

The complaint

Mr H complains about a loan provided to him by Bamboo Limited, ("Bamboo"), which he says was unaffordable. The complaint is brought to this service on Mr H's behalf by a claims' management company. But for ease, I shall refer below to all actions being taken by Mr H.

What happened

Mr H entered into an agreement with Bamboo for a loan of £3,000 on 28 November 2019. The loan was repayable by 17 monthly repayments of £225.88 and one monthly repayment of £225.92. The loan was secured by a guarantor who would be responsible for repaying it if Mr H failed to make his repayments. The interest rate was 41%, (49.7% APR). If Mr H made each payment when it was due, he'd pay £4,065.88 in total. The loan was repaid on 27 August 2020.

Mr H says that Bamboo failed to carry out an effective affordability assessment. If an effective assessment had been carried out, Bamboo would not have provided him with a loan.

In its final response letter, Bamboo said that its review showed that Mr H had good credit profiles at the time of his application. He had no active payday loans, no county court judgements, and no defaults. It said he was managing his finances well. It also considered Mr H's debt amount of £5,336 to be manageable in relation to his income of £26,400 and not excessive. Based on this information, Bamboo considered that Mr H was creditworthy. It used a credit reference agency income verification tool which drew on bank account data to check that Mr H 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 H's living costs and loan servicing costs, Bamboo said that he had a monthly disposable income of £384.55 to meet the proposed monthly loan repayment of £225.88. This showed that the payments should have been affordable for Mr H and there was a buffer in case of emergencies. Bamboo said it appreciated that self-employed income could be erratic. But it had comfort that Mr H's net monthly disposable income was high enough to be able to even out any low earning periods, especially if the loan was being used for debt consolidation as stated in Mr H's application. Bamboo considered that sufficient and proportionate checks were made prior to approving Mr H's application and that the loan was sustainably affordable for him. Although Bamboo didn't believe it had done anything wrong, it offered Mr H £250 as a gesture of goodwill in full and final settlement of his complaint.

It doesn't appear that Bamboo's offer was accepted.

Our investigator's view

Our investigator recommended that the complaint be upheld. She appreciated that Mr H had declared that this loan was for debt consolidation. But she'd noted that Mr H was using payday lenders and said that Mr H was most likely reliant on credit to supplement a gap in his finances. So, she thought Bamboo should've realised that this loan wasn't sustainable.

Bamboo disagreed and responded to the investigator's view to say, in summary, that:

- It acknowledged that Mr H was utilising his overdraft on one of his current accounts, but it said that the balance outstanding was much less than one month's net monthly income for him. On another of his current accounts, he had no requirement for an overdraft at all and was not utilising a £1,000 overdraft limit on another. He was also only using 37% of his revolving credit.
- Mr H had 13 open credit lines at the time of the application but was only actively utilising five of these accounts showing that he was in control of his finances.
- One of Mr H's loans had a balance of £516. As he was paying £609 a month towards this loan, this meant that within a month of the Bamboo loan, he would have less credit commitments.
- It did not consider the regular use of payday loans to be an instant indication that a consumer was struggling financially, especially for someone who was self-employed and was managing their cash flow levels.

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 H and to Bamboo on 4 February 2022. I summarise my findings:

When Bamboo lent to Mr H 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 H's creditworthiness before it entered the agreement. This meant that Bamboo had to consider both the risk to it that Mr H wouldn't make the repayments under the agreement when due, and the risk to Mr H of not being able to make these repayments.

In particular, Bamboo had to consider Mr H'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 don'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'd expect a lender to require more assurance the greater the potential risk to the borrower of not being able to repay the credit in a sustainable way. So, for example, I'd expect a lender to seek more assurance by carrying out more detailed checks

- the lower a borrower'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).

I'd noted that Bamboo had gathered some information from Mr H about his income and accommodation expenses before it agreed the loan. It had also carried out a credit check.

Mr H told Bamboo he was living with his partner and had one dependent, he was a tenant and paid £550 rent, he was self-employed, and his net monthly income was £2,200.

I thought the fact that Mr H 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 H 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 H's loan application. I couldn't see that it had asked Mr H for more information about his self-employed income. I could see that Bamboo had said it used a credit reference agency income verification tool to verify his income. But I didn't think the income amount verified by the verification tool was likely to be accurate. Mr H's income from self-employment was likely to fluctuate from month to month and be a gross amount before the deductions I'd referred to above were made. So, in these circumstances, I'd thought it would have been reasonable for Bamboo to do more to verify Mr H's actual net income.

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

I'd noted that Bamboo had said that Mr H's net monthly disposable income was high enough to be able to even out any low earning periods. But as it calculated Mr H's monthly disposable income to be £158.67 (after Bamboo's loan repayment), this wouldn't have even covered two days absence from work a month. So, I didn't think it could safely conclude in Mr H's circumstances that he would have sufficient disposable income over the loan term for the loan to be repaid without the repayments having a significant adverse effect on his financial situation.

The lender had used information from its credit checks to assess Mr H's monthly credit commitments at £866.63.

I'd reviewed Bamboo's credit checks. I'd noted that these showed that Mr H had 13 active credit accounts and that seven of these had been opened in the previous six months.

I could see that Mr H had opened a credit card account in May 2019. The credit limit was £800 and the current balance on the credit check was shown as £755. I could see that the outstanding balance had ranged between £728 and £782 for the five months prior to the loan application. So, Mr H was barely making any inroads into the amount he owed his credit card provider. I'd noted that Mr H's most recent payment to this account was just £25.

I'd also noted that Mr H had a number of current accounts, but that only one appeared to be overdrawn with an overdraft of £1,481. But this was near the overdraft limit of £1,500 and was at its highest level since the earliest credit record in March 2019.

More worryingly, I'd noted that Mr H had borrowed six loans from June 2019 to October 2019. He'd borrowed a home credit loan and an unsecured loan (likely to be a payday loan) totalling £983 in June 2019. He'd then borrowed two unsecured loans (likely to

be payday loans) in August 2019 (totalling £1,264). In September 2019, he'd borrowed a home credit loan for £590 and in October 2019 he'd borrowed a home credit loan for £2,191. Three of these loans had been repaid. Whilst Bamboo said that Mr H was managing his cash flows with these loans, I thought this was unlikely as he'd been borrowing on average over £1,000 each month.

The credit checks also showed that Mr H was taking out payday loans regularly throughout 2017 and 2018.

Simply performing credit checks isn't enough. A lender needs to react appropriately to the information that any checks show. Altogether I thought Bamboo's credit checks ought to have caused it concerns as Mr H's finances appeared to be under pressure and suggested that Mr H was likely struggling to manage his money. This was shown on its credit checks by Mr H's relatively recent need for a relatively high amount of credit as shown by a credit card account near its credit limit, a current account near its overdraft limit and at its highest point since March 2019, and six recent loans totalling over £5,000 in the six months prior to his loan application. I thought it would have been reasonable for Bamboo to conclude from its credit checks that despite the disposable income it had calculated, it was likely that Mr H wouldn't be able to repay the loan without the repayments having an adverse effect on his financial situation.

Bamboo was also likely aware that not all lenders reported to the same credit reference agencies and a lender's credit check wouldn't always be up to date. So, it was likely to know that Mr H could have had other credit which wasn't shown on its credit checks.

Bamboo said that Mr H had told it that his payday loans would be settled within the next two months and he wouldn't need any moving forward. He'd also said 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 debt consolidation a condition of the loan. So, it couldn't be sure that the loans would be paid off. And Mr H 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 also thought the relatively high amount of short term borrowing shown on the credit checks might have suggested that Mr H was having serious problems managing his finances that a debt consolidation wouldn't have solved. Mr H's need for credit appeared to be an ongoing one and his finances weren't stable.

Bamboo also said that one of Mr H's payday loans would be paid within a month of its loan and that his credit commitments would then decrease. But, in view of Mr H's recent need to borrow as shown in Bamboo's credit checks, I didn't think it could safely assume that Mr H wouldn't borrow again after he'd received its loan.

I could also see that even if Mr H had used the proceeds of the loan for debt consolidation, his total indebtedness was still increasing. He'd be using a loan of £3,000 to repay debt, but he would need around £4,065 to repay that loan.

I also didn't think it was reasonable for Bamboo to rely on statistical information about Mr H's living costs without verifying them. Bamboo used ONS data, which was based on the finances and expenditure of the average consumer, to estimate Mr H's living expenses. But Mr H'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 H's circumstances - was fair, reasonable, and proportionate.

Altogether, I didn't think that Bamboo had carried out proportionate checks here. Its affordability assessment wasn't tailored to Mr H and I thought it should have been in his circumstances.

I'd noted that Bamboo said that Mr H had a monthly disposable income of £384.55 to meet the monthly proposed loan repayment of £225.88, and that this showed that the payments should have been affordable for Mr H. It seemed to me that Bamboo was focussing on its calculation of whether the loan was affordable for Mr H on a pounds and pence basis. But the lender was required to establish whether Mr H could sustainably make his loan repayments – not just whether the loan payments were technically affordable on a strict pounds and pence calculation. The loan payments being affordable on this basis might be an indication that a borrower could sustainably make the repayments. But it didn't automatically follow that this was 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 wouldn't be able to sustainably make their repayments if it was on notice that they were unlikely to be able to make their repayments without borrowing further.

I'd said that I wasn't going to investigate what further checks might have shown in view of what I'd said above. Overall, I was satisfied that the available information demonstrated that Mr H wasn't in a position to take on any more debt and so Bamboo's decision to arrange the loan wasn't fair and reasonable in the circumstances. Agreeing further credit for Mr H was only likely to add to his financial pressures. And, I thought Bamboo ought to have been concerned about Mr H's ability to repay its loan out of his usual means, without borrowing, as it didn't appear he was managing to do so with his existing debt.

I thought it worth mentioning that I'd reviewed the credit report Mr H provided to this Service. I could see that this showed that Mr H had a larger amount of existing credit at the time of his loan application than that shown in Bamboo's credit checks. I could see he'd borrowed another two payday loans in November 2019 totalling £500 before he'd applied for Bamboo's loan. There were also a significant number of relatively recent credit searches shown in the credit report.

I'd noted that Bamboo said that Mr H had repaid the loan well. But I could see that his third repayment was made late, around a week after the due date. And I didn't think that Mr H's ability to make his other repayments necessarily meant that the loan repayments were repaid 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, for the reasons set out above, and subject to any further representations by Mr H or Bamboo, I intended to say that Mr H's complaint should be upheld, and that Bamboo should put things right as follows:

Putting things right – what Bamboo needs to do

I don't think Bamboo should have agreed to give the loan to Mr H. So, Bamboo should:

1. Refund all the interest and charges Mr H paid on the loan;
2. Pay interest of 8% simple a year on any refunded interest and charges from the date they were paid to the date of settlement*; and
3. Remove any adverse information recorded on Mr H's credit file in relation to the loan.

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

Mr H hasn't responded to my provisional decision.

Bamboo responded to my provisional decision to say that 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 H 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 this complaint 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 this complaint. In full and final settlement of this complaint, I order Bamboo Limited 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 H to accept or reject my decision before 4 April 2022.

Roslyn Rawson

Ombudsman