The complaint

Mr D is unhappy that Amigo Loans Limited (Amigo) gave him two loans in 2018. He said that if Amigo had completed more thorough affordability checks it would've seen that he wasn't in a position to manage the repayments.

What happened

In February 2018, Mr D applied for a guarantor loan of £3,000 repayable over 36 months. The monthly repayment was £146.37 and the total amount repayable was £5,269.

In July 2018, Mr D applied for additional funds, which were given by way of a 'top up' loan of £4,000 over 36 months. £2,763 of this loan was used to repay the remaining balance on the first loan. The monthly repayment was £195.16 and the total amount repayable was £7,025.76.

In August 2019 Mr D complained to Amigo about its decision to lend.

Amigo didn't uphold Mr D's complaint. It said, in summary, that:

- The income and expenditure assessment showed that the repayments were comfortably affordable and the checks it completed supported this.

- The expenditure figures provided were verified against national averages. The income was verified using a check provided by a credit referencing agency.

- Mr D's credit file was reviewed to ensure that all expenditure on existing credit items was accounted for within his overall expenditure.

- Based on this and other information Mr D had provided, it was satisfied that reasonable and proportionate checks were completed to confirm affordability.

Mr D remained unhappy and brought his complaint to this Service. He said that he had been going through a tough time financially and trying to manage a gambling problem when he applied for the first loan. He said that Amigo hadn't asked him for actual proof of his income or expenditure and this had led to him getting into a further debt cycle.

An investigator here looked into things and upheld the complaint. In summary she said that:

- Mr D's credit file showed that he had been struggling with his finances, including a number of account defaults, one of which related to a payday loan. This was at odds with the large disposable income he had declared.

- This should have prompted Amigo to carry out further checks to ascertain whether the lending would be affordable. This could reasonably have included requesting recent bank statements, to give a clearer picture of what was happening.

- Amigo would've seen some returned direct debits, payday loans being taken out and significant amounts being spent on betting/casino sites. Amigo would have realised that Mr D would struggle to sustainably meet the loan repayments. And also that access to additional funds may cause further problems, given the amount spent on gambling.

- It's therefore reasonable to conclude that Amigo didn't make a fair lending decision.

- In terms of the second loan, the credit report showed a 184% credit increase within the six month period between both loans. This should've prompted Amigo to carry out additional checks.

- Mr D's bank statements showed a continued gambling habit and returned direct debits. So, the additional lending was unlikely to be affordable/sustainable for Mr D.

- Mr D should therefore only have to repay the money he borrowed and had use of. So, Amigo should calculate the position Mr D would be in had he only borrowed the capital, with no interest applied. If this meant that Mr D had paid more than the capital borrowed, Amigo should refund the overpayments.

- If Amigo needs to refund any payments to the guarantor, it can't make Mr D liable for the capital part of the refund, so that the balance is in excess of what Mr D owed when he made his complaint.

- Amigo should remove any negative information recorded on Mr D's credit file, regarding the loans.

Amigo disagreed. In summary, it said that:

- It treated Mr D fairly and its actions didn't cause him any detriment.

- The onus must be on Mr D to demonstrate on the balance of probabilities that Amigo's actions were not only inadequate or unfair but also directly causative of detriment to him.

- The investigator failed to take adequate account of the nature of the market Amigo operates in (and it made a number of observations about this market and the people Amigo typically lent to).

- It disagrees that the checks carried out were inadequate. It believes the checks were fully compatible and compliant with the legal and regulatory requirements of the time.

- The investigator had (without establishing that Amigo's decision process was clearly flawed) made selective use of the facts of the case and information that was available to Amigo, to replace its reasonable view as lender at the time, with the investigator's own retrospective view. Amigo doesn't believe this is a reasonable approach in principle.

- It believes the steps it went through to assess a loan application (which it described in generic terms) were proportionate. And that the sort of extensive and individually crafted inquiries implied in the investigator's view, would be disproportionate and uneconomic.

- Based on Mr D's stated income and expenditure at the point of each application, he had a net disposable income of over £1,500 on each occasion. His disclosure of expenditure was full and complete in both applications.

- At the time of both applications, Mr D was on a reasonably stable financial footing. His credit history was satisfactory and didn't indicate an over-reliance on credit or significant challenges managing the credit he had in place.

- The 184% credit increase mentioned by the investigator was clearly due to the approval of the first loan.

- The evidence suggests both loans were affordable and it was reasonable for Amigo to have assessed them as such given the information provided by Mr D and the regulatory standards of the day.

- Our assessment appears to be based on the fact that Mr D made misleading statements to Amigo in relation to his financial situation when the loans were agreed. If the case is to be upheld, Amigo would need to reserve the right to have sight of all relevant evidence and consider whether it is adequately verified, if we are relying on it to make a binding decision.

I issued a provisional decision setting out that I was minded to uphold the complaint. Briefly, this was because I didn't think that Amigo had carried out reasonable and proportionate checks before agreeing to either of the two loans.

I also set out that I thought if Amigo had carried out reasonable and proportionate checks, it likely wouldn't have lent Mr D the money, on the basis that neither loan was affordable. And I set out what I thought Amigo should do to put things right.

I said that I would take into account any further information and arguments received by 9 January 2021 from both parties, before reaching a final decision.

Mr D accepted my provisional findings. Amigo didn't provide a response.

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.

Neither party has provided any further information or arguments and so there is no reason for me to deviate from my provisional conclusions.

I am therefore still upholding this complaint in relation to both loans. I'll explain why.

Mr D applied for the loans in February and July 2018, so the Consumer Credit sourcebook regulations apply. The following regulations are particularly relevant in this case and are quoted as they stood at the time:

5.2.1R

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

(2) A firm carrying out the assessment required in (1) 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*….

(3) A creditworthiness assessment must be based on sufficient information obtained from:

(a) the *customer*, where appropriate; and

(b) a *credit reference agency*, where necessary.

5.2.3G

The extent and scope of the *creditworthiness assessment….* in a given case, should be dependent upon and proportionate to factors which may include one or more of the following:

(1) The type of *credit;*
(2) The amount of the *credit*
(3) The cost of the *credit;*
(4) The financial position of the *customer* at the time of seeking the *credit;*
(5) The *customer's* credit history, including any indications that the *customer* is experiencing or has experienced financial difficulties;
(6) The *customer's* existing financial commitments including any repayments due in respect of other *credit agreements, consumer hire agreements, regulated mortgage contracts,* payments for rent, council tax, electricity, gas, telecommunications, water and other major outgoings known to the *firm;*
(7) Any future financial commitments of the *customer;*
(8) Any future changes in circumstances which could reasonably be expected to have a significant financial adverse impact on the *customer;….*

5.2.4G

(2) 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.

(3) A firm should consider the types and sources of information to use in its *creditworthiness assessment….*which may, depending on the circumstances, include some or all of the following:

(a) its record of previous dealings;
(b) evidence of income;
(c) evidence of expenditure;
(d) a credit score;
(e) a *credit reference agency* report; and
(f) information provided by the *customer.*

5.2.6G

(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…. 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.*

5.3.1G

(2) The *creditworthiness assessment*….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.

(4) If a *firm* takes income or expenditure into account in its *creditworthiness 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;…*

5.3.2R

A *firm* must establish and implement clear a procedures to make a reasonable *creditworthiness assessment…*

5.3.3G

Under the procedures required by *CONC 5.3.2 R* a *firm* should take adequate steps, insofar as it is reasonable and practicable to do so, to ensure that information (including information supplied by the *customer*) on an application for *credit* relevant to a *creditworthiness assessment*…is complete and correct.

5.3.7R

A *firm* must not accept an application for *credit* under a *regulated credit agreement* where the *firm* knows or ought reasonably to suspect that the *customer* has not been truthful in completing the application in relation to information supplied by the *customer* relevant to the *creditworthiness assessment*….

5.3.8R

An example of where a *firm* ought reasonably to suspect that the *customer* has not been truthful may be that the information supplied by the *customer* concerning income or employment status is clearly inconsistent with other available information.

So, in essence, Amigo needed to check Mr D's creditworthiness (focused on affordability) and the checks it carried out needed to be proportionate given the relevant factors.

Bearing this in mind, 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); and

- the *greater* the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

There may also be other factors which could influence how detailed a proportionate check should've been for a given loan application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances.

I've carefully thought about all of the relevant factors in this case.

Bearing in mind the rules, regulations, guidance and good industry practice, I still think that there are three key questions for me to think about while looking at Mr D's complaint. These are:

1. Did Amigo complete reasonable and proportionate checks to satisfy itself that Mr D would be able to repay the loans in a sustainable way?

    a. If so, did it make fair lending decisions?

    b. If not, would those checks have shown that Mr D would've been able to do so?

2. Should Amigo have realised it was increasing Mr D's indebtedness in a way that was unsustainable or otherwise harmful, so shouldn't have provided either loan?

3. Did Amigo act unfairly or unreasonably in some other way?

But before considering those questions, I'll first deal with Amigo's contention that it was unreasonable for the investigator to have retrospectively considered whether the checks carried out by Amigo were proportionate and the conclusions it would have drawn had it (in the investigator's opinion) carried out proportionate checks. I note that Amigo hasn't said why this was unreasonable.

I still disagree. Given the nature of the complaint raised by Mr D, it is not only reasonable, but *necessary* for us to consider those things, in order to determine whether Amigo did what it was required to do and, if it didn't, consider what this means.

Amigo has also said that it is for Mr D to demonstrate on the balance of probabilities that Amigo's actions were not only inadequate or unfair but also directly causative of detriment to him.

Again, I still disagree. Mr D has raised concerns with Amigo and Amigo has not upheld his complaint. In the circumstances, it is for me to determine whether Amigo did what it needed to do and, if it didn't, what (if anything) needs to happen to put things right.

So, I've again thought about whether Amigo carried out proportionate checks in relation to Mr D's loan application, to satisfy itself that Mr D would be able to repay the loans in a sustainable way.

Loan One

<u>Did Amigo complete reasonable and proportionate checks to satisfy itself that Mr D would be able to repay this loan in a sustainable way?</u>

Amigo was required to carry out proportionate checks, having regard to the relevant factors. These checks could include verifying the stated income and expenditure, amongst other things. Amigo says it checked Mr D's credit history and was satisfied with what it saw. It also says that it established that he had a disposable monthly income of £1,500.

Mr D was applying to borrow £3,000 over a period of 3 years. Under the terms of the loan, the total amount payable was over £5,000. I consider this to be a reasonably significant undertaking involving a high-cost credit product, and one that significantly increased Mr D's indebtedness.

Amigo has said that at the time of the application, Mr D hadn't taken any new items of credit in the six months prior. It said that whilst Mr D's credit file evidenced that he held four defaulted items of credit, each had fallen into a state of arrears some years ago. Amigo says that this shows Mr D was on a reasonably stable financial footing. It also says that in this context, the checks it carried out were both reasonable and proportionate. And that it was safe, appropriate and responsible to lend to Mr D. In response to the investigator's assessment, Amigo said that only one of the four unsettled defaults was a current account, not two as incorrectly suggested by the investigator.

When bringing the complaint, Mr D said that he was going through a tough time financially and trying to manage a gambling problem developed from the pressure of having high interest loans. He said he doesn't believe he should've been given the loan. And that, had Amigo asked for bank statements, it would've seen that he wasn't in a place to be responsible for the repayments.

I sympathise with the predicament Mr D was in, in terms of his gambling problem. But Amigo wasn't aware of this when it agreed to lend. In order to say that Amigo should've taken this into account before agreeing to lend, I'd need to conclude that the checks it carried out weren't proportionate *and* that proportionate checks would most likely have uncovered the problem gambling.

Under the relevant CONC rules at the time, 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. And a firm must not accept an application for credit where the firm knows or ought reasonably to have suspected that the applicant had not been truthful in completing the application. An example of this is where the information supplied by the applicant concerning income or employment status, is clearly inconsistent with other available information.

Amigo has said it validated Mr D's income using a check provided by a credit reference agency. And that it verified Mr D's expenditure statement by using ONS averages. I have some concerns with Amigo's course of action, bearing in mind it has also said greater emphasis should be placed on the nature of the market it served. ONS data is based on the finances and expenditure of the average consumer. But Amigo knew, when it lent to Mr D, that it was providing a loan to someone who fell outside this average portfolio.

I'm also mindful that Amigo hasn't provided any detail about how these checks worked in Mr D's case, what the checks showed, and why it considered them to be adequate.

So, I'm still not able to put any particular weight on these checks.

I remain of the view that Amigo was in receipt of information that means it ought to have doubted the income and expenditure information provided by Mr D. First, the credit report it obtained showed that Mr D had four unsettled defaults, with more than £4,000 still owed. This is inconsistent with Mr D's having a declared disposable income of over £1,500. It was also, of itself, an indication that Mr D was still experiencing financial difficulties at the time of applying for the loan.

In addition to this, during one of the calls between Amigo and Mr D before the loan was taken out, Mr D expresses concern about the monthly repayment amount of around £300 (presumably this being the repayment figure if the money was borrowed over one year). The Amigo representative then gives Mr D monthly repayment figures for a two year loan (£185.45), a three year loan (£146.37), a four year loan (£128.33), or a five year loan (£118.57). Mr D then asks what the interest would be over three years and the Amigo representative gives the total repayment amount. Mr D then says "it's probably more possible (or plausible) over the three year marker…".

This in particular ought to have caused Amigo to doubt the income and expenditure information Mr D had provided. If he had disposable income of around £1,500, why was he expressing concern at meeting a monthly repayment figure of around £300? At that point, I think it would've been proportionate to explore this apparent inconsistency, before agreeing to lend to Mr D.

Given the level of inconsistency in the information gathered and the questions arising from it, I still think it would've been proportionate and reasonable to verify both Mr D's income and expenditure.

Amigo could have done this in different ways – in the investigation of complaints like these, this service usually asks to review relevant bank statements.

So, I need to decide whether it is more likely than not that a proportionate check would have told Amigo that Mr D would've been unable to sustainably repay the loan.

I've seen a number of Mr D's bank statements in the lead up to the first loan. Of course, I accept different checks might show different things. And just because something shows up in the information Mr D has provided, it doesn't mean it would've shown up in any checks Amigo might've carried out. But in the absence of anything else from Amigo showing what this information would have shown, I still think it's perfectly fair, reasonable and proportionate to place considerable weight on it as an indication of what Mr D's financial circumstances were likely to have been.

The statements provided by Mr D show significant gambling expenditure – around £700 in both October and November 2017 and nearly £3,000 in December 2017 (albeit seemingly with nearly £2,000 money in from a gambling company – possibly winnings). The statements also show a number of returned direct debits.

I cannot say for sure what Amigo would've done upon finding this out, but given the amount of money being spent on gambling, I think it's likely that there ought to have been real questions about whether it would've been responsible or appropriate to lend Mr D the money. Even if the gambling itself had not provided cause for concern, it seems that it is contributing to broader financial problems. For example, the returned direct debits themselves also suggest that Mr D was struggling to meet his existing commitments. And this would've called into question Mr D's ability to sustainably meet the repayments.

So in summary, I still don't think the checks Amigo carried out were proportionate. To the extent that Amigo did check Mr D's income and expenditure declarations, it still hasn't been able to provide me with any details about how the checks worked, what they revealed, and so what level of confidence those checks provided. And I still think that had it carried out proportionate checks, it likely wouldn't have lent him the money.

<u>Should Amigo have realised it was increasing Mr D's indebtedness in a way that was unsustainable or otherwise harmful, so shouldn't have provided the loan?</u>

Because of the finding I've made above, it still isn't necessary for me to elaborate on this. Other than to say that at the point of applying for the loan, Mr D had a reasonably modest amount of existing debt. And I don't think that in agreeing to the loan, Amigo ought to have considered that it was increasing his indebtedness in a way that was unsustainable or otherwise harmful.

<u>Did Amigo act unfairly or unreasonably in some other way?</u>

At the point of bringing the complaint, Mr D hadn't alleged that Amigo acted unfairly or unreasonably in some other way. And I haven't seen that it did.

Loan Two

<u>Did Amigo complete reasonable and proportionate checks to satisfy itself that Mr D would be able to repay this loan in a sustainable way?</u>

Under the rules in place at the time, Amigo was again required to carry out proportionate checks, having regard to the relevant factors. These checks could include verifying the stated income and expenditure, amongst other things.

Loan 2 was sought by Mr D around five months after loan 1. He was effectively seeking to 'top-up' his first loan. Because of the way Amigo provides loans, he wasn't able to have more than one loan at a time. So he asked to borrow £4,000 over a period of three years. Over £2,750 of the £3,000 Mr D initially borrowed as part of loan 1 remained outstanding at this point. So Amigo retained this amount to settle loan 1 and Mr D received a little under £1,250 as the additional proceeds of loan 2. Under the terms of the new £4,000 loan, the total amount payable was over £7,025.76.

Amigo has said that at the time of the application, Mr D's circumstances hadn't changed very much. His income was declared as being the same and his expenditure very similar.

Amigo said that Mr D had the same four historically defaulted items of credit. And that Mr D had taken out two new items of credit within the last six months – the first Amigo loan and a current account with no overdraft. Amigo says this shows there were again no debt problems and all of the active debt items were budgeted for within the expenditure. Amigo also pointed out that the 184% credit increase mentioned by the investigator was due to the first Amigo loan.

Amigo said this showed that Mr D had remained on a reasonably stable financial footing.

The ‘loan purpose’ is documented as “home Improvements”. This seems strange given that Mr D was renting. Amigo doesn’t appear to have questioned this.

Mr D was looking to borrow more money only 5 months or so after taking the first loan. The account statement for loan one shows that Mr D managed to make his repayments on that loan. However, I think the fact Mr D wanted to borrow more money so quickly after the first loan (and bearing in mind that I have already concluded that the checks for the first loan weren’t sufficient in the circumstances) means that Amigo needed to carry out more than the automated income and expenditure checks it has described it did. Again, it hasn’t provided any details of what the checks showed and what Amigo took from that to satisfy itself that the increased borrowing would be affordable for Mr D.

So it seems that Mr D, who declared he again had disposable income of around £1,500, was apparently looking to borrow an additional amount – equivalent to less than one month’s declared disposable income – and to repay it over 4 years paying considerable interest in the process. And I note that the credit file showed none of the unsettled defaulted balances had reduced since the first loan was taken out – calling into question Mr D’s ability to be able to repay even more borrowing.

Taking all of this into account, I still think that Amigo ought to have carried out additional checks to the ones it did, to make sure that Mr D could afford the loan.

Again, Amigo could have done this in different ways, but for the purposes of my investigation, the simplest way of checking both income and expenditure is to obtain recent bank statements. Mr D has provided account statements in the lead up to the second loan.

Mr D had told us that between starting the first loan and applying for the second loan, he arranged for his salary to be paid into another account, one held jointly with his sister. He said his sister had set the account up and was trying to help Mr D with his gambling addiction.

This is consistent with what Mr D’s bank statements show – that his salary was paid into his account in the April statement, but not in the May or June statements. For the sake of completeness, I asked Mr D to provide statements for the other account. He had said he’s sent them in by post, but these haven’t been added to his file, possibly as a result of the pandemic restrictions. Our investigator asked Mr D if he could perhaps scan and e-mail them to us, but Mr D said that he sent us the original statements he received from the bank.

Given the reality of where we are, I’m still not convinced it’s necessary to see them. There’s no suggestion that Mr D’s circumstances had materially changed from when he applied for the first loan. The April 2018 statement for Mr D’s sole account shows a number of returned direct debits. And spending of over £1,100 with a betting company. And his May statement shows several returned standing orders.

I again cannot say for sure what Amigo would’ve done upon finding this out, but given the evidence of significant gambling and the many returned direct debits and standing orders, I still think it unlikely it would’ve considered it responsible or appropriate to lend Mr D the money.

So, in summary, I still don't think the checks Amigo carried out were proportionate for this loan also. And had it carried out proportionate checks, it likely wouldn't have lent Mr D the money.

Should Amigo have realised it was increasing Mr D's indebtedness in a way that was unsustainable or otherwise harmful, so shouldn't have provided the loan?

Because of the finding I've made above, it still isn't necessary for me to elaborate on this. Other than to say that at the point of applying for the loan, Mr D still had a reasonably modest amount of existing debt. And I don't think that in agreeing to the loan, Amigo ought to have considered that it was increasing his indebtedness in a way that was unsustainable or otherwise harmful.

Did Amigo act unfairly or unreasonably in some other way?

Again, at the point of bringing the complaint, Mr D hadn't alleged that Amigo acted unfairly or unreasonably in some other way. And I haven't seen that it did.

In conclusion

In conclusion, Amigo has done something wrong and it needs to do something to put things right.

Putting things right

When I find that a business has done something wrong, I'd normally direct it – as far as it's reasonably practicable – to put the complainant in the position they *would be in now* if the mistakes it made hadn't happened.

In this case, that would mean putting Mr D in the position he would now be in if he hadn't been given the loans in question.

However, this isn't straightforward when the complaint is about unaffordable lending. Mr D *was* given the loans and he used the money even though a significant proportion of loan two was used to repay loan one. And, in these circumstances, I can't undo what's already been done. So, it isn't possible to put Mr D back in the position he would be in if he hadn't been given loans one or two in the first place.

I don't think it appropriate for Amigo to benefit from an unfair lending decision.

In some cases, such as where it was evident at the time of lending that credit was likely to be used in a way that caused losses as a result of a serious gambling, and where this has led to significant financial difficulties, it may be fair to write off an outstanding loan balance. I've thought carefully about whether that's the right course of action in this case, but I remain of the view that it isn't appropriate in this case to write off any capital amounts. So, I still think a fair remedy in this case is to put Mr D in the position he would be in now, as though he had only borrowed the capital amounts i.e. without interest or other charges.

So, Amigo needs to:

- Calculate how much Mr D has paid in interest and charges to date (A)

It appears the loan is ongoing. If it is, then:

- The outstanding loan balance should be reduced by A and no future interest and charges applied to the loan. If this results in a ‘positive’ balance, this amount should be paid to Mr D.

If however the loan capital has already been repaid, then:

- add interest of 8% simple a year on all refunded interest and charges - from the date the loan capital was repaid to the date of settlement.

In either case, Amigo should remove any negative information about the loans from Mr D’s credit file.

My final decision

My final decision is that I uphold this complaint and I direct Amigo Loans Ltd to do what I’ve said above under ‘Putting things right’.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr D to accept or reject my decision before 12 February 2021.

Ben Brewer
Ombudsman