

The complaint

Mr S says Bank of Ireland (UK) Plc (BOI) irresponsibly lent to him.

What happened

BOI agreed a loan for Mr S in May 2019. The loan was for £17,500 to be repaid in monthly instalments of £383.08 over five years, and the total amount owed was £22,984.80.

Mr S says that BOI was irresponsible as it clearly didn't complete reasonable and proportionate checks before lending. Had it done so it would have seen the loan was unaffordable: he had a severe gambling addiction which developed as a distraction from the psychiatric illness and disabling anxiety he suffers from.

BOI said that it approved Mr S's loan application based on information he'd provided and what it could see on his credit file. It used national statistics to estimate his living costs. BOI concluded it hadn't lent irresponsibly and didn't uphold Mr S's complaint.

Our investigator upheld Mr S's complaint. She said BOI's checks were not proportionate and better checks would have shown the loan was not affordable for him.

Mr S accepted these findings but BOI disagreed. In summary, it said its assessment used the bureau data for income and existing credit, as well as a higher mortgage figure, and this showed Mr S would have £482 net disposable income. So it had no concerns – and now it seems Mr S was not honest about the reason for the loan. It also said even if it had received Mr S's bank statements it is not the bank's role to judge an accountholder's transactions and spending activity.

Mr S then submitted a detailed summary of his complaint points setting out why he feels BOI lent irresponsibly.

As an agreement was not reached the complaint was passed to me to make a final 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.

I want to reassure Mr S that I have read and thought carefully about all of his submissions. And I mean no discourtesy by this, but I will focus here on the issues I find to be material to the outcome of his complaint. This is in keeping with our role as an informal dispute resolution service and as our rules allow.

BOI will be familiar with the regulations in place at the time so I won't set them out in detail but will summarise them and refer to them if appropriate. BOI needed to check that Mr S could afford to meet his repayments without difficulty before agreeing the loan. In other words, it needed to check that he could meet his repayments out of his usual means

without having to borrow further and without experiencing financial difficulty or other adverse consequences. The checks needed to take into account both the nature of the credit (the amount offered or the loan term, for example) and Mr S's particular circumstances. The overarching requirement was that BOI needed to pay due regard to Mr S's interests and treat him fairly.

With this in mind, my main considerations are did BOI complete reasonable and proportionate checks when assessing Mr S's application to satisfy itself that he would be able to make his repayments without experiencing adverse consequences? If not, what would reasonable and proportionate checks have shown and, ultimately, did BOI make a fair lending decision?

Having considered everything carefully, I am upholding Mr S's complaint.

BOI has told us it carried out an income and expenditure assessment when Mr S applied for his loan. It used the income he declared, after adjusting it once verified, and modelled his likely outgoings based on national statistics. It completed a credit check to understand his credit commitments. It also asked about the purpose of the loan which was 'furniture and electrical'. These checks combined showed Mr S was managing his active credit well and he would have £482 net disposable income each month after taking on this loan.

I am not persuaded that BOI's checks were proportionate given the value and term of the loan. And there were some discrepancies in the initial checks between what Mr S had told BOI and what the credit reference agency showed. As the loan was over a five-year term I think BOI needed to be more certain that it had an accurate overview of Mr S's financial position.

I have looked at Mr S's bank statements for the three months prior to his application. I am not saying BOI had to do exactly this, just that it is a reliable way for me to understand what better checks would most likely have shown.

They show Mr S was spending significantly in excess of his income on gambling each month, indeed even in excess of the loan value on occasion. In these circumstances I cannot see BOI, as a responsible lender, would have made the same lending decision had it carried out a fuller financial review. It argues it is not its role to judge an applicant's spending activity, but it is its role to react to an appropriate level of information to ensure its lending does not cause foreseeable financial harm.

And there was clear financial instability here. So increasing Mr S's indebtedness was most likely to cause him financial harm given his evident addiction. BOI has raised that it now seems Mr S was not borrowing the money for the purpose he stated, and whilst I accept that was most likely the case that does not change my conclusion. I say this as it does not alter BOI's obligation to complete proportionate checks before lending. And I find better checks would have changed BOI's lending decision.

It follows I think BOI was wrong to lend to Mr S.

Putting things right

I think it's fair that Mr S repays the capital he borrowed but I don't think he should pay any interest or charges on this loan, which I've found to have been irresponsibly given. In summary BOI should:

- Cap the amount Mr S needs to repay at £17,500; and

- Consider all payments Mr S made as payments towards this capital amount; and
- If Mr S has paid more than this then BOI needs to refund these overpayments to him along with 8% simple interest per annum* from the date of payment to the date of settlement of this complaint; or
- If Mr S has not yet repaid the capital, then BOI needs to treat Mr S fairly and with forbearance and due consideration regarding his outstanding balance. This may mean coming to an affordable repayment plan with him.
- Remove any negative information about this loan from Mr S's credit file once any outstanding capital balance has been repaid.

* HMRC requires BOI to take off tax from this interest. BOI must give Mr S a certificate showing how much tax it's taken off if he asks for one. If it intends to apply any refund to reduce the capital balance outstanding it must do so after deducting the tax.

My final decision

I am upholding Mr S's complaint. Bank of Ireland (UK) Plc must 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 25 March 2024.

Rebecca Connelley
Ombudsman