

complaint

Mr K complains that George Banco.com Limited treated him unfairly. He was a guarantor on three loans provided by George Banco.com to a very close family member (“the borrower”). Amongst other things he says that George Banco.com was irresponsible when it accepted him as a guarantor because it didn’t adequately check that he’d be able to afford to repay the loans if the borrower failed to do so.

background

Mr K agreed to be a guarantor on three loans taken by the borrower as follows (I have rounded the figures for ease of reference):

	date taken	principal amount	term	monthly repayments	total repayable
1	05/08/16	£3,000	48	£125	£5,991
2	13/03/17	£4,000	60	£150	£9,021
3	13/10/17	£6,000	60	£226	£13,538

Part of the principal amount of Loan 2 was used to settle Loan 1. Similarly £3,824 from Loan 3’s principal amount was used to settle Loan 2.

Mr K and the borrower lived together in the same house. Mr K paid the borrower some rent.

The borrower made all the repayments towards Loans 1 and 2. Mr K hadn’t been called upon to make any repayments on Loan 3 until after the borrower suddenly died in late 2018. Since that time George Banco.com has tried to enforce the guarantee and indemnity agreement against Mr K.

One of our adjudicators looked into Mr K’s complaint. As Mr K hadn’t been required to pay anything towards Loans 1 and 2 she didn’t think Mr K had lost out even if George Banco.com had done something wrong. But she concluded that George Banco.com shouldn’t have accepted Mr K as the borrower’s guarantor at the point they took Loan 3. So she upheld Mr K’s complaint and also recommended that George Banco.com pay him some compensation for the trouble and upset it had caused him after the time it had been notified of the borrower’s death.

George Banco.com doesn’t agree with our adjudicator and so the complaint has come to me - an ombudsman - for a final decision. If Mr K accepts my decision it will be binding on the parties.

my findings

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

Even if George Banco.com did something wrong in relation to Loans 1 and 2 and Mr K’s role as guarantor on those loans, it doesn’t seem that he has lost out. So I’m only looking into what happened as regards Loan 3. However Loans 1 and 2 do form part of the background in this case and so reference is made to them in this decision.

George Banco.com provided the loan in question while it was authorised and regulated by the Financial Conduct Authority (“FCA”).

The FCA’s Principles for Business set out the overarching requirements which all authorised firms are required to comply with. These included PRIN 2.1.1 R (6) which says: A firm must pay due regard to the interests of its customers and treat them fairly.

The Consumer Credit sourcebook (“CONC”) sets out the rules and guidance which apply to guarantor loan providers like George Banco.com when providing loans. CONC 5 sets out a firm’s obligations in relation to responsible lending.

Section 5.2.1R of CONC sets out what a lender needs to do before agreeing to give a borrower a loan. It says:

(1) Before making a regulated credit agreement the firm must undertake an assessment of the creditworthiness of the customer.

And at Section 5.2.1(2) it says a firm must consider:

(a) the potential for the commitments under the regulated credit agreement to adversely impact the customer’s financial situation, taking into account the information of which the firm is aware at the time the regulated credit agreement is to be made; and

(b) the ability of the customer to make repayments as they fall due over the life of the regulated credit agreement, or for such an agreement which is an open-end agreement, to make repayments within a reasonable period.

CONC also includes guidance about ‘proportionality of assessments’. CONC 5.2.4G(2) says:

A firm should consider what is appropriate in any particular circumstances dependent on, for example, the type and amount of credit being sought and the potential risks to the customer. The risk of credit not being sustainable directly relates to the amount of credit granted and the total charge for credit relative to the customer’s financial situation.

CONC 5.3 contains further guidance on what a lender should bear in mind when thinking about affordability. CONC 5.3.1G(1) says:

In making the creditworthiness assessment or the assessment required by CONC 5.2.2R (1), a firm should take into account more than assessing the customer’s ability to repay the credit.

CONC 5.3.1G(2) then says:

The creditworthiness assessment and the assessment required by CONC 5.2.2R (1) should include the firm taking reasonable steps to assess the customer’s ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.

CONC 5.3.1G(6) clarifies what is meant by “sustainable”:

For the purposes of CONC “sustainable” means the repayments under the regulated credit agreement can be made by the customer:

- (a) without undue difficulties, in particular:
 - (i) the customer should be able to make repayments on time, while meeting other reasonable commitments; and*
 - (ii) without having to borrow to meet the repayments;**
- (b) over the life of the agreement, or for such an agreement which is an open-end agreement, within a reasonable period; and*
- (c) out of income and savings without having to realise security or assets; and*
unsustainable” has the opposite meaning.

CONC 5.3.1G (4) adds that if a firm does take account of income and expenditure in its credit worthiness assessment:

(b) it is not generally sufficient for a firm to rely solely for its assessment of the customer’s income and expenditure on a statement of those matters made by the customer.

(c) its assessment should be based on what the firm knows at the time of the assessment

CONC also contains the additional obligations owed by guarantor loan providers to guarantors when providing a guarantor loan. The additional requirements in relation to an assessment of the guarantor’s circumstances are contained in CONC 5.2.5R. It says:

- (1) This rule applies if, in relation to a regulated credit agreement:
 - (a) an individual other than the borrower (in this rule referred to as “the guarantor”) is to provide a guarantee or an indemnity (or both); and*
 - (b) the lender is required to undertake an assessment of the customer under CONC 5.2.1R or CONC 5.2.2R.**
- (2) Before entering into the regulated credit agreement, the lender must undertake an assessment of the potential for the guarantor’s commitments in respect of the regulated credit agreement to adversely impact the guarantor’s financial situation.*
- (3) A firm must consider sufficient information to enable it to make a reasonable assessment under this rule, taking into account the information of which the firm is aware at the time the regulated credit agreement is to be made.*
- (4) For the purposes of (2), CONC 5.2.3G, CONC 5.2.4G and CONC 5.3.1G to CONC 5.3.8G apply as if:
 - (a) references to the customer were references to the guarantor; and**

(b) references to CONC 5.2.2R(1) were references to CONC 5.2.5R(2).

This last paragraph means that some of the rules in CONC, relevant to the assessments undertaken in respect of a borrower, apply equally to assessments in respect of a guarantor. So the bar isn't lower when lenders are making an assessment as regards the guarantor. They have the same obligations in relation to guarantors as they do for borrowers as regards the scope of the assessment, what is proportionate, and the assessment of the guarantor's ability to meet repayments in a sustainable manner without incurring financial difficulties or experiencing significant consequences.

CONC 5.2.6G clarifies this further and contains some guidance on the scope of the assessment of the guarantor. And it says:

- (1) The assessment of the guarantor does not need to be identical to the assessment undertaken in respect of the borrower, but should be sufficient in depth and scope having regard to the potential obligations which might fall on the guarantor.*
- (2) The provision of the guarantee or indemnity (or both), and the assessment of the guarantor under CONC 5.2.5R, does not remove or reduce the obligation on the lender to carry out an assessment of the borrower under CONC 5.2.1R or CONC 5.2.2R. Firms are reminded of the rule in CONC 5.3.4R that the assessment of the borrower must not be based primarily or solely on the value of any security provided by the borrower.*

CONC 4 sets out a firm's obligations, in relation to the provision of information, prior to contracting with consumers. A firm is required to provide adequate explanations when providing loans. The additional explanations firms are required to provide to guarantors are set out in CONC 4.2.22R. It says:

- (1) This rule applies if:
 - (a) a firm is to enter into a regulated credit agreement; and*
 - (b) an individual other than the borrower (in this rule referred to as "the guarantor") is to provide a guarantee or an indemnity (or both) in relation to the regulated credit agreement**
- (2) The firm must, before making the regulated credit agreement, provide the guarantor with an adequate explanation of the matters in (3) in order to place the guarantor in a position to make an informed decision as to whether to act as the guarantor in relation to the regulated credit agreement.*
- (3) The matters are:
 - (a) the circumstances in which the guarantee or the indemnity (or both) might be called on; and*
 - (b) the implications for the guarantor of the guarantee or the indemnity (or both) being called on.**
- (4) For the purposes of (2), the rules and guidance listed in (5) apply as if:
 - (a) references to the customer were references to the guarantor; and*
 - (b) references to CONC 4.2.5R were references to this rule.**

- (5) *The rules and guidance are:*
(a) *CONC 4.2.6G to CONC 4.2.7AG;*

CONC 4.2.6G (referred to above) says:

The explanation provided by a lender or a credit broker under CONC 4.2.5 R should enable the customer to make a reasonable assessment as to whether the customer can afford the credit and to understand the key associated risks.

CONC 4.2.7G says:

In deciding on the level and extent of explanation required by CONC 4.2.5 R, the lender or credit broker should consider (and each of them should ensure that anyone acting on its behalf should consider), to the extent appropriate to do so, factors including:

- (1) the type of credit being sought;*
- (2) the amount and duration of credit to be provided;
the actual and potential costs of the credit;*
- (2B) the risk to the customer arising from the credit (the risk to the customer is likely to be greater the higher the total cost of the credit relative to the customer's financial situation);*
- (2C) the purpose of the credit, if the lender or (as the case may be) the credit broker knows what that purpose is;*
- (3) to the extent it is evident and discernible, the customer's level of understanding of the agreement, and of the information and the explanation provided about the agreement; and*
- (4) the channel or medium through which the credit transaction takes place.*

Finally CONC 3 sets out a firm's obligations when communicating with its customers. And CONC 3.3.2R contains general guidance regarding the clarity of a firm's communications with customers. It says:

A firm must ensure that a communication or a financial promotion:

- (1) uses plain and intelligible language*
- (2) is easily legible (or, in the case of any information given orally, clearly audible)*

Whilst CONC sets out the regulatory framework that authorised consumer credit providers have to adhere to it represents a minimum standard for firms. And - as an ombudsman - I'm also required to take into account any other guidance, standards, relevant codes of practice, and, where appropriate, what I consider to have been good industry practice.

Taking into account the relevant rules, guidance, good industry practice and law, I think there are four overarching questions I need to consider in order to decide what's fair and reasonable in the circumstances of Mr K's complaint. The questions are:

1. Did George Banco.com complete reasonable and proportionate checks to satisfy itself that the borrower would be able to repay this loan in a sustainable way?

- If so, did it make a fair lending decision?

- If not, would those checks have shown that the borrower would've been able to do so?
2. Did George Banco.com obtain Mr K's properly informed consent before binding him to the guarantee and indemnity agreement?
 3. Did George Banco.com complete reasonable and proportionate checks to satisfy itself that Mr K was in a position repay the loan in the event the borrower did not?
 - If so, did it make a fair lending decision?
 - If not, would those checks have shown that Mr K would've been able to do so?
 4. Did George Banco.com act unfairly or unreasonably in some other way?

If I determine that George Banco.com didn't act fairly and reasonably in its dealings with Mr K and that he has lost out as a result, I will go on to consider how George Banco.com should put things right.

1. Did George Banco.com complete reasonable and proportionate checks to satisfy itself that the borrower would be able to repay this loan in a sustainable way?

I've outlined above some of the regulations in place at the time George Banco.com provided the loan to the borrower. It had to carry out a reasonable and proportionate assessment of whether they could afford to repay their loan in a sustainable way. The fact that there was a guarantee and indemnity agreement in place - and so the potential for George Banco.com to pursue Mr K instead of the borrower - doesn't lessen that obligation.

However, as I've mentioned, the borrower has passed away. And the personal representatives of the estate are not parties to this complaint. I don't have information about the borrower's circumstances or evidence of what George Banco.com did before it agreed to lend to them. But in any event, I don't think I need to make a finding on this question for reasons I'll explain below.

2. Did George Banco.com obtain Mr K's properly informed consent before binding him to the guarantee and indemnity agreement?

George Banco.com was required to obtain Mr K's properly informed consent before binding him to the guarantee and indemnity agreement. This could only be done after having provided him with an adequate explanation of the circumstances in which the guarantee and indemnity might be called upon and what the implications of this would be for Mr K.

Mr K's representative argues that the guarantee isn't enforceable against Mr K because there wasn't a term in the guarantee and indemnity agreement which expressly stated he would be required to repay the loan in the event of the borrower's death. In other words Mr K thinks that the guarantee isn't enforceable in this situation.

I have seen a copy of the loan agreement signed by the borrower. It does state that George Banco.com shall be entitled to call on the guarantee in a number of situations including: "if you die".

There is no similar term expressed in the guarantee and indemnity agreement signed electronically by Mr K. I accept that George Banco.com may have provided a copy of the borrower's signed loan agreement to Mr K but given that he did not sign that – and was only required to sign the guarantee and indemnity agreement I have some concerns about whether George Banco.com is correct in its assertion that the guarantee is enforceable in these circumstances.

However – as with question 1 – I don't need to make a finding on this issue because, even if I'm mistaken and the term in the credit agreement means that the guarantor remains liable in the event of the borrower's death, I am upholding Mr K's complaint for other reasons. I'm satisfied that George Banco.com failed to do enough in respect of its obligations under question 3.

3. Did George Banco.com complete reasonable and proportionate checks to satisfy itself that Mr K was in a position to repay the loan in the event the borrower did not? If so, did it make a fair lending decision? If not, would those checks have shown that Mr K would've been able to do so?

The rules and regulations required George Banco.com to carry out a reasonable and proportionate assessment of whether Mr K could afford to repay this loan in a sustainable manner should the borrower fail to do so. It had to carry out this guarantor-focused assessment in addition to any checks it was required to undertake in relation to the borrower. In effect this meant that George Banco.com had to ensure that, if the guarantee was enforced against Mr K, it wouldn't adversely impact Mr K's financial situation. It had to consider the effect of having to make the loan repayments on Mr K if the borrower didn't.

The checks George Banco.com did had to be proportionate to the specific circumstances of the loan. And what is proportionate will depend on a number of factors including things like the consumer's financial history and current situation as well as things such as the amount, type, cost of the credit being sought.

In light of this, I think that a reasonable and proportionate check ought generally to have been more thorough:

- the lower a customer'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 term of the loan (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make payments for an extended period);

I've carefully considered what a reasonable and proportionate check should've looked like when George Banco.com was in the process of approving Mr K as the guarantor for this loan which - to confirm - was a loan of £6,000 to be repaid over the following five years. The monthly repayments were to be around £226, meaning that the total to be repaid was over £13,500.

In its response to our adjudicator's assessment George Banco.com raises some questions about proportionate checks. I've thought about these but it hasn't persuaded me that George Banco.com did enough in this case. And in any event, like our adjudicator, I think that the

information George Banco.com already had was sufficient for it to conclude that the repayment of Loan 3 – if Mr K were to be called on as guarantor – would be unsustainable for him.

However, as George Banco.com has concerns about the matter perhaps it would be helpful if I outlined my conclusions on this issue.

The loan in question was the third loan taken by the borrower in 14 months. The borrower had begun by borrowing £3,000 over 48 months with monthly repayments of around £125 (Loan 1). Seven months later they refinanced Loan 1 with Loan 2. This was for £4,000 but of that the borrower received only around £1,020 because £2,980 went directly to settle Loan 1. The repayments for Loan 2 increased to £150 per month and the term was extended – most likely to keep down the monthly cost - to 60 months.

Seven months after taking Loan 2 the borrower refinanced again with Loan 3. This time the loan was for £6,000 of which the borrower received around £2,175 because the rest went to settle directly Loan 2.

Mr K was the guarantor on each occasion. Despite the amount being borrowed doubling, and the repayments increasing to £226, it seems that George Banco.com did the same checks as it had for Loans 1 and 2. From my understanding George Banco.com actually did less because it had verified Mr K's income through payslips for at least one the earlier loans: it didn't do this for Loan 3.

Potentially Mr K could've been liable for the repayment of the whole loan – a significant sum of over £13,500 over 60 months. In other words George Banco.com could've pursued payments from Mr K as the guarantor of £226 each month for five years – from October 2017 to September 2022. This was a very serious commitment for anyone but, particularly so for someone in Mr K's circumstances – some details of which George Banco.com was aware. As such it warranted a thorough assessment to ensure that he'd be able to repay it in a sustainable manner.

As I've mentioned, under CONC the risk of the credit not being sustainable directly relates to the amount of credit and the total charge relative the customer's financial situation (and for "customer" read "guarantor").

And to be sustainable Mr K had to be able to make the repayments without undue difficulties. In particular George Banco.com should've been satisfied – through its assessment that Mr K would be able to make repayments on time, while meeting his other reasonable commitments, without having to borrow to meet the repayments, over the life of the agreement out of income and savings.

I can see that George Banco.com did some level of credit reference agency check for Mr K. And from what it's shown me it doesn't seem there was anything so adverse that George Banco.com should've declined Mr K as guarantor on the basis of those results. But George Banco.com was provided with information about Mr K's personal day to day financial situation – and it was this which should've concerned George Banco.com.

Mr K had declared a monthly income of £1,200 at the point each loan was taken. Our adjudicator mentioned that she had seen on his bank statements that his income was around £1,300. But I've looked across the period and I can see that Mr K's salary varied. Sometimes it was less than £1,100. At others it exceeded the £1,200 he'd declared. But a

fair ball-park figure was between £1,200 and £1,300. This is a relatively low income compared to the national average salary at the time which was well over £20,000 per year. Even without taking account of any expenses Mr K might have had, repayment of a loan at £226 per month was going to take over one-sixth of his take home pay. And this was for a loan where he hadn't been the principal borrower.

I note that George Banco.com didn't question whether it was correct that over the 14 months of borrowing the amount of Mr K's "cost of living" figure hadn't changed at all. It had remained at £620. And from what I've seen this figure wasn't broken down further to provide details of how it had been reached.

Of concern to me is the rent figure declared by Mr K at the time he took Loan 3. I've listened to the call recording of the conversation between George Banco.com and Mr K prior to Loan 3 being approved. Mr K told the George Banco.com member of staff that it varied and was roughly between £50 and £100. The George Banco.com member of staff suggested that he put down £75 and Mr K replied "OK". Firstly as George Banco.com was undertaking an assessment of Mr K's ability to repay the loan if called upon to do so, I think it should've taken the higher figure of £100 for its assessment.

And secondly I note that for Loans 1 and 2 George Banco.com had recorded a rent figure of £150. But it doesn't seem it questioned Mr K about this reduction. Instead it simply entered a figure of £75 and proceeded to carry out its assessment based on that. I'm not suggesting that Mr K was misleading George Banco.com in any way at all. From what I can tell in the bank statements it looks as though he was paying £100. My point is that George Banco.com should've done more to confirm the figure than pick a mid-point and run with that especially in a situation like this where the margins were so small.

So I think George Banco.com should've done considerably more than it did to verify Mr K's financial circumstances. However, despite being satisfied that George Banco.com failed to do enough at the point it assessed whether Mr K would be able to repay Loan 3 sustainably if the borrower failed to do so, even on the information it did obtain, it shouldn't have approved Mr K as the guarantor.

According to George Banco.com it obtained the following information through its checks:

Income £1,200
Fixed credit £143
Revolving credit £96
Rent £75
Monthly expenditure £620

It says that this therefore left Mr K with £266 per month from which to meet the repayment of the loan. After the loan repayment of £225.63 this left Mr K with a disposable income of £40.37.

It's unclear what the £620 declared as "monthly expenditure" included because as I've mentioned, I haven't seen anything to suggest that George Banco.com broke this down. But Mr K has confirmed and his bank statements support this - he was paying around £200-£300 per month as child maintenance so it's likely to have been included in the £620. And it seems to me that the declared £620 was essentially Mr K's regular minimum spend each month. I don't think it's likely that it included a figure for unusual, irregular or unexpected expenses - or an amount for gifts or socialising.

In its response to our adjudicator George Banco.com questions whether a reasonable disposable income is £40, £75, £150 or £200? And it adds that this is for the business to decide in compliance with FCA guidance and regulations.

I don't disagree that as part of its assessment a business may want to decide what sort of figure might be a reasonable disposable income for someone called upon to repay a loan. But that doesn't mean that its decision will not be scrutinised. This is because whatever figure the business decided upon it also had to consider the risk to Mr K of him not being able to repay the credit sustainably.

I think George Banco.com acted irresponsibly when it concluded that a monthly sum of £40.37 disposable income from which to meet everything else not included in its list – potentially for five years – was sufficient.

In these circumstances George Banco.com shouldn't have approved Mr K as a guarantor. As it did, it treated him unfairly and I require George Banco.com to put things right in the way I describe below.

4. Did George Banco.com act unfairly or unreasonably in some other way?

Given the relationship between the borrower and Mr K it's not surprising that Mr K has been devastated by his loss. In addition to the sadness and grief he has suffered through the passing of the borrower, Mr K says he's been caused considerable further upset by the conduct of George Banco.com as regards its contact with him about Loan 3. And from what I've seen I think that George Banco.com has added to the distress already being felt by Mr K because of the way it behaved after it was informed of the borrower's death.

Our adjudicator recommended that George Banco.com pay Mr K £200 for the trouble and upset it has caused. It doesn't agree saying:

In relation to the contact after the death of the borrower, you have asked for £200 to be paid as you believe George Banco could have stopped any automated letters and emails being sent. This was responded to in our final response letter and I am unable to ascertain from your review what letters or emails were incorrectly sent. We put the account on hold and no communication was sent on the agreed times. Whilst I appreciate it may have been good practice to put a hold on communication indefinitely, we still required contact from [Mr K] regarding the account and for him to complete an Income and Expenditure form in order to agree the new repayments if he was in financial difficulty.

I understand that a lender is likely to want some clarity as to how the person, it deems is responsible for the loan, intends to repay it. But it seems to me from George Banco.com's response above that it has not taken into account the fundamental principal of treating its customer fairly.

George Banco.com has provided some contact notes relating to communications on the account. Within about 11 days of the borrower dying a third party friend of the family called George Banco.com to let it know the news. During that call George Banco.com requested a copy of the death certificate and – according to its notes – discussed the existence of the guarantor.

Later that morning George Banco.com sent an email to Mr K and the third party to say that it was sad to hear of the news. And it attached an income and expenditure (I&E) form for Mr K to complete and return.

It's apparent from this that George Banco.com was immediately concerned about repayment of the loan. A few minutes later Mr K rang George Banco.com and gave it permission to speak with the third party. The notes say that George Banco.com advised that the guarantor would be liable for the account. It added exclusion to the account meaning that automated contact would cease for two weeks. There was some discussion over the following days about how much it would cost for Mr K to settle Loan 3 – it seems he wanted to understand his options. The third party also explained that Mr K didn't think that the amounts being quoted by George Banco.com were correct or that it had done enough during its assessment of him as guarantor.

Over the following weeks – which included the Christmas period - George Banco.com made numerous attempts to request payment from the borrower's bank account. Two of these were within the exclusion period. These requests were unsurprisingly declined. Around a month after the initial contact and numerous attempts to request payment from the borrower's account George Banco.com sent a notice of arrears to the borrower and Mr K by email.

The third party again contacted George Banco.com through email to explain that the notice (which included reference to potential legal action) to the borrower had been received by Mr K even though George Banco.com had been advised of the death of the borrower. They added that Mr K was in deep grief and had understood that Mr K would be allowed a period for grieving and to settle affairs.

The third party added that the succession of emails had led to constant upset for Mr K and that George Banco.com had compounded and intensified Mr K's grieving period with additional unnecessary stress. It seems that at that point George Banco.com did register the death of the borrower and cancelled the means to collect repayments from their account.

George Banco.com replied by email to the third party again – *"I am sorry for yourself and [Mr K's] loss. I will need [the borrower's] death certificate to update the system. Please reply to this email with the death certificate. I have put 7 days breathing space on the account. However we do urgently need to discuss the account with [Mr K] as the arrears are very serious. Kind regards..."*

So far as I can see a payment had been made at the start of the month in which the borrower died. This means that at the time of this email only two repayments had been missed (the second one was around 8 days past due) so I find the description of the arrears as "very serious" to be somewhat alarming – especially given that George Banco.com was aware of the passing of the borrower. I think that this description is likely to have led to Mr K feeling additional concern – especially as discussions were "urgently needed".

Around a week after this the third party complained on behalf of Mr K to George Banco.com. There was some interim correspondence during which I note that the third party called to say that despite having made a formal complaint Mr K had received another letter. George Banco.com advised them that the account was in serious arrears again. The third party informed George Banco.com that Mr K would not be paying until the complaint had been dealt with because the basis of the complaint itself was that Mr K shouldn't have to pay. George Banco.com also told the third party that Mr K would have to pay all the arrears once

the complaint was resolved. This suggested that George Banco.com had already decided that Mr K's complaint was being rejected.

But it wasn't until ten days later that it sent its final response letter about the complaint to Mr K. In this it explained why it didn't agree that it had done anything wrong. The last paragraph of the final response letter stated that if George Banco.com did not receive Mr K's written acceptance of the letter as its final response within 21 days it would interpret that as his acceptance and the complaint would be closed.

Despite that final paragraph providing what appears to be some breathing space, on the following day an email and a text were sent to Mr K by George Banco.com. The writer stated that they had tried calling Mr K but hadn't received a response. It added *"The account that you guarantee is in serious arrears of £676.89. I only have a matter of days to work with yourself before the account gets sent over to our pre litigation team and possible legal action requiring. I want to help you and prevent this from happening. Please call me as a matter of urgency today on...."*

Just over a week later an email was again sent to Mr K by George Banco.com after it had failed to contact him through his mobile phone number. On the following day – and still within the 21 day period referred to in the final response letter - George Banco.com sent Mr K a letter. This stated that George Banco.com had tried to contact Mr K and that his details were to be passed on to another party within the next seven days and that a representative may be sent to the property to establish contact with Mr K. The following paragraphs in large red capital letters threatened legal action.

The third party helping Mr K emailed George Banco.com to confirm (within the 21 day time limit) that Mr K didn't agree to the complaint being closed - apparently unaware that the threatening letter had been sent the day before. Following receipt of that letter the third party contacted this Service and emailed George Banco.com to confirm that the complaint was continuing.

In response George Banco.com stated that the legal action letter had been automated due to the level of arrears on the account and that there was an exclusion on contact with Mr K as regards automated emails and texts but that George Banco.com couldn't put a stop on letters being sent out.

As I've said, I understand that a lender is likely to be concerned about how it might recover a debt where the borrower has died. And I don't disagree that a lender should be able contact the parties involved to discuss the matter of repayment especially where arrears may be increasing. But in such circumstances I think a lender should endeavour to proceed with the utmost compassion and care. I have concerns that George Banco.com apparently doesn't have the means to put a stop on threatening letters going out to its recently bereaved customers. Mr K had lost someone very close to him, very suddenly. On top of that - according to George Banco.com, he was now liable for a significant debt. In this case George Banco.com had been in contact with the third party who was supporting Mr K from the earliest point. Mr K had consented to George Banco.com dealing with that third party in relation to the loan.

And yet George Banco.com continued to pursue Mr K (and early on, the borrower despite being aware they had passed away) on numerous occasions. I find the tone of much of the correspondence to be alarming and later, threatening. I think George Banco.com acted unfairly when it pursued Mr K as it did following the death of the borrower.

putting things right

I'm satisfied that George Banco.com acted unfairly when it accepted Mr K as a guarantor on Loan 3. As he is now being expected by George Banco.com to make repayments on a loan he shouldn't have been accepted as a guarantor for, I think he stands to lose out because George Banco.com did something wrong.

Where I find that a business has done something wrong, I'd expect that business – in so far as is reasonably practicable – to put the consumer back in the position they would be in now if that wrong hadn't taken place. In essence, in this case, this means George Banco.com putting Mr K in the position he'd now be in if he hadn't unfairly and unreasonably been accepted as a guarantor on Loan 3.

I also have the power to make an award to reflect any trouble or upset George Banco.com's wrongdoing has caused Mr K. Mr K's representative says that the impact on Mr K from the way George Banco.com has behaved towards him since the passing of the borrower has had a detrimental impact on his health. I think George Banco.com's failure to treat Mr K fairly during a very difficult period for him has resulted in Mr K suffering additional upset and stress.

So this is how I require George Banco.com to put things right:

- a) release Mr K from any obligations under the guarantee and indemnity agreement and then terminate it
- b) remove any information about this loan from Mr K's credit file
- c) pay Mr K a sum of £200 to reflect the trouble and upset caused to him when George Banco.com acted unfairly and/or unreasonably towards him

my final decision

For the reasons outlined above I uphold Mr K's complaint and require George Banco.com Limited to put things right in the way I've explained.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 23 October 2019.

EJ Forbes
ombudsman