

The complaint

Mr M complains that Amigo Loans Ltd lent to him in an irresponsible manner.

What happened

Mr M was given two loans by Amigo in February and June 2018. His first loan, for £4,000, was repaid around a month into the planned three-year term. His second loan, for £7,500 was due to be repaid over a five-year period. But Mr M has faced problems repaying that loan and a balance remains outstanding. Both loans were guaranteed by Mr M's partner.

When Mr M first complained to Amigo it thought it had been reasonable to give him the first loan. But Amigo thought it had been incorrect to agree to give Mr M the second loan. So Amigo removed all the interest from that loan, refunding the interest that Mr M had paid to date. As part of the settlement agreement Mr M repaid some of the arrears on the loan. But that still left a significant outstanding balance that Amigo requires Mr M to repay.

When Mr M's complaint was assessed by one of our adjudicators she thought that Amigo shouldn't have agreed to give the first loan to Mr M either. Amigo accepted that assessment and offered to refund the interest Mr M had paid in line with what our adjudicator had recommended. But Amigo told Mr M that it intended to use that refund to reduce his outstanding balance on the second loan. Our adjudicator thought that was reasonable however Mr M didn't agree. So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process.

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 approach to unaffordable/irresponsible lending complaints on our website and I've kept this in mind while deciding Mr M's complaint.

When it looked at the complaint Amigo recognised that it shouldn't have given the second loan to Mr M. And following our adjudicator's assessment Amigo has agreed it shouldn't have given the first loan either. So don't need to decide whether those loans were lent unreasonably. But for completeness I will, very briefly, summarise what I have seen.

I don't think the checks Amigo did before agreeing each loan were proportionate. I think, given what Amigo knew about Mr M's sources of income, and his past credit history, it would have been right for Amigo to independently verify the true state of Mr M's finances before agreeing the loan. Had Amigo done those checks I think it would have seen that Mr M's finances were under significant pressure.

Mr M has told us, and his bank statements clearly evidence, that he was spending significant sums each month on online gambling activities. I agree with Amigo's conclusion that

evidence would have meant that it shouldn't have lent to Mr M. So I think that Amigo needs to put things right, and how that should be done is what I need to consider in this final decision.

As I said earlier Amigo has already paid Mr M some compensation in relation to loan 2. The information I have about how that compensation was calculated is limited. So, whilst I have no reason to doubt Amigo's calculations, I cannot confidently conclude that it is in line with what I would recommend. So I will include loan 2 in the redress I am requiring Amigo to pay, although I will obviously direct that Amigo can take account of the compensation it has paid when it makes its final calculations.

The dispute that still remains with the compensation is whether it is reasonable for Amigo to use the refund it is offering in relation to loan 1 to offset the money that Mr M still owes in relation to loan 2. Generally I consider that it is fair and reasonable that a consumer should repay the principal that they have borrowed, and had the benefit of, on a loan. And I haven't seen anything to make me think that shouldn't apply here. Loan 2 was taken very shortly after loan 1 had been repaid. I don't think there was sufficient gap between the two loans for me to consider Mr M's relationship with Amigo to have been in two parts. It seems to me that it was one continuous relationship. And so I think it is reasonable that any compensation being paid in relation to loan 1 should be available for Amigo to use to reduce the outstanding balance on loan 2.

Putting things right

I don't think Amigo should have lent to Mr M in February or June 2018. So, to put things right Amigo should;

- refund all the interest and charges Mr M paid on loan 1
- pay interest of 8% simple a year on any refunded interest and charges from the date they were paid (if they were) to the date of settlement†
- remove any interest and charges still outstanding on loan 2 and treat all the payments Mr M made towards this loan as payments towards the capital. Amigo may however take account of the refund that it has paid to Mr M when assessing the value of the payments he has made.
- if reworking Mr M's loan account as I've directed results in Mr M effectively having made payments above the original capital borrowed, then Amigo should refund these overpayments with 8% simple interest calculated on the overpayments, from the date the overpayments would have arisen, to the date of settlement†.
- If reworking Mr M's loan account leaves an amount of capital still to be paid, then Amigo can use the total refund for loan 1 (after the deduction of tax) to offset this. And if there still remains an outstanding capital balance then I remind Amigo that it should take a sympathetic view when seeking to agree an affordable repayment plan with Mr M
- remove any adverse information recorded on Mr M's credit file in relation to the loans

† HM Revenue & Customs requires Amigo to take off tax from this interest. Amigo must give Mr M a certificate showing how much tax it's taken off if he asks for one.

My final decision

My final decision is that I uphold Mr M's complaint and direct Amigo Loans Ltd to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 25 February 2021.

Paul Reilly
Ombudsman