

The complaint

Ms M, who is represented by a third party, has complained that Everyday Lending Limited, trading as "George Banco.com" ('George Banco') unfairly accepted her as a guarantor on a guarantor loan without carrying out sufficient checks.

What happened

Ms M became the guarantor on a loan of £10,000 provided to the borrower, a friend, in September 2019. The loan was secured by way of a guarantee and indemnity agreement and was due to be repaid in 60 monthly instalments of £394.56. The total amount to be repaid was £23,674.80.

One of our investigators looked at the complaint and thought that George Banco hadn't carried out proportionate checks before lending and that such checks would more likely than not have shown George Banco that Ms M would not have been able to sustainably repay the loan in the event she had to.

As George Banco has disagreed with our investigator, the complaint has been passed to me for a decision.

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 general approach to complaints about unaffordable/irresponsible lending - including the key rules, guidance and good industry practice related to guarantor loans - on our website. And I've referred to this when deciding Ms M's complaint.

Having carefully thought about everything, I'm upholding Ms M's complaint.

The rules and regulations in place when George Banco lent to the borrower required it to also carry out a reasonable and proportionate assessment of whether Ms M could afford to repay this loan in a sustainable manner as her guarantor. The guarantee and indemnity agreement between Ms M and the borrower sets out Ms M's liability as guarantor to pay the loan if required to do so.

The borrower isn't a party to this complaint. I see that after our investigator gave her view on the complaint, George Banco sent details of the credit checks it carried out for the borrower. But given that I am looking at the question of whether it was fair and reasonable for Ms M to be accepted as a guarantor, it is outside the scope of this decision for me to make any finding on merits in relation to the borrower. That's because as well as carrying out reasonable checks to establish that the borrower could afford to make the repayments, George Banco also needed to carry out similar enquiries into Ms M's circumstances to check that she'd be able to afford to sustainably make the payments to this loan in the event the guarantee and indemnity agreement needed to be relied on.

The information George Banco has provided shows it carried out a credit check about Ms M before this loan was provided. Based on that and using statistical data, it assessed whether Ms M would be able to repay the loan if required to do so. The results of these checks showed that Ms M was already significantly indebted. She owed around £69,000 by way of an ongoing mortgage, was repaying an unsecured loan on which she owed just over £11,000 and owed around £4,000 on a credit card with a £6,000 credit limit. George Banco's checks indicated she wasn't using her bank overdraft but this was not the case.

George Banco says that Ms M was managing her credit well. I've seen that Ms M had been over her credit card limit for a period of just over 2 ½ years between early 2014 and late 2016. I accept this was around 3 years earlier and is therefore historical. But it strongly suggests that were she to become over-indebted once again, it would not be easy for Ms M to get herself out of financial difficulty. So, with the additional burden of guaranteeing the borrower's loan for what could be as long as five years, I think this and the debt issues I've mentioned above showed likely issues about Ms M's ability to repay. I think that ought to have prompted George Banco to carry out further enquiries before making a decision about accepting Ms M as a guarantor, in order to ensure that its checks had been both reasonable and proportionate. Also, I don't consider that making regular payments on previous credit is necessarily enough to show that a prospective guarantor will be able to repay a loan for someone else.

Our adjudicator asked Ms M to provide us with copies of her bank statements leading up to the agreement. Providing these to George Banco at the time was one way it could have found out more about Ms M's committed expenditure each month aside from her existing credit, such as living costs. The statements I've seen show that Ms M was making near-constant use of her overdraft, at such a level that her income was only able to put her into credit for around ten days each month, before taking her up to around £1,300 of overdraft just before being paid. I think this once again underpins Ms M's having financial circumstances that strongly suggested that she wouldn't have sufficient disposable income available to her each month so that she could sustainably afford the loan repayments, were she to be called upon to meet them.

All of this leaves me persuaded by what I've seen about Ms M's financial situation at the time she agreed to become a guarantor. I think this would have been apparent to George Banco had it carried out better checks. Had it done so, it would likely have realised that Ms M simply wasn't in a position to act as a guarantor on this loan. As this is the case, I think that George Banco's failure to properly look into Ms M's circumstances meant that it unfairly accepted her as the guarantor for this loan.

My understanding is that Ms M is still being expected to make payments to a loan that she shouldn't have been accepted as a guarantor on. I'm therefore satisfied that she has lost out as a result of what George Banco did wrong. And so George Banco needs to put things right.

Putting things right – what George Banco needs to do

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

- releasing Ms M from all obligations under the guarantee and indemnity agreement and then terminating it;
- refunding any loan payments that Ms M may have made;
- adding interest at 8% per year simple on the above payments from the date they

were paid by Ms M, if they were, to the date of settlement†;

- removing any information recorded on Ms M's credit file as a result of this loan;

† HM Revenue & Customs requires George Banco to take off tax from this interest. George Banco 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. Everyday Lending Limited, trading as George Banco.com, 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 10 October 2023.

Michael Goldberg

Ombudsman