

The complaint

Mr A complains about a loan provided to him by Bamboo Limited, trading as Bamboo Loans, ("Bamboo"), which he says was unaffordable.

What happened

Bamboo entered into an agreement for a loan for Mr A in August 2021. The loan was for £9,000 and was repayable by 47 monthly payments of £325.68 and one monthly payment for £325.62. The interest rate was 30.31%, (34.9% APR). If Mr A made each repayment when it was due, the total amount payable was £15,632.58. Mr A told Bamboo that the loan was to be used for debt consolidation.

Mr A said, in summary, that the loan was provided irresponsibly and was unsustainable, due to his credit situation, income and his lack of understanding regarding financial matters. He was desperate for the funds to try and clear his outstanding credit card, loans, and catalogue balances that he was struggling to find the funds to pay. He thought the loan would clear all his debts, but he was still left with over £4,000 of outstanding credit leading him into a worse situation, causing unnecessary financial stress and worry. Mr A said that Bamboo had the full picture of his finances, including full access to his banking transactions, a credit report, and payslips (detailing his monthly income before overtime). Bamboo would have clearly seen from this that every month he was constantly maxing out his overdraft. This should have been a clear indication of how much he was struggling, yet Bamboo found this acceptable and lent to him.

In its final response letter, Bamboo said it was prepared to make a goodwill offer in full and final settlement of the complaint. It said that if Mr A returned the loan advance of £9,000 to it within 21 days, it would close this loan, with no further monies due.

Mr A rejected Bamboo's offer.

Our investigator's view

The investigator recommended that the complaint should be upheld. She said that Mr A used his overdraft and other forms of credit so frequently that she thought this was a strong indication that he had no disposable income to service this loan in a sustainable manner. So, she thought it reasonable to suggest that Mr A was in an unaffordable cycle of debt and would most likely need to borrow to sustain the loan repayments.

Bamboo disagreed and responded to say, in summary, that

- It was aware that Mr A's payslips showed that a portion of his income was from overtime. But Mr A told it that he was contracted to work additional hours each month.
- It used Mr A's banking records to evidence that the average of Mr A's last 12 months' wage credits was in line with the income that he declared within his application.
- It used higher expenditure figures within its affordability calculation as it liked to be

conservative in its assumptions. It believed that its affordability assessment was a good indication of Mr A's financial situation at the time.

- It believed that it was fair and reasonable to accept the income that had been declared by Mr A as true, and there was no suggestion that Mr A had lied about the status of his overtime.
- It disagreed that Mr A's bank statements showed that he was in financial difficulty. Bamboo said he used his overdraft as a revolving credit facility, much like a credit card, and stayed well within the prescribed limit, and managed the account well.
- Consolidating most of Mr A's revolving credit into a fixed term loan put him into a significantly better position than he would have been prior to its loan.

The investigator responded to say that by reviewing Mr A's payslips, it was evident that part of his income was from overtime which wasn't a guaranteed form of income. This type of income couldn't be relied on and shouldn't have been taken as part of his income. She thought his actual monthly income was lower (£1,450).

She also said that although Bamboo had viewed Mr A's income amounts in his open banking records, it also had access to two of his payslips which showed a significant portion of his income was from working extra hours, which should've been taken into account. There were several occasions when Mr A had earned less than the income amount Bamboo relied on in its calculations. If Mr A's basic income had been used, she thought Bamboo would've realised that this loan was unaffordable.

In addition, the investigator said that as Bamboo had access to Mr A's bank statements, it would've seen what he was actually spending on credit and essential bills instead of relying on estimated expenditure. She noted that Bamboo had used higher expenditure figures in its calculations, but these weren't actual expenditure figures which reflected his circumstances.

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 A and to Bamboo on 7 April 2022. I summarise my findings:

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

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

In particular, Bamboo had to consider Mr A'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 is down to the lender to decide what specific checks it wishes 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 is 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 consumer 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 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).

I'd noted that Bamboo had gathered some information from Mr A about his income and accommodation expenses and it saw two payslips before it agreed the loan. It assessed his other regular expenditure using data from the Office for National Statistics ("ONS"). It had also carried out a credit check and saw Mr A's bank transaction data. Bamboo also spoke to Mr A on the phone to query his income, the payment holidays he'd taken on some of his debts and it discussed his proposed debt consolidation with him. I'd listened to a recording of that call.

Mr A was entering into a significant commitment with Bamboo. He would need to make monthly repayments for a period of four years. So, I thought it was right that Bamboo wanted to gather, and independently check, some detailed information about Mr A's financial circumstances before it agreed to lend to him. I thought that the checks I'd described above allowed Bamboo to form a detailed view of Mr A's finances. I thought that the checks Bamboo did were proportionate.

But simply performing proportionate checks isn't always enough. A lender also needs to react appropriately to the information shown by those checks. Those results might sometimes lead a lender to undertake further enquiries into a consumer's financial situation. Or, in some cases, the results might lead a lender to decline a loan application outright. So, I'd looked at the results of Bamboo's checks to see whether it made a fair lending decision.

Mr A told Bamboo he was single and had no dependents. He said his monthly income was £1,891. The lender used the results of its credit checks to calculate Mr A's monthly credit commitments to be £761.98. But it adjusted that amount by £227.97 because the loan was to be used for debt consolidation. It had also estimated Mr A's expenditure to be £323.59 using ONS data.

I'd noted that Mr A said that his net monthly income was £1,891. Bamboo saw two of Mr A's payslips for June 2021 and July 2021. The July payslip showed a net monthly income of around £1,731, but this included overtime pay of around £571. The June 2021 payslip showed a net monthly income of around £2,068 but this included a larger amount for overtime. Mr A's basic gross monthly income was £1,768.03. Bamboo's open banking data

showed Mr A's wage credits since August 2019 and it said these supported Mr A's disposable income. But I didn't think that was correct as there were 13 monthly income entries which were less than Mr A's declared monthly income. The monthly income amounts ranged from around £2,330 to £1,203. Before the pandemic, the lowest monthly amount was around £1,655, and the most recent payslip for July 2021 that Bamboo had seen showed an amount somewhat lower than Mr A's declared income. In the circumstances, I didn't think it would have been appropriate here for Bamboo to have used a net monthly income of more than £1,731 in its affordability calculations.

Mr A told Bamboo that he was on a rota to work for two weekends a month as part of his contract. I'd asked the investigator to ask Mr A for more information about this. He said that overtime was

"clearly never guaranteed and could be withdrawn when you are not required as it's on a as needed basis. This had happened to me on several occasions."

I could see that Bamboo ought to have been aware that Mr A's overtime was variable from the income amounts in the open banking data. It could have asked Mr A if there were times when he didn't receive overtime, but I didn't hear in the call that it had done so. In these circumstances, I thought it ought to have appreciated that a month without overtime, or even with reduced overtime, would make it difficult for Mr A to meet his repayments.

I'd also reviewed Bamboo's credit checks. I'd noted that these showed that Mr A had 17 active accounts and he'd opened one new account in the six months prior to the loan application. The total credit balance outstanding was around £18,000. I could also see that Mr A had made six minimum payments and withdrawn £110 cash in the last 12 months which might have indicated that his finances were strained during that period. Mr A had around eight active credit card accounts with the most recent account opened just two months prior to the loan application. He also had three active mail order accounts and two active loan accounts. Three of the credit cards were approaching their respective credit limits. I thought the credit checks suggested that Mr A was reliant on credit.

Bamboo would also have been aware that its credit checks might not have revealed the full extent of Mr A's credit commitments (and the open banking data it saw was likely to have suggested that this was the case). A lender might only see a small portion of a borrower's credit file, or some data might be missing or anonymised. Its checks might not necessarily be up to date. Also, not all lenders reported to the same credit reference agencies.

When Mr A spoke to Bamboo, he told it he was going to clear all his credit card accounts and two loan balances with its loan. But Bamboo would have been aware from its credit checks that this wouldn't have been possible. Mr A's credit card balances alone totalled around £1,400 more than Bamboo's loan advance. I thought it ought to have queried this with him as he appeared to be assessing the loan to be affordable based on this inaccurate assumption.

I'd calculated Mr A's monthly credit commitments before the loan using the figures from Bamboo's credit checks as around £730 using 3% of the credit card and mail order balances, and the two loan repayment amounts. If Mr A used Bamboo's loan to repay his two outstanding loans (a total balance of £5,145) and the balance to repay part of his credit card balances, I'd calculated his remaining monthly credit commitments together with Bamboo's loan repayment to be around £600. If Mr A used Bamboo's loan to repay part of his credit card balance (a total balance of £10,411), I'd calculated his remaining monthly credit commitments together with Bamboo's loan repayment to be around £786. If Mr A took the former approach, he appeared to be spending around £130 less each month on credit. But this calculation was also based on Mr A only making minimum repayments on his credit

card and mail order accounts which effectively extends the debts potentially for years and adds very significantly to the cost of the credit. Repayments at that level are insufficient to make any meaningful inroads into those balances. So, I thought there was a real risk of Mr A not being able to make the loan repayments in these circumstances.

In addition, whilst Mr A 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 debts would be paid off. And Mr A 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 A had used all the proceeds of the loan for debt consolidation, his total indebtedness was still increasing. He said he was using a loan of £9,000 to repay debt, but he would need around £15,632 to repay the loan. So, it appears that Mr A's total indebtedness was being increased as well as the time he'd be indebted for.

I'd noted that Bamboo had said that Mr A had sufficient disposable income to make the loan sustainably affordable for him. But this assumed Mr A's need for credit wasn't an ongoing one. I'd noted from the bank statements I'd seen that Mr A had other high cost credit which wasn't shown in Bamboo's credit checks. In June 2021, he was repaying another high cost loan and had taken out a payday loan. In July 2021, he'd taken out another high cost loan for around £742. I thought Mr A's apparent reliance on high cost credit to meet his existing spending showed that this wasn't a reasonable assumption. It seemed to me there was a risk here that Mr A would need to borrow to meet his repayments on this loan, as he was currently doing so for his existing spending.

I also didn't think it was reasonable for Bamboo to rely on statistical information about Mr A's expenditure without verifying it. Bamboo used ONS data, which was based on the finances and expenditure of the average consumer, to estimate Mr A's expenses. But I didn't think it was reasonable for Bamboo to think that Mr A's circumstances fell within this average portfolio. Bamboo's affordability assessment wasn't tailored to Mr A and I thought it should have been in his circumstances.

I'd noted that Bamboo also saw information about Mr A's banking transactions. It had said in its final response letter that from its review of this information, it was able to gain comfort that the level of Mr A's income and expenditure was sufficient to manage the proposed loan repayments. Bamboo hadn't provided this Service with the banking information it saw except for information about Mr A's income.

I'd asked the investigator to ask Mr A for his bank statements from around the time of the loan from his two main current accounts so that I could see what Bamboo had seen. I'd reviewed these bank statements for June 2021 and most of July 2021. Taking Mr A's income as £1,731 as shown in his July 2021 payslip and all of Mr A's existing (and ongoing) financial commitments (less £130 for the debts which were likely to be consolidated as I'd explained above) and reasonably identifiable spend on rent, council tax, water, utilities, food and household, medical, phone, TV/internet package, and petrol didn't leave Mr A with sufficient disposable income to repay Bamboo's loan. Overall, I thought it was clear from the bank transactions which Bamboo said it had seen that Mr A's financial commitments and regular living costs were higher than the amount Bamboo had calculated.

Overall, I didn't think Bamboo had properly scrutinised the information it did see to ensure that Mr A would have enough funds to be able to make the payments over 48 months without them having a significant adverse effect on his financial situation. Bamboo didn't seem to have used the open banking information it had to verify its estimate of Mr A's

expenditure. And, had Bamboo considered fully the information it had received, I thought it would have learned that the loan wasn't likely to have been affordable for him and so I considered it was irresponsible to have agreed it.

So, I intended to say that Bamboo had made an unfair lending decision and that Mr A's complaint should be upheld.

I'd noted that Mr A had asked for the loan amount to be written off. I'd carefully thought about what amounted to fair compensation in this case. Where I find that a business has done something wrong, I'd normally expect that business – in so far as is reasonably practicable – to put the consumer in the position they *would be in now* if that wrong hadn't taken place. In essence, in this case, this would mean Bamboo putting Mr A in the position he'd now be in if he hadn't been given the loan.

But when it comes to complaints about irresponsible lending this isn't straightforward. Mr A *was* given the loan in question and he'd used the funds. So, in these circumstances, I couldn't undo what had already been done. And it was simply not possible to put Mr A back in the position he would have been in if he hadn't been given the loan in the first place.

As this was the case, I'd had to think about some other way of putting things right in a fair and reasonable way bearing in mind all the circumstances of the case.

As I'd explained, Bamboo ought to have realised that it was providing Mr A with a loan that he'd more likely than not be unable to repay without adverse consequences. And in reality, it was the interest that Mr A had to pay Bamboo that was the problem, as he would have kept having to find additional funds (usually through borrowing elsewhere) to pay the interest on his loan. So, I said that Bamboo should refund all the interest on the loan that Mr A had paid it, as well as any fees and charges he'd paid, and overall, Mr A shouldn't have to pay Bamboo any amounts over and above the capital borrowed of £9,000.

With regard to Mr A's credit file, generally speaking, I'd expect a lender to remove any adverse information recorded on a consumer's credit file as a result of the loans they shouldn't have been given. I saw no reason to depart from our typical approach in this case. So, I thought that Bamboo should remove any adverse information recorded on Mr A's credit file in relation to the loan.

So, I said that I intended to uphold this complaint and that it would be fair and reasonable in all the circumstances of Mr A's complaint for Bamboo to put things right in the following way:-

Putting things right – what Bamboo needs to do

I understand that the loan hasn't been fully repaid. In order to put Mr A back into the position he would have been had the loan not been agreed for him, Bamboo needs to ensure that Mr A only repays the principal borrowed on the loan. In other words, Mr A shouldn't repay more than the capital amount of £9,000 he borrowed. So, Bamboo needs to:

- a) treat all payments that Mr A has made towards the loan as payments towards the principal amount borrowed;
- b) if Mr A has made payments above the capital amount of £9,000, then these should be refunded to him, along with simple interest at the rate of 8% per year on these amounts from the date they were paid to the date of settlement*;
- c) if Mr A hasn't made payments above the capital amount of £9,000 and there is still an outstanding capital balance then Bamboo needs to treat Mr A fairly and sympathetically in this matter. This may mean agreeing a mutually agreeable repayment plan with him; and

d) remove any adverse information about the loan from Mr A's credit file.

If Bamboo has sold the outstanding debt on the loan, 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 a) to d) above.

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

Mr A didn't provide any further information in response to my provisional decision.

Bamboo responded to my provisional decision to say that it didn't believe that adding any additional points would change the outcome for this case.

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 A 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, trading as Bamboo Loans, to take the steps 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 A to accept or reject my decision before 7 June 2022.

Roslyn Rawson

Ombudsman