it most likely didn't have a proper understanding of Mr S's financial situation because the way he had recently started to use credit looked to be at odds with the amount of disposable income that Bamboo thought he should have. Bamboo's affordability calculations suggested he could have saved up this loan amount within a couple of months which should've raised a question about why he needed to borrow it and whether this expensive loan was in Mr S' interests.

So I think Bamboo needed to do more to understand why Mr S was now actively taking out credit when this wasn't something he appeared to have done previously – in particular, whether it was a sign that he was facing problems managing his money.

For someone earning the amount that Mr S declared, I also think the term and the cost of the loan were relatively high. I think reasonable and proportionate checks would've involved Bamboo obtaining a thorough knowledge of Mr S' financial circumstances, including evidence. That's because, to my mind, the monthly cost presented a high risk of becoming unaffordable or unsustainable over the term of the loan.

Keeping in mind that Bamboo's checks needed to be borrower focused, I think it needed to do more to obtain a thorough understanding of Mr S' overall financial situation to be satisfied he could afford the loan, particularly bearing in mind that Bamboo had relied on third party data to establish Mr S income and expenditure but seen no direct evidence.

And it hadn't particularly enquired or checked, as far as I can see, if he had any costs over and above what would be typical for someone in his financial situation.

All this leads me to think, on balance, that Bamboo should have carried out a complete review of Mr S's finances and done more to verify what he had told it to ensure a more thorough understanding of his financial circumstances. So, I've looked at what I think proportionate checks would likely have shown.

I've looked at bank statements provided by Mr S which I think are a useful guide to understanding his overall financial situation at the time – and I am aware that these have also been seen now by Bamboo. I've taken into account that Bamboo considers that it wasn't proportionate to have requested to see these bank statements, based on information presented at the time.

But, for the reasons I have set out more fully above, I think Bamboo did need to carry out more in-depth checks. And if it had done what I consider would have been a proportionate check before lending, it would've seen nothing to reassure it that this loan was going to be sustainably affordable for Mr S.

I can see that, far from having the amount of disposable income left over each month that Bamboo had calculated, in reality Mr S was often struggling to keep his bank account in credit - despite being regularly in receipt also of substantial payments into his account from a third party, to whom he made some repayments from time to time. His income during the months running up to him taking this loan fell significantly short of the figure Bamboo had relied on in its affordability assessment. And had Bamboo used Mr S' *actual* income as shown on his bank statements when assessing affordability (an amount which worked out on average over this period at around half the amount Bamboo thought he earned) it would've realised that the monthly surplus it had calculated was more than wiped out by the shortfall in actual income.

Bamboo would also have seen that Mr S' income was supplemented from time to time by benefit payments. Whilst it has said this wouldn't be a reason not to lend to a borrower, I think it's fair to say that Mr S received benefit that was means tested and designed to help him meet essential living costs. It wasn't a sufficient amount to boost his income up to the level Bamboo had assumed he had and it can't fairly or reasonably be considered as surplus income available to repay new debt.

To sum up, I think a proportionate check would have shown that loan 1 wasn't sustainably affordable for Mr S and so Bamboo should've realised it was unfair to lend to him and it shouldn't have provided loan 1.

The fact that Mr S was able to make the monthly repayments on time doesn't mean that he was able to do so in a way that was sustainable – so this doesn't affect my overall view.

Mr S applied for extra borrowing and used this in part to repay loan 1 early. Given that I think loan 1 was irresponsibly provided, it follows that I think loan 2, which increased Mr S' overall debt and extended the period of his indebtedness, shouldn't have been provided either. And had more in-depth checks been done, as I think ought to have happened bearing in mind the information Bamboo was aware of at the time, it would have seen that his actual financial situation showed that the loan was unaffordable on any sustainable basis. I think that's borne out by the fact that Mr S by then had evident money problems which included a £715 county court judgement debt dated very shortly after Bamboo agreed this loan.

So I can't fairly say that I've seen enough to make me think that Bamboo's loan helped Mr S to improve his financial situation. And I don't think Bamboo should have agreed to give either of these loans to Mr S.

As Mr S has been further indebted with a high amount of 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 Bamboo needs to put things right.

I haven't seen enough to make me think that Bamboo acted unfairly or unreasonably towards Mr S some other way. So I'm not awarding any additional redress over and above what I've set out below.

I appreciate that Bamboo takes a different view and I'm grateful to Bamboo for its detailed responses to this complaint. I believe Bamboo will be aware already that where information is inconsistent or incomplete, as some of it is here, I must make my decision based on what I think is likely to have happened taking into account all the information that's available. This means making some reasonable assumptions where there's only limited information. I've noted that Bamboo said that our investigator was making assumptions that some transfers seen on Mr S' bank statements showed he was borrowing and repaying lending from a third party. I think that is a reasonable conclusion in the circumstances. But it's not the main reason I'm upholding this complaint so I don't think I need comment further and what Bamboo has said about this doesn't affect the outcome.

If I haven't commented on everything else that's been mentioned, that's because I've concentrated on dealing with the things that are directly relevant to the reasons why I'm upholding this complaint and there's nothing more I can usefully add to what our investigator has said already.

For all the reasons I have explained above, I think it is fair and reasonable for Bamboo to take the following steps to put things right.

### **Putting things right**

In its submissions to us, Bamboo has talked about the 2020 High Court judgement in the case of Kerrigan vs Elevate Credit International Limited. Bamboo drew on the Court's findings to support its view that the lending decisions it made were fair and reasonable and it has questioned assumptions about what might have happened had it declined the lending in question, and so Mr S would've had to apply to a third-party lender.

In deciding what Bamboo should fairly do to put things right in this case I've thought about what might have happened had it not lent to Mr S, as I'm satisfied it ought not to have done. Clearly there are a great many possible, and all hypothetical, answers to that question. For example, having been declined this lending, Mr S may have simply left matters there, not attempting to obtain the funds from elsewhere. If this wasn't a viable option, he may have looked to borrow the funds from a friend or relative – assuming that was even possible.

Or, he may have decided to approach a third-party lender with the same application, or indeed a different application (i.e. for more or less borrowing). But even if he had done that, the information that would have been available to such a lender and how they would (or ought to have) treated an application which may or may not have been the same is impossible to now accurately reconstruct. From what I've seen in this case, I certainly don't think I can fairly conclude there was a real and substantial chance that a new lender would have been able to lend to Mr S in a compliant way at this time.

Having thought about all of these possibilities, I'm not persuaded it would be fair or reasonable to conclude that Mr S would more likely than not have taken up any one of these options. So it wouldn't be fair to now reduce Bamboo's liability in this case for what I'm satisfied it has done wrong and should put right.

In line with this Service's approach, Mr S shouldn't repay more than the capital amount he borrowed when he took out the loans. But he has had to pay interest and charges on lending that shouldn't have been provided to him – which isn't fair or reasonable.

When this complaint was first brought to us there was still a balance owing on loan 2. If Bamboo has sold any outstanding debt it should buy this back if able to do so and then take the following steps.

Otherwise, Bamboo should liaise with the new debt owner to achieve the results outlined below and do the following:

- add up the total amount of money Mr S received as a result of being given the loans. The payments Mr S made should be deducted from this amount
- if this results in Mr S having paid more than he received, then any overpayments should be refunded along with 8% simple interest\* (calculated from the date the overpayments were made until the date of settlement)
- if any capital balance remains outstanding, then Bamboo should attempt to arrange an affordable/suitable payment plan with Mr S.
- remove any adverse information placed on Mr S's credit file regarding these loans.

\*HM Revenue & Customs requires Bamboo to take off tax from this interest. Bamboo must give Mr S a certificate showing how much tax it takes off if he asks for one.

### **My final decision**

I uphold Mr S' complaint and direct Bamboo Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 7 February 2022.

Susan Webb  
**Ombudsman**