

The complaint

Mr S complains about two loans from Bamboo Limited, trading as Bamboo Loans, ("Bamboo"), which he says were unaffordable.

What happened

Mr S was given two loans by Bamboo. Loan 1 was for £5,000 and was taken out in March 2019. Loan 2 was for £5,200 and was taken out in February 2020. Loan 1 was repaid from the proceeds of Loan 2. Some of the information Bamboo provided about the loans is shown in the table below.

Loan number	Start date	End date	Loan amount	Monthly repayments	Term (months)
1.	20 March 2019	Around 25 February 2020	£5,000	47 monthly repayments of £213.37 and one repayment of £213.51	48
2.	Around 25 February 2020	Not yet repaid	£5,200	47 monthly repayments of £221.92 and one monthly repayment of £221.87	48

Loan 1 was secured by a guarantor who would be responsible for repaying it if he failed to make his repayments. The interest rate was 41%, (49.7% APR). If Mr S made each payment when it was due, he'd pay £10,241.90 in total.

Mr S referred to Loan 2 as a top up loan. This loan was also secured by a guarantor. The interest rate was 41%, (49.7% APR). If Mr S made each payment when it was due, he'd pay £10,652.11 in total. Bamboo used the proceeds of Loan 2 to repay Loan 1. The loan agreement said that Bamboo would pay no less than £600 to the guarantor's account.

Mr S says that when Bamboo offered him Loan 1, he was already in high financial difficulty and had a high level of debt. He also wasn't earning anywhere near what they claimed. He was gambling every day at the time and if any proper checks had been made, Bamboo would have seen all that and he should never have been offered a loan in the first place, let alone a top up loan (Loan 2) not much later. Mr S also said that Loan 1 had put him in great debt. It made him struggle to pay for basic things like rent and council tax and taking out the loan resulted in him going into a debt management plan. He has never been more depressed or anxious in his life. Mr S was seeking a fair refund and for his guarantor to be removed from the loan.

In its final response letter, Bamboo said, in summary, that its review showed that overall, Mr S had good credit profiles going back several years. He had no county court judgements and all of his credit was up to date with no missed payments. It also considered the amount of debt Mr S had in relation to his income. At the time of his first application, this was £6,408. When compared to Mr S's net income of £25,044, the debt was considered to be low and manageable. It used a credit reference agency income verification tool which drew on bank account data to check that Mr S had the necessary income and made a statistical determination of his additional living expenses using data from the Office for National Statistics ("ONS"). After deducting Mr S's living costs and loan servicing costs, Bamboo said that he had a monthly disposable income of £880 on Loan 1 to meet the proposed loan repayment of £213.37. This demonstrated that the loan was sustainably affordable for Mr S and there was a good buffer in case of changes in circumstances. Bamboo also acknowledged that it could perhaps have asked more questions at the time of his application for Loan 2. So, it said it was willing to write off interest of £772.27 in respect of the top up advance on this loan.

Our investigator's view

Our investigator assessed the complaint about Loan 1 and recommended that it be upheld. He noted that Bamboo had agreed to uphold Mr S's complaint about Loan 2. So, he said that he wouldn't be considering that.

The investigator said that whilst Mr S was maintaining the payments to his existing creditors, he thought there were indications about the way Mr S was managing his money that should've led Bamboo to go further in its checks. Mr S had recently used payday loans. The investigator said that this didn't seem to correlate to someone with the surplus income that Bamboo identified and was relying on before deciding to lend. He said that Bamboo needed to take additional steps to better understand Mr S's finances before agreeing to lend to him. The investigator had reviewed Mr S's bank statements and concluded that Mr S's financial situation was fragile and given the position he was in, he was not someone who should've been lent to.

Bamboo disagreed and asked to see Mr S's bank statements which Mr S agreed could be sent to Bamboo. But before receiving these it responded to the investigator's view to say, in summary, that:

- Mr S had a good credit history and its assessments demonstrated that the loan was sustainably affordable.
- If used for its intended purpose, the loan would have allowed Mr S to settle 78% of his outstanding debt. More specifically, he would be able to clear the balances on all his credit cards and his mail order account.
- Whilst Mr S had recently taken out some new credit cards, his balance to limit ratio was 76% and he had not exceeded any of the limits available to him. Furthermore, he was making payments that were likely to be more than the minimum required in the several months leading up to the Bamboo application.
- It didn't agree that a loan term of 48 months should have automatically warranted a request for bank statements.
- Regarding Mr S's payday loan usage, it said that his credit report showed that he had not opened any short-term high-cost lending accounts in 2019 and his previous payday loans were settled.
- It had seen no evidence to suggest that its assessment of Mr S's income, essential everyday living costs, debt servicing expenditure or accommodation costs were inaccurate.

Mr S responded to say that by the time he applied to Bamboo for Loan 1, he already had other loans including a high cost loan for £8,000, a short term loan for £1,600, another loan for £700 and he owed about £3,000 on credit and store cards. His bank statements would have shown that every penny was going on gambling. Mr S was also struggling to pay his rent and other bills, and he owed council tax. Bamboo could have seen or asked in a simple conversation about his situation. He was receiving universal credit because he wasn't earning enough.

As this complaint hadn't been resolved informally, it was passed to me, as an ombudsman, to review and resolve.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr S and to Bamboo on 4 January 2022. I summarise my findings:

As it appeared that Bamboo had accepted Mr S's complaint about Loan 2, I said that I wouldn't investigate whether Bamboo had acted fairly in providing that loan. But I would include directions about Loan 2 in the redress section of the decision.

I also said that I was sorry to learn about Mr S's difficulties.

I'd noted that when Bamboo lent to Mr S the regulator was the Financial Conduct Authority and relevant regulations and guidance included its Consumer Credit Sourcebook (CONC).

Bamboo was entering a regulated credit agreement. So, it had to carry out a reasonable assessment of Mr S's creditworthiness before it entered the agreement. This meant that Bamboo had to consider both the risk to it that Mr S wouldn't make the repayments under the agreement when due, and the risk to Mr S of not being able to make those repayments.

In particular, Bamboo had to consider Mr S's ability to make repayments under the agreement as they fell due over the life of the agreement, without him having to borrow to meet the repayments, without him failing to make any other repayment he had a contractual or statutory duty to make, and without the repayments having a significant adverse effect on his financial situation.

The rules didn't set out any specific checks which must be completed to assess creditworthiness. But the lender should take into account the borrower's income (over the full term of the loan) and their ongoing expenditure for living expenses and other debts. Whilst it was down to the lender to decide what specific checks it wished to carry out these should be reasonable and proportionate to the type and amount of credit being provided, the length of the term, the frequency and amount of the repayments and the total cost of the credit. So, a lender's assessment of creditworthiness would need to be flexible and what was appropriate for one person might not be for another. And what might be sufficient for a borrower in one circumstance might not be so for the same borrower in other circumstances.

In general, I would have expected a lender to require more assurance the greater the potential risk to the consumer of not being able to repay the credit in a sustainable way. So, for example, I would have expected a lender to seek more assurance by carrying out more detailed checks

- the lower a consumer'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 period of time a borrower would be indebted for (reflecting the fact that the total cost of credit was likely to be greater and the borrower was required to make repayments for an extended period).

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

- Did Bamboo complete reasonable and proportionate checks when assessing Mr S's application for Loan 1 to satisfy itself that he would be able to repay the loan in a sustainable way? If not, what would reasonable and proportionate checks have shown?
- Did Bamboo make a fair lending decision?

Did Bamboo complete reasonable and proportionate checks when assessing Mr S's application for Loan 1 to satisfy itself that he would be able to repay the loan in a sustainable way?

I'd noted that Mr S originally applied for a loan of £7,000. Bamboo said it could only lend him £5,000. I'd thought this suggested that Bamboo had some concerns about Mr S's finances before providing the loan.

Bamboo had gathered some information from Mr S about his income and accommodation expenses before it agreed the loan. It had also carried out a credit check.

Mr S told Bamboo he was married with two dependents, he was a tenant and paid £300 rent, he was self-employed, and his net monthly income was £2,087. I'd noted that Bamboo's application details showed Mr S's earned income as £1,387 and the rest came from another source such as benefits. But I thought the fact that Mr S was self-employed meant that his income might have been sporadic or likely to fluctuate. His declared income might not have been his available income and might not have been net of all tax, national insurance, and business expenses. There was also an element of uncertainty – especially as Mr S was unlikely to receive any sick pay or holiday pay. So, I thought this might have caused Bamboo to take additional care when reviewing Mr S's loan application. I couldn't see that it had asked Mr S for more information about his self-employed income or the income from a different source. I could see that Bamboo had said it used a credit reference agency income verification tool to verify his income. But having seen Mr S's bank statements, I couldn't see that the income verification tool was accurate.

Bamboo didn't ask Mr S for any information about his living costs. It assessed these according to ONS statistical information.

The lender had also assessed Mr S's monthly credit commitments at £450. Bamboo calculated that Mr S had a disposable income of £880.

I'd reviewed Bamboo's credit check. I'd noted that this showed that Mr S had 13 active credit accounts and that six of these had been opened in the previous six months. There were also 11 credit searches made in the previous three months. I thought Bamboo might have been concerned about the credit searches – I could see that five of these were in the month prior to Mr S's loan application – as well as the number of recent credit accounts.

In addition, I could see that Mr S had opened three credit card accounts in the three months prior to the loan application, one of which had only been opened around three weeks before his loan application. This suggested a recent need for credit and ought to have caused Bamboo to question Mr S's disposable income. I could also see that one of these cards had a £1,000 credit limit and Mr S's balance was around just £30 short of that.

I'd also seen more evidence of Mr S's recent need for credit on the credit check. I'd noted that Mr S borrowed two payday loans totalling over £1,000 less than three months before his loan application. He'd also borrowed an additional two payday loans three months before those loans. Although the two most recent payday loans were repaid in late January 2019, Mr S's need to borrow these expensive loans suggested a recent need for credit which I thought ought to have concerned Bamboo.

Altogether I thought Bamboo's credit checks ought to have caused it concerns as Mr S's finances appeared to be under pressure and suggested that Mr S was likely struggling to manage his money. This was shown by Mr S's relatively recent need for credit shown by the relatively high number of recent credit searches, three new credit card accounts in the previous three months and the recent payday loans. I'd also noted that Mr S was still repaying two long term loans totalling around £5,000 taken out just a year before his loan application.

Bamboo was also likely to be aware that its credit checks might not have revealed the full extent of Mr S's credit commitments

Whilst Mr S had told Bamboo that he would be using the loan proceeds to consolidate some of his debts, I couldn't see from the information received from Bamboo that it had made this a condition of the loan. So, it couldn't be sure that the loans would be paid off. And Mr S would still have been left with a relatively large amount of debt to repay even if he did repay some of his debts with the loan proceeds.

I could also see that even if Mr S had used the proceeds of Loan 1 for debt consolidation, his total indebtedness was still increasing. He said he was using a loan of £5,000 to repay debt, but he would need around £10,250 to repay Loan 1.

On balance, I didn't think Bamboo treated Mr S fairly when it agreed to lend to him based on the information it would have seen on its credit checks because this showed it was likely that agreeing more credit for him would simply add to his debt levels. I also thought it might have been concerned as to why someone with such a large proportion of available income (according to its own calculations) would need to borrow so much expensive credit so recently. Bamboo estimated that Mr S's disposable income each month was around £880 which I didn't consider to be consistent with the amount of debt he had, nor the need for a further high cost loan.

I also didn't think it was reasonable for Bamboo to rely on statistical information about Mr S's living costs without verifying it. Bamboo used ONS data, which was based on the finances and expenditure of the average consumer, to estimate Mr S's living expenses. But Mr S's multiple recent credit applications meant that Bamboo knew it was providing a loan to someone who fell outside this average portfolio. I didn't think that using ONS data – which was unlikely to reflect the existing commitments of someone in Mr S's circumstances – was fair, reasonable, and proportionate.

In addition, Mr S was entering into a significant commitment with Bamboo. And given the amount being lent, the repayment amounts and the length of the loan term, I thought Bamboo should reasonably have taken steps to build a clearer picture about Mr S's finances before providing him with an expensive loan in order to satisfy itself that Mr S could repay the loan over a 48 month period without the repayments having a significant adverse effect on his financial situation. He was, after all, committing to repay around £10,250 over that period.

Bamboo was required to establish whether Mr S could make his loan repayments without experiencing adverse consequences and not just to ascertain whether the loan repayments were technically affordable on a strict pounds and pence calculation. It could have done this by, for example, requesting bank statements from Mr S, asking for copies of payslips, bills and/or receipts for his expenses and by asking him for more information about his existing credit commitments. Bamboo didn't say that it took steps to do this. So overall, I didn't think the checks Bamboo had carried out on this occasion were reasonable and proportionate.

But that in itself didn't mean that Mr S's complaint should succeed. I also needed to be persuaded that what I considered to be proportionate checks would have likely shown Bamboo that Mr S couldn't sustainably afford the loan. So, I'd looked at Mr S's bank statements to see what better checks would have shown Bamboo.

What would reasonable and proportionate checks have shown? And did Bamboo make a fair lending decision?

Mr S had provided this Service with his bank statements from around the time he'd applied for Loan 1. Some of these were sent to Bamboo in October 2021, but I'd noted the lender hadn't commented on them. I wasn't suggesting that these were the checks that Bamboo should have done. But I thought looking at these gave me the best picture of what the lender was likely to have seen had it made better checks. Had it sought some verification of Mr S's finances before lending, I thought Bamboo would've been in a better position to understand Mr S's financial situation before it decided to lend to him.

I'd firstly reviewed Mr S's bank statements for the period 17 January 2019 to 14 February 2019 which were also sent to Bamboo. I'd noted that Mr S's monthly income on the statements appeared to consist only of benefit income and was around £900, and around £1,200 less than he'd declared to Bamboo. I'd asked the investigator to ask Mr S if he was earning money at that time. He said he had earned £700 around that period but the receipt of this amount of earned income wasn't clear to me from the statements.

I could also see that Mr S had spent around £3,000 on gambling during that period. Mr S's spending on gambling was frequent enough throughout that month that it was more likely than not that it would continue in the same pattern and posed a risk to Mr S being able to repay the loan sustainably. In these circumstances, I didn't think that Bamboo would have lent if it knew this, as I thought it ought to have done if it had made better checks.

The statements also showed that Mr S's financial circumstances were strained. He'd borrowed a significant amount of short term credit (around £1,770 that month) to supplement his income. And as Mr S was borrowing a significant amount of short term credit, I also thought there was a very real prospect that Mr S would need to borrow again in order to repay his new loan and that would likely have a significant adverse effect on his financial situation.

Mr S had also sent us his bank statements for February and March 2019. So, I'd also reviewed those statements. His financial situation hadn't improved. He'd spent around £2,400 on gambling and had borrowed short term credit of around £1,800. He'd received around £737 in benefit income on 19 February 2019 and around £774 on 19 March 2019. Again, it wasn't clear if Mr S had received earned income during this period, although he had received some payments totalling around £400 from named individuals during this period. There were also returned payments and numerous overdraft fees shown on the statements.

So, I thought if Bamboo had carried out what I considered to be proportionate checks, I thought it was likely it would have discovered Mr S's income was substantially less than he'd

declared, his relatively substantial expenditure on gambling and the full extent of Mr S's financial commitments. I thought Bamboo ought reasonably to have realised that Mr S was over committed financially and that he was having significant difficulties managing his finances. And even though Loan 1 was for debt consolidation, I thought the significant amounts spent on gambling transactions and the relatively high amount of short term borrowing would have suggested that Mr S was having serious problems managing his finances that a debt consolidation wouldn't have solved. Mr S's finances weren't stable, and I didn't think that further checks would have provided the assurance Bamboo needed. And I thought Bamboo ought reasonably to have realised that it was unlikely that Mr S would've been able to repay his loan without him having to borrow to meet the repayments, without him failing to make any other repayment he had a contractual or statutory duty to make, and without the repayments having a significant adverse effect on his financial situation.

So, I thought Bamboo should reasonably have concluded that it treated Mr S unfairly when it agreed to lend Loan 1 to him. So, subject to any further representations by Mr S and Bamboo, I said that I intended to uphold Mr S's complaint about Loan 1 and that Bamboo should put things right as shown below. As Bamboo appeared to uphold Mr S's complaint about Loan 2 in its final response letter, my proposed award also included our usual directions for that loan.

I'd noted that Mr S had said that he would like his guarantor to be removed from the loan. The investigator didn't make any comment on that in his view. So, I'd explained that removing a guarantor from a loan wasn't something that automatically followed just because we agreed a loan shouldn't have been provided. The guarantor's liability ended as soon as a loan was repaid. But I understood Loan 2 hadn't yet been repaid and might not yet be repaid after Bamboo had provided the redress shown below. I'd said that if the guarantor would like us to investigate whether Bamboo had acted fairly and reasonably when it approved the guarantor, then this was something we could investigate. But the guarantor should first complain to Bamboo and the lender then had a chance to respond to the complaint. If the guarantor's complaint couldn't be resolved by agreement, then the guarantor could complain to this Service and we would investigate that as a separate complaint.

Putting things right – what Bamboo needs to do

I understand that Loan 1 was repaid from the proceeds of Loan 2 and that Loan 2 hasn't been fully repaid. In order to put Mr S back into the position he would have been had Loans 1 and 2 not been agreed for him, Bamboo needs to ensure that Mr S only repays the total amount of money he received as a result of having been given Loans 1 and 2. So, Bamboo needs to:

1. Add up the total amount of money Mr S received as a result of having been given Loans 1 and 2. For the avoidance of doubt this added up amount should not include any interest, charges, document or any other administration fees;
2. The payments Mr S made (to Loans 1 and 2) should be deducted from this amount;
3. Any payments made, if any, after the total amount repaid exceeds the amount of money Mr S was given should be treated as overpayments and refunded to Mr S;
4. Interest at 8% per year simple should be paid on any overpayments made, if they were, from the date they were paid by Mr S to the date of settlement;*
5. If the total amount of money paid by Mr S doesn't exceed the total amount of money he received as a result of having been given Loans 1 and 2 (and for the avoidance of doubt any outstanding balance shouldn't include any interest, charges and document or other administration fees), Bamboo should treat Mr S positively and

sympathetically regarding repayment of the balance. This might mean agreeing a mutually agreeable repayment plan with him; and

6. Remove any adverse information recorded on Mr S's credit file as a result of Loans 1 and 2;

If Bamboo has sold the outstanding debt on Loan 2, it should buy it back if it is able to do so or chooses to do so and then take the steps listed above. If Bamboo isn't able to buy the debt back or chooses not to, then it should liaise with the new debt owner to bring about steps 1. to 6. above.

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

Mr S was happy with my provisional decision and had no further comments to add.

Bamboo responded to my provisional decision to say it had no further comments.

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.

I have also taken into account the law, any relevant regulatory rules and good industry practice at the time.

Given that Mr S and Bamboo have given me nothing further to consider, I see no reason to depart from the conclusions I reached in my provisional decision. It follows that I uphold Mr S's complaint about Loan 1 and require Bamboo to take the steps set out above under the heading "Putting things right - what Bamboo needs to do".

My final decision

My decision is that I uphold Mr S's complaint about Loan 1. In full and final settlement of Mr S's complaint, I order Bamboo Limited, trading as Bamboo Loans, to put things right as I've set out above under the heading "Putting things right – what Bamboo needs to do".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 21 February 2022.

Roslyn Rawson

Ombudsman