

## **complaint**

Mr A complains George Banco Limited lent him money he couldn't afford to repay. He says it didn't carry out adequate affordability checks. He wants a refund of interest and the balance of the debt written off. And he wants his guarantor to be released from her obligation.

## **background**

Mr A tells us he took out a fixed sum loan agreement, with a guarantor, in early 2017. The loan was for £7,500. With interest and charges the amount repayable was almost £17,000.

He says at the time he was taking out payday and other guarantor loans to pay off debts. And he was also borrowing heavily from friends. He says he has a gambling addiction. He doesn't think George Banco carried out sufficient checks. And feels if it had done it would have seen he couldn't afford to make repayments.

George Banco told us it had carried out checks with a credit reference agency (CRA) and saw Mr A was under the limit for all lines of credit. And as it had been informed by Mr A that the loan was for consolidation purposes it had removed these from the affordability checks. It said it had no reason to believe the information it received from the CRA would be incorrect.

I issued a provisional decision on this complaint on 4 February 2019 indicating my intention to uphold the complaint. Both parties have since replied accepting my provisional view. Mr A also asked me to consider ordering the refund of the £900 document fee. I thank both parties for their replies. In the light of these I see no need to change my provisional decision - but I'll deal with Mr A's request in my final decision which is set out below.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'm sorry Mr A is experiencing financial difficulties - I appreciate that he's been frank in admitting that part of his situation is caused by his gambling habit. This can't be easy - having to confront dual problems which must appear extremely difficult to resolve. As even if he is able to overcome - or at least control - the gambling, he's still left with the debt.

As this complaint is about unaffordable/irresponsible lending I should explain our approach to such cases. In summary, this is a two-part process. We look to see if a business has made sufficient checks about a customer's income and expenditure. And then, based on those checks and any other criteria it uses, whether the business has reached a correct decision on the customers' ability to repay the loan in a sustainable manner.

I've seen the affordability checks carried out by George Banco. These included an income and expenditure statement from Mr A along with information it obtained from a CRA. This led to it assessing Mr A had disposable income in excess of the amount needed to repay the loan.

It's now apparent that the affordability check was based on erroneous and/or incomplete information. But the test of whether or not a loan was affordable or if it was made irresponsibly is not judged with the benefit of hindsight. It's based on what a business knew or *ought to have known* at the time.

The two areas where the discrepancies arose seem to be in Mr A's own statement of expenditure - which was understated. This led to his disposable income appearing larger than was in fact the case. And unfortunately, the CRA report used by George Banco did not disclose *all* the accounts Mr A was liable to repay. This seems particularly unfortunate as Mr A has supplied a copy of a recent credit file which appears to be from the same CRA as used by George Banco. Why such a discrepancy has occurred I can't say.

The result was that over £450 per month of payments weren't taken into account. It's probable if they had been the loan would not have been made. Mr A did not have sufficient disposable income to sustainably repay it.

There's no set list of checks a business is required to carry out before granting credit. But it is necessary for checks to be sufficient and proportionate having regard to factors including, but not limited to, the size of the loan and amount of repayments. Looking at the information George Banco had obtained I've concluded its checks didn't go quite far enough. I'll explain why.

In his application Mr A's income and expenditure is recorded as comprising three main components. His income, his rent and his other monthly outgoings. This appeared to result in disposable income of over £1,500 per month.

But George Banco's checks revealed that Mr A's outgoings were around double that disclosed. And taking into account other adjustments it made, based on its criteria for assessing affordability, it reached a disposable income figure of just over £450 - from which repayments of £282 were to be paid.

But given the information it obtained showed clear and substantial differences to that disclosed by Mr A, I'm of the view further checks and verification by the business were required at that stage. The difference of over £1,000 in disposable income assessment requires an explanation. It's an inevitable inference there must have been either errors or omissions in what Mr A had disclosed. Particularly when someone with such an apparently high disposable income is seeking a long term loan - and other lines of credit - which the CRA did show - were close to their limits.

I'm aware George Banco has told the investigator it had no reason to believe the CRA report was incorrect and I'm aware it has tried to seek an explanation. I've not seen the result of its enquiry. But it's up to a business what sources of information it relies upon. And in this case I think there was enough from the information it *did* have to require additional checks and verification.

If these had been undertaken it seems to me on a balance of probabilities the likelihood is a more accurate picture of Mr A's precarious financial state would have been revealed. And it is more likely than not the proposed loan would have been deemed unaffordable. And whilst I've not taken this into account in reaching my findings - Mr A was around the time of the George Banco loan also accessing other credit. So it's possible this would also have been identified. Whilst it may have been an influencing factor, I don't think the missing information on the CRA can fairly be seen to have excused the need for further checks.

I know Mr A thinks the loan agreement should be cancelled and the debt written off. But I don't think that would be fair and reasonable. He's had the benefit of the capital sum and I see no reason why that should not be repaid. So I'll only be requiring George Banco to remove the interest from the loan. As far as the document fee is concerned I shan't be asking George Banco to do anything about that. I think Mr A bears some responsibility in not providing a complete record of his outgoings. This led - in part at least - to the approval of the loan. And the administration costs - including the document fee - related to the capital sum as well as the interest charges.

As the guarantor is not a direct party to this complaint I can't make any findings about her situation. It is of course entirely possible that my final decision will have a consequential effect on the amount of her liability - but that's entirely incidental.

### **my final decision**

For the reasons given above my final decision is I'm upholding this complaint.

I'm ordering George Banco Limited to:

1. Remove the interest charge from this loan and recalculate the sum outstanding.
2. Arrange for any adverse information recorded on Mr A's credit file as a result of this loan to be removed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 26 March 2019.

Stephen D. Ross  
**ombudsman**