

The Complaint

Miss S has complained that Amigo Loans Ltd (“Amigo”) provided her with two unaffordable guarantor loans. She says that, if Amigo had carried out the right checks before providing her with the loans, it would have found that the loans were unaffordable for her.

Background to the Complaint

Amigo provided Miss S with two loans on 16 September 2016 and 1 December that year. Both loans were secured by way of guarantees and indemnity agreements.

Loan One

This was a £5,000 loan taken to purchase a car and consolidate some debt. It was repayable over 36 months and the monthly repayments were £243.95. The loan’s Annual Percentage Rate (APR) was 49.9% - which, when applied to the amount borrowed over the 36-month term, amounted to £3,782.20 in interest. As a result, the total amount payable was £8,782.20.

Miss S started her loan application online – completing an income and expenditure assessment when doing so. And not long afterwards, she was phoned by Amigo to discuss the application and complete the process over the phone.

Amigo pointed out that Miss S had declared her income and outgoings online – which were recorded by Amigo as £1,287 and £587 respectively. The conversation didn’t elaborate on much of what had been declared – though it did focus, at points, on house and life insurance as well as the declaration Miss S made online when she said that her partner paid the rent while she paid for food, utilities and other regular household bills.

Miss S declared that she was spending £10 a month on life insurance. And when asked by Amigo about what she might spend at most each month on house insurance should she have it in the future, she said it might be £15 a month.

Miss S also confirmed, when asked, that her partner was paying the rent as well as some of the other household bills at times and she said that she was confident that he would do so for the duration of the loan.

The conversation moved on to Miss S’s credit file. Amigo queried three existing accounts that were in default. When doing so, it reassured her that they wouldn’t stop her from getting the loan. But they needed to be budgeted for. Miss S indicated that she had arrangements in place to pay all three – declaring that two were £10 a month and the other was £50 a month. She also told Amigo that these accounts were what she wanted to consolidate using the money she was borrowing.

Amigo concluded the initial part of the conversation by asking Miss S if there were any other outgoings she needed to include and if she anticipated any changes over the next three years that might see her income go down and/or her outgoings go up. Miss S mentioned that she was paying £27 a month for her TV Licence. But other than that, she told Amigo that it

had everything. She also said that she didn't anticipate any changes to her outgoings or income as her jobs were secure and she hoped that her partner's business would go from strength-to-strength.

Amigo then calculated Miss S's disposable income as £700 and told her that it was £400 each month once the monthly repayment for the loan in question was taken into account. It also told her what would happen if she went over her budget and found the loan unaffordable.

At that point, Miss S told Amigo that she had two jobs. She said she was working for her guarantor for three days a week before going on to make the point that her income from that job was more than enough to cover the monthly repayment on the loan.

Miss S did go on to enquire about borrowing more than £5,000. But decided against it. And with that being the case, Amigo went ahead and lent Miss S the money she was after.

Loan Two

This was a £7,250 loan taken to purchase a car and refinance Loan One – which meant that Miss S borrowed £2,309.31 in new money. It was repayable over 60 months and the monthly repayments were £286.56. The loan's Annual Percentage Rate (APR) was 49.9% - which, when applied to the total amount borrowed over the 60-month term, amounted to £9,943.60 in interest. As a result, the total amount payable was £17,193.60.

This time around, it was Miss S who phoned Amigo to discuss the application and complete the process over the phone.

Two minutes into the call, Amigo spent 40 seconds or so running through Miss S's income and outgoings to ensure they hadn't changed since her loan application in September – which included what she had previously disclosed about the rent being paid for by her partner. Miss S confirmed that there hadn't been any changes to either her income or outgoings – though these were recorded at the slightly higher sum of £616.31.

Amigo then turned to Miss S's credit file. It queried a Doorstep Loan and an account she had for her utilities – which Miss S attributed to a meter she topped up each month. But neither query led to a more in-depth conversation about the results of Amigo's credit search.

The conversation then moved on to any anticipated changes to Miss S's circumstances over the next five years – which she hoped there wouldn't be.

And based on everything Miss S had provided during the application, Amigo calculated that she still had enough disposable income to render this loan affordable. So, it went ahead and lent her the money she was after.

2019

With concerns about Amigo's decisions to lend in 2016, Miss S complained about them in 2019. In response, Amigo argued that it had carried out reasonable and proportionate checks – carrying out a credit search along with an income and expenditure assessment that it verified using statistical information that it got from a credit reference agency and the Office of National Statistics (ONS). And having calculated that Miss S's disposable income rendered Loans One and Two affordable in its view, it rejected Miss S's complaint.

Unhappy with Amigo's response to the complaint, Miss S referred it to us in late 2019. And in her Complaint Form (CF), she argued that both loans were unaffordable because she was in

financial difficulty with an impaired credit file. She also informed us that she went into a Debt Relief Order – which she told us started in July 2017.

We emailed Miss S on 4 December 2019 to ask her for more information to help us decide whether we could prioritise the complaint. And as part of her response, she told us that the money she borrowed from Amigo hadn't been included in her Debt Relief Order. She also told us that she had a partner at the time of each loan application and that she had been honest with Amigo about the contributions he was making to the household bills – including the rent.

One of our adjudicators looked at the complaint and she asked Miss S on 3 February 2020 to provide her with some bank statements. Miss S did that and provided statements for a Halifax account on the 15th of that month. The statements covered 20 July 2016 to 6 January 2017. But having looked at them, our adjudicator decided that she needed more information as there were numerous transfers to another of Miss S's accounts and a lot of what went into her Halifax account was cash.

So, on 10 March 2020 our adjudicator asked Miss S to explain the cash deposits and provide the statements for the account that she was transferring money into.

Miss S responded by email on the same day. She provided statements for a Lloyds TSB account – which covered 2 August 2016 to 9 January 2017. She told our adjudicator that she was paid in cash from two part-time jobs at a gift shop and bar. She said she was earning roughly £300 a week and that she didn't always have time to go to the bank each week to deposit her wages – so she sometimes deposited larger sums from a few weeks' wages as a result.

In the same email, Miss S also told our adjudicator that some of the cash deposits were from her partner at the time to help her with the bills. She also said that she didn't remember Amigo checking her bank statements or payslips; the loan applications were based on what her partner contributed.

Miss S followed her email on 10 March 2020 with another email a day later – which she used to provide another explanation of her bank statements and a breakdown of her outgoings.

When explaining her bank statements, Miss S referred in general terms to what was leaving her account and why. This is what she said:

- Some of the money transferred out of her account was to help her children;
- Her partner at the time used her account to hold some of his money as he was going through a divorce;
- £3,000 was used to pay back her son's friend who had lent him the money to buy a car;
- She was paying back an existing debt each month;
- She played the National Lottery; and
- She splashed out for Christmas.

As for Miss S's outgoings, she listed the following:

- | | |
|----------------|------|
| • Rent/Water | £660 |
| • Gas/Electric | £160 |
| • Council Tax | £120 |
| • TV Licence | £12 |
| • Phone | £40 |
| • Sky | £40 |

• Life Insurance	£10
• Food	£100
• Credit Cards/Credit	£50
• Tobacco	£40
Total	£1,232

Our adjudicator considered what Miss S had said and provided along with everything else on file and shared her initial assessment with both parties on 2 April 2020. When coming to her view, she said that there were three key questions to consider when determining a fair and reasonable outcome in this complaint:

1. Did Amigo complete reasonable and proportionate checks to satisfy itself that Miss S would be able to repay the loans in question in a sustainable way?
 - a. If it did, did it come to a fair lending decision? or
 - b. If it didn't, would such checks have shown that Miss S would have been able to repay the loans in question in a sustainable way?
2. Was there a point when Amigo ought reasonably to have realised it was increasing Miss S's indebtedness in a way that was unsustainable or otherwise harmful – such that it shouldn't have lent her any more money?
3. Did Amigo act unfairly or unreasonably in some other way?

Our adjudicator argued that Amigo's checks in September 2016 weren't reasonable and proportionate in light of the loan term and the cost of the borrowing because it hadn't verified Miss S's financial circumstances. So, she went on to consider what more thorough checks would have shown.

Having done that, our adjudicator suggested that, had Amigo carried out such checks by verifying Miss S's income and expenditure – using, for example, some of her bank statements, it would have discovered that she was paying her own rent as well as the household bills. And with that being the case, our adjudicator concluded that more thorough checks probably would have led Amigo to the conclusion that the lending was likely to have been unsustainable and therefore unaffordable.

Our adjudicator did go on to consider the third question. But she didn't think Amigo had acted unfairly in any other way.

As for Loan Two, because Miss S's financial circumstances hadn't changed in the few months that had passed since Loan One, our adjudicator reached the same conclusion that more thorough checks would have probably led Amigo to the conclusion that the lending was likely to have been unsustainable and therefore unaffordable on that occasion too.

And with that being the case, our adjudicator upheld the complaint in full.

Amigo responded on 23 July 2020 and provided us with detailed submissions on why it disagreed with the outcome our adjudicator had reached so far and her reasons for it. There were three parts to its submissions:

1. General Observations Relevant to This Complaint;
2. The Lending Decisions; and
3. Miss S's Circumstances at The Relevant Time

Here's a summary from each part. For ease of reference, I've included the number used by Amigo to identify each paragraph.

General Observations Relevant to This Complaint

6. The onus in this complaint must be on Miss S to demonstrate, on the balance of probabilities, that the steps taken by Amigo were not only inadequate or unfair in some way, but that they were the main cause of her detriment.
7. We failed to adequately take into account the nature of the market in which Amigo operates. And we failed to take sufficient account of the steps Amigo took to verify Miss S's circumstances – including the responses she freely made to its enquiries at the time.
8. Amigo only offers guarantor loans. It invites customers to support their application for credit by obtaining a 'guarantor' who is able and prepared to step in and settle amounts owing under the agreement if the applicant is unable to do so. And this enables Amigo to offer appropriate applicants more advantageous terms than they could in all probability obtain elsewhere.
9. Amigo's customers tend to have impaired credit records and its products are designed for and aimed at them. Prior County Court Judgments (CCJs) and defaults on previous credit commitments are not uncommon. And by enabling customers, with a reasonable prospect of being able to sustain the proposed lending, to put in place a guarantor, Amigo provides them with an option that is normally less expensive than Overdrafts, Credit Cards and Payday Loans. As a result, many of Amigo's customers are transitioning from a poor credit history to more controlled credit usage. And, with that being the case, debt consolidation is a common reason for applications.

The Lending Decisions

12. The checks Amigo made were fully compatible and compliant with the legal and regulatory requirements of the time – both in terms of scope and extent. And they should now be judged as proportionate and adequate in the circumstances of Miss S's complaint as they were at the relevant times.
13. Our adjudicator made selective use of the facts of the complaint and the information that was available to Amigo in 2016 to replace its reasonable judgement as the lender with her own view some four years later.
14. Amigo carefully considered an applicant's credit file before agreeing to lend. Any outstanding credit commitments were included in its affordability assessments – ensuring that they were budgeted for and part of the discussions it had with them. Amigo added to this information a breakdown of an applicant's income and expenditure – which they were required to disclose openly and honestly. And the information provided was verified in two ways:
 1. Amigo used industry data – like information from a credit reference agency called Callcredit – to compare and assess what was disclosed as monthly income; and
 2. Amigo used data from the ONS to compare and assess declared expenditure.

If anything was unclear, incongruous or clearly important to understand, Amigo would have discussed that with the applicant to better understand the circumstances and

identify any issues that might have suggested that the lending was likely to be unsustainable.

15. Additional inquiries of the sort that our adjudicator suggested were necessary would have been disproportionate and unreasonable given the type, amount and cost of the credit and Miss S's financial circumstances. They would have had the effect of materially increasing the cost of the applications so as to make applications subject to such checks uneconomic.
16. Given the size of the loans, their features and flexibilities, the risks to Miss S of poor loan purchases and her circumstances as disclosed, Amigo's checks were proportionate.
17. Without establishing that Amigo's lending process was clearly flawed, our adjudicator brushed the process aside and used her own retrospective judgement about the nature of the information we should have obtained and the conclusions we should have drawn – an approach Amigo doesn't think was reasonable.
18. Our adjudicator applied her own interpretations of the information Amigo got from its credit searches. And her approach to the assessment supplants, without due cause or proper explanation, Amigo's established approach as a professional and experienced lender with her own retrospective analysis of the position.
19. Determining affordability requires a proportionate and balanced assessment of qualitative and quantitative information. Amigo's process did not use automated judgments based on credit scoring. Instead, it involved extensive discussions with and disclosures by Miss S. And Amigo's approach was, if anything, more extensive than most of its competitors each time and it is wrong to suggest that there was an obligation on Amigo to conduct extensive formal enquiries when deciding whether or not Miss S's relatively modest loans were affordable for her.

Miss S's Circumstances at The Relevant Time

21. Our adjudicator was selective in the information used during her assessment and she failed to provide a balanced account of Miss S's circumstances as disclosed during the applications. As a result, our adjudicator's conclusion that the loans were unaffordable was wrong on its own terms.
22. A more balanced and accurate account of Miss S's circumstances at the time of Loan One would be that she had a declared income of £1,200 per month from her job as well as £87.00 in Benefits. Her declared expenditure was £587 per month. This gave her a net disposable income of £700. And her disclosure was full and complete. For example, she told Amigo that her partner paid all the rent while she managed the household bills.
23. At the time of Loan One, Miss S had a revolving credit balance of £0 and she hadn't taken new credit within the last six months. And while her credit file indicated that she held three historically defaulted items of credit, each of them had fallen into a state of default some years ago. There weren't, therefore, any indicators of recent debt problems.
24. It is important also to stress that Miss S planned to use the loan, in part, to consolidate all three defaults, totalling £1,151.

25. Taking into account of all these facts in a balanced way, it seems to Amigo that Miss S was on a reasonably stable financial footing. And that underlines the proportionality and reasonableness of the assessment Amigo made at the time.
26. At the time of Loan Two, Miss S's circumstances weren't that different to those at the time of Loan One. Her income was still £1,287 – which consisted of her wage and Benefits. Her declared expenditure was £616.31 per month, an increase of £29.31 since September 2016. And her disclosure was full and complete. For example, she told Amigo that her partner paid all the rent while she managed the household bills.
27. Once again, Miss S had a revolving credit balance of £0 and the only credit taken within the last 6 months was her first Amigo loan. Although Miss S hadn't consolidated her historically defaulted credit, there were no indicators of debt problems and these items were fully budgeted for in Miss S's declared expenditure.
28. Taking into account of all these facts in a balanced way, it seems to Amigo that Miss S was on a reasonably stable financial footing. And that underlines the proportionality and reasonableness of the assessment Amigo made at the time.
31. The information provided by Miss S during her application and the checks Amigo completed didn't indicate any reason to be concerned about her financial circumstances or the affordability of the loan repayments. As such, Amigo didn't need to request additional information – like bank statements – as suggested by our adjudicator.
32. Having looked at some of Miss S's bank statements, our adjudicator pointed out that Miss S's monthly expenditure was more than she had led Amigo to believe and that she was paying her own rent. If Miss S chose to mislead Amigo by disclosing outgoings that were lower than they actually were and telling it that her partner was paying the rent when he wasn't, then it does not seem reasonable or appropriate to reward her for such a misleading statement. And as Amigo used automated checks to verify the information provided by Miss S, it suggests that it was reasonable to take into account her declared income when assessing affordability.
33. Amigo verified Miss S's income by using Callcredit to assess the reasonableness of what she disclosed. And given what Miss S's bank statements indicated, her bank statements support Amigo's position that its checks were reasonable and proportionate.
34. Checking employment contracts or bank statements was not 'required'. And it was just our adjudicators view, with the benefit of hindsight, that Amigo should have done so on both occasions. It was not Amigo's practice at the time of the applications in question to routinely seek written evidence from customers about the details of their employment status. They were asked to disclose information fully and honestly and, subject to checking the reasonableness of the information they provided, Amigo relied heavily on the information that customers provided as part of the formal application process. Regulation and law did not 'require' Amigo to go further. And Amigo does not accept that a general requirement to make such onerous and intrusive enquiries would be clearly proportionate.
36. Amigo suggests that a fair assessment of the evidence should lead to the conclusion that Miss S could afford the loan and that it was reasonable to assess it as affordable in light of the information she provided and the prevailing regulatory standards of the day.

As an informal resolution to this complaint didn't prove possible, the complaint was referred for an ombudsman's decision – which is why it was passed to me.

In light of Paragraphs 13, 17, 18 and 19 of Amigo's response to our adjudicator's assessment, we asked it to provide us with copies of the scorecards and lending policy that were in place when Miss S took out Loans One and Two. But Amigo didn't provide either piece of information. And this is what it said to explain why:

"As you will understand our credit scorecards form only a part of our lending [...] process. In common with most lenders our scorecards are adjusted regularly in the light of experience, regulatory changes, changes in the material provided by the credit reference agencies and changes in risk appetite. The scorecards are then built into our automated credit assessment systems and act as a tool to support our team's interactions with the potential borrowers (and guarantors). Those scorecards therefore form but one part of our lending process - for example a loan that may 'pass' the scorecard might be rejected following our discussion with the customer. As such your request is not at all straightforward to address in practice and risks giving something of a misleading picture of our overall lending assessment approach."

I asked Amigo to provide me with recordings of the calls that it had with Miss S on 16 September 2016 and 1 December that year – which it provided.

I also asked Miss S to tell me who was named on the tenancy agreement for the house she lived in and, in addition to asking her for more bank statements going back to the beginning of June 2016, I asked her to provide me with more information about the contributions her partner was making to the household bills at the time of each loan – including:

- The amount he contributed;
- When and how often he contributed; and
- How he contributed – in other words, I asked Miss S to tell us if he gave her the money in cash or by bank transfer.

In response, Miss S told me that she was the only person named on the tenancy agreement and provided her 'Deposit Protection Certificate' as proof. She also told me that, as her partner was a builder, his contributions to the household bills were inconsistent. He sometimes put money on the gas and electric meters. But, otherwise, he didn't contribute a great deal.

Miss S also provided me with Halifax and Lloyds TSB bank statements going back to the beginning of April and June 2016 respectively along with an accompanying explanation of what was in the statements.

Miss S told me that she hadn't paid council tax for a year prior to taking Loan One – and she pointed to payments to her local council that she says were for parking tickets. She also pointed out that some of the large sums of money put into her account were from her partner at the time for court fees following his divorce.

Having looked at the additional bank statements provided by Miss S, I asked her to explain why there was:

- more cash going into her accounts than her declared earnings in June, July and August 2016; and
- less cash in September, October and November 2016.

I also pointed out to Miss S that there were transfers from her partner in July and October carrying the reference 'Rent'. So, I asked her to explain the agreement she had in place with her partner in as much detail as she could – which included elaborating on:

- what she meant when she said her partner didn't contribute a 'great deal' to the household bills; and

- why, with the bullet point above in mind, she told us when she first referred her complaint to us that she had been honest with Amigo about her partner paying the rent.

In response, Miss S told me that she wasn't sure about what was going on in 2016 because her circumstances were difficult at the time and it was a long time ago. She also said that she didn't always have time to run to the bank to deposit her wages. So, her partner sometimes transferred the money and she paid him back.

But Miss S did acknowledge that the transfers from her partner referred to above could have been for rent before also going on to recognise that she had told Amigo that her partner helped to pay the household bills. However, she did go on to say that his contributions were inconsistent.

Having considered everything that had been said and provided so far, I issued my Provisional Decision on 15 December 2020 upholding the complaint in full.

In summary, I wasn't persuaded that Amigo had carried out reasonable and proportionate checks before granting either of Miss S's loans because I thought that it had lent to her when there were important questions that it had left unanswered. And had Amigo carried out the requisite checks, I thought that the available evidence suggested that it would have discovered that Miss S wouldn't have been able to make the repayments without a real risk of undue difficulty – such that the loans couldn't reasonably have been deemed sustainable and, therefore, affordable.

I gave both parties until 15 January 2021 to respond to my Provisional Decision with new evidence and/or arguments. Miss S acknowledged my initial findings, but she didn't have anything to add. Amigo didn't respond.

I looked at the complaint again with the intention of issuing my Final Decision using the information we had.

Having done that, I emailed Amigo on 25 January to clarify one or two parts of my Provisional Findings – which I also shared with Miss S. In summary, I explained why I had looked at bank statements for both of her accounts covering only June, July and August 2016 when she had provided statements for one of the accounts going back to April 2016.

On further review of the statements, I pointed out in my email that a £10 monthly payment for Sky Protect looks like it was stopped after July 2016. So, it shouldn't have been included when adding up her regular outgoings over each of the three months I looked at. And when working out how much of her rent it looked like she was paying on average over June, July and August, I acknowledged that the £150 her partner appears to have given her for rent on 15 July 2016 needed to be factored in more clearly with the excess cash going into her account.

But, having thought about what I had said, I told Amigo and Miss S that I wasn't persuaded that the £10 for Sky Protect or the single payment of £150 from her partner – when averaged out at £50 in June, July and August 2016 – changed the initial outcome that I had reached. I thought that the loan in question was still likely to have been unaffordable as it still didn't look like Miss S would have had enough disposable income even if £60 was effectively added to it by including the money from her partner and excluding Sky Protect.

I gave Amigo and Miss S a week to comment on the merits of the complaint in response to my email. And I asked them to let me know before that deadline was up if they needed more time to respond.

Miss S acknowledged the email but had nothing to add. Amigo didn't respond.

As a result, I'm now in the position to issue my Final Decision. But as neither party to this complaint have provided me with new arguments and/or evidence, much of what I have to say from here on in simply reflects what I said in my Provisional Decision – albeit in less detail in places.

The Legal and Regulatory Framework

Amigo lent to Miss S while it was authorised and regulated by the Financial Conduct Authority (FCA). And the relevant rules and regulations that authorised firms had to follow are set out in the FCA's Handbook of Rules and Guidance. Those most relevant to this complaint are:

1. The Financial Conduct Authority's ('FCA') Principles for Business ('PRIN')

This part of the FCA's Handbook set out the overarching requirements that all authorised firms were required to comply with at the time of the events complained about.

The Principles themselves were set out in PRIN 2.1.1R. And the most relevant principle to this complaint was PRIN 2.1.1 R (6) – which said that 'A firm must pay due regard to the interests of its customers and treat them fairly'.

2. The FCA's Consumer Credit Sourcebook (CONC)

This part of the FCA's Handbook sets out the rules that apply to providers of consumer credit – like Amigo. And in light of the complaint in question, I think the most relevant section is CONC 5 – which sets out an authorised firm's obligations when lending responsibly.

These rules have been updated since 16 September and 1 December 2016. So, I refer below to some of the rules as they were at the time Amigo lent to Miss S.

CONC 5.2.1R(2) set out what a lender needed to do before agreeing to provide a consumer with credit – which includes a regulated credit agreement of the type in question. 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 included guidance about 'proportionality of assessments'.

CONC 5.2.3G:

The extent and scope of the creditworthiness assessment or the assessment required by CONC 5.2.2R (1), 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 be reasonably expected to have a significant financial adverse impact on the customer;
- (9) the vulnerability of the customer, in particular where the firm understands the customer has some form of mental capacity limitation or reasonably suspects this to be so because the customer displays indications of some form of mental capacity limitation (see CONC 2.10).

CONC 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.

CONC 5.3 contained further guidance on what a lender had to keep in mind when thinking about affordability.

CONC 5.3.1G(1):

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):

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(4):

If a firm takes income or expenditure into account in its creditworthiness assessment or its assessment required under CONC 5.2.2R (1):

- (a) the firm should take account of actual current income or expenditure and reasonably expected future income or expenditure (to the extent it is proportionate to do so) where it is reasonably foreseeable that it will differ from actual current income or expenditure over the anticipated repayment period of the agreement;
- (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;

CONC 5.3.1G(6):

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 5.3.2R:

A firm must establish and implement clear and effective policies and procedures to make a

reasonable creditworthiness assessment or a reasonable assessment required by CONC 5.2.2R (1).

CONC 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 or an assessment required by CONC 5.2.2R (1) is complete and correct.

CONC 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 or the assessment required by CONC 5.2.2R (1).

Other Relevant Publications

CONC set out the regulatory framework that authorised consumer credit providers had to follow. But the framework represented a minimum standard for firms. And as I've said before, I'm also required to take into account any other relevant guidance and, when appropriate, what I consider was good industry practice.

Review of Relending by High-Cost Lenders: The FCA's Findings

On 6 August 2020, the FCA published its findings following its review of relending by lenders in its high-cost lending portfolio (which Amigo is included in). I accept that this (as well as the Portfolio Strategy Letter I'll go on to refer to) was published sometime after Miss S's loans were agreed. But, as the review dealt with how firms ought to be handling complaints about historic lending being unaffordable, I think it offers some insight on the FCA's perspective on the rules. And as a result, I consider it to be of some relevance in this complaint.

Under the section called "*Relending and Customer Outcomes*", the report said:

"Firms should ensure that relending leads to positive customer outcomes and does not cause harm."

Our analysis of data provided by firms and our consumer research shows breaches of specific rules as well as breaches of our principles for business. In this report, we set out what we have found, our expectations and examples of what firms can do to meet these principles.

From developments in the market, including trends in Financial Ombudsman Service complaints and a number of high-cost short-term credit (HCSTC) firms entering administration as a result of liabilities for complaints, we can see the consequences for firms that fail to adequately assess affordability or relend in a way that is sustainable for their customers.

Across the portfolio, we have seen levels of debt increasing as customers take additional loans. We did not generally observe additional credit being used to maintain existing levels of debt. Some customers told us they have experienced financial difficulties caused by relending and related anxiety and stress. Many regret their additional borrowing and the consequent financial position they find themselves in.

High-cost credit customers are more likely to be vulnerable, have low financial resilience and poor credit histories. They often hold multiple credit products and have to juggle repayments, sometimes having to decide which priority debts to pay when they don't have enough for all. We have significant concerns that repeat borrowing could be a strong indicator of a pattern of dependency on high-cost credit and levels of debt that are harmful to the customer.

We therefore expect firms not to encourage refinancing of credit agreements where the customer's commitments are not sustainable. We also expect firms to only agree to refinance if they reasonably believe that it is not against the customer's best interests to do so.

From our analysis, we have seen that this is not always the case and we set out our views of the potential drivers of harm and request that firms assess their relending operations to ensure they remain appropriate and consistent with our principles.

Customers have also told us they rely on credit and, despite wanting to be in a better financial position, they are used to living in debt and expect to need to continue to borrow in the future. We have seen firms servicing customers' needs by providing additional borrowing. But we are concerned that relending can move from a positive customer experience into one which causes harm.

For all high-cost lending business models in our sample, relending is a significant part of their business. Many firms, particularly those offering small value loans, do not make a profit on a customer's first loan. Profitability in high-cost lending firms is therefore mainly driven by relending. For nearly all firms, profitability increases for subsequent loans, in many cases substantially."

Under the section called "Increasing Levels of Debt and Repayments", the report said:

"The level of debt and repayments can increase significantly, to the point where it is no longer affordable or sustainable for some customers.

We reviewed a sample of the borrowing history of around 250,000 customers to better understand the customer journey with each firm in our sample. We saw that relending caused both the level of debt and repayment amount to increase nearly every time further borrowing was taken.

We remind firms of our Dear CEO letter from October 2018, sent to all HCSTC firms (but which equally applies to other firms in the high-cost lenders portfolio). In that, we highlighted the risks in relation to repeat borrowing given that it could indicate a pattern of dependency on credit that is harmful to the borrower. Rigorous affordability assessments are key to avoiding harm in this area, and firms should ensure they are making proportionate and responsible assessments of the sustainability of borrowing. Further, firms must not encourage a customer to refinance a regulated credit agreement if the result would be the customer's commitments are not sustainable.

We are concerned in some instances to see levels of debt and repayments increase significantly. We saw levels of relending often double within a 2 to 3 year period. Figures 1 and 2 show how a typical customer's overall debt and repayments can escalate to considerable levels.

At some point, rising levels of overall debt and repayments will become unsustainable for customers. From our consumer research, we are concerned that firms are lending to customers beyond levels which they can sensibly manage and causing customer harm as a result. Notably:

48% of customers told us that they had to cut back on other spending to make their loan repayments
37% told us they had missed payments on their rent, mortgage, utility bills or council tax in the last 6 months, to ensure they could make repayments on their relending
16% of customers reported their most recent relending was taken to repay debt with other firms
45% of customers told us they regretted taking out additional lending
45% of customers said they had experienced anxiety and stress in the previous few weeks because of financial difficulties

We are particularly concerned to see behaviour which suggests some customers may be managing financial difficulties through further borrowing. We consider that additional borrowing should not be used, in effect, as a debt management solution. When considering an application for refinancing where the firm is aware that the customer is a regular user and appears dependant on high-cost credit we expect the firm to assess the customer's best interests. They do this by considering the customer's overall financial situation and whether forbearance or debt advice might be more appropriate than additional lending.

We are also concerned to see some firms not taking their responsibilities to assess affordability for repeat borrowers as seriously as we would expect. For example, rather than gather up-to-date customer information, some firms ask customers to confirm there have been no changes in their financial circumstances since the last affordability check was completed and some online applications pre-fill answers with the last details given. While we recognise that firms may want to streamline and automate their processes, they must base every lending decision on up-to-date and accurate information.

There has been some debate in the HCSTC market about how our creditworthiness rules should apply to repeat lending.

Other than for rollovers, our rules do not expressly prevent firms from issuing more than a particular number of loans to a customer. However, firms do still need to comply with our creditworthiness rules in doing so, including assessing the affordability risk to the borrower. This is a view shared by the Financial Ombudsman Service."

Under the section called **"Relending, Profitability and Consumer Harm"**, the report said:

"Relending accounts for a high proportion of business and drives profitability in many firms, which gives rise to customer harm.

In addition to examining customer loan histories, we also reviewed a sample of firms' loan books to understand the proportion of and growth in relending over a 3-year period.

We identified that most firms had more repeat than first-time borrowers and repeat borrowers accounted for more than 80% of all customers at many firms. We recognise there are additional financial costs of acquiring new customers and acknowledge there are commercial reasons for lending to existing customers rather than expanding the customer base. However, we remind firms of their requirement to lend responsibly and to be mindful that driving profitability through repeat lending has the potential to lead to poor customer outcomes if not properly managed.

Having looked at customer lending journeys we are concerned that some customers may be suffering harm because of over indebtedness and we expect firms to review their lending practices and operations to ensure they are appropriately discharging their obligations to lend responsibly."

FCA Portfolio Strategy Letter to Firms Providing High Cost Lending Products

On 6 March 2019, The FCA wrote a 'Dear CEO' letter to the Chief Executive Officers of the firms it allocated to its 'High Cost Lenders' portfolio. The letter set out the FCA's view of the key risks that High Cost Lenders pose to consumers and the markets they operate in.

On page two of this letter, the FCA set out its view of the key causes of harm. It said:

"Following our analysis, we see two key ways that consumers may be harmed across the High Cost Lenders portfolio:

- a high volume of relending, which may be symptomatic of unsustainable lending patterns
- firms' affordability checks may be insufficient, leading to loans that customers may not be able to afford".

We also see an additional potential harm from guarantor lending:

- the proportion of loan repayments that guarantors make has risen considerably, which could indicate that affordability on the part of the borrowers is falling.

On page three of the letter, under the title 'Complaints', the FCA said:

"We expect firms to fulfil all relevant obligations, including analysing the root causes of complaints and taking into account the Financial Ombudsman Service's relevant decisions. We gave further detail about what we expect from firms' complaint-handling procedures in the Dear CEO letter we issued to HCSTC firms in October 2018. This is equally relevant to all firms in the portfolio".

My Findings

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

When doing that, I'm required by DISP 3.6.4 R of the Financial Conduct Authority (FCA) Handbook to take into account the:

'(1) relevant:

- (a) law and regulations;
- (b) regulators' rules, guidance and standards;

(c) codes of practice; and

(2) (where appropriate) what [I] consider to have been good industry practice at the relevant time.'

But when the evidence is incomplete, inconclusive, incongruent or contradictory, I've made my decision on the balance of probabilities – which, in other words, means I've based it on what I think is most likely to have happened given the available evidence and the wider circumstances.

We've set out our general approach to complaints about irresponsible and unaffordable lending on our website. And having taken this into account along with everything else I need to consider, I've decided that this complaint should still be upheld.

I realise this might be disappointing for Amigo. But I hope my explanation helps it to understand why I've come to the conclusion I have.

Under the legal and regulatory framework I've set out above, Amigo was obliged to lend responsibly. This meant that it had to reasonably assess whether Miss S could afford to meet the loan repayments in a sustainable way over the terms of the loan agreements in question.

As I've said before, the FCA didn't specify what level of detail such an assessment might require – nor did it set out how such an assessment needed to be carried out in practice. Instead, it said that the necessary level of detail when carrying out a requisite assessment would depend on the risk to the borrower relative to the borrower's financial situation – though it wouldn't necessarily be limited to that.

But the guidance in CONC did define the notion of sustainably repaying debt as being able to meet the repayments of a credit agreement without undue difficulty. And that includes being able to make repayments on time and without taking on additional borrowing to do so while also meeting other reasonable commitments.

And with that being the case, Amigo's assessment of Miss S's circumstances before each loan application had to be 'borrower-focused' – which means that, while it wasn't prevented from assessing its own risk as a lender, it had to assess the risk to Miss S as a borrower.

As a result, I think there are a number of overarching questions I need to consider when deciding a fair and reasonable outcome in the circumstances of this complaint.

I know that Amigo has suggested that it doesn't necessarily accept that some of these represent a safe and appropriate basis on which an ombudsman should decide this type of complaint. But it still hasn't proposed an alternative nor has it argued persuasively that the questions aren't relevant to Miss S's complaint.

The questions are:

1. Did Amigo carry out reasonable and proportionate checks to satisfy itself that Miss S would be able to repay the borrowing in a sustainable way?
 - i. If Amigo carried out such checks, did it lend responsibly using the information it had?

Or

- ii. If Amigo didn't carry out such checks, would the requisite checks have shown it that Miss S was likely to have been able to borrow in a sustainable way?
2. Was there a point when Amigo ought reasonably to have realised that it was increasing Miss S's indebtedness in a way that was unsustainable or otherwise harmful – such that it shouldn't have lent her any more money?
3. Did Amigo act unfairly or unreasonably in some other way?
4. Did Miss S lose out as a result of any of Amigo's mistakes?

Did Amigo carry out reasonable and proportionate checks to satisfy itself that Miss S would be able to repay the borrowing in a sustainable way?

In addition to being borrower-focused, Amigo's checks had to be proportionate to the specific circumstances of each loan application.

What constituted proportionate checks will depend on several factors. And for that reason, I agree with Amigo that determining what these checks looked like in practice at the time wasn't an exact science – and I'd say that's still the case now.

However, many of the factors relevant to determining what such checks looked like did relate to Miss S's financial circumstances – which included, though weren't necessarily limited to, her financial history and outlook along with her situation as it was, including signs of vulnerability and/or financial difficulty.

Ahead of my Provisional Decision, Amigo made the general observation that its products were and are designed for and aimed at customers who tend to have impaired credit records – which is why it also said that prior County Court Judgments (CCJs) and defaults on previous credit commitments aren't uncommon amongst its applicants. The underlying point to these general observations wasn't clear to me from Amigo's written submissions. But as I said in my Provisional Decision, Amigo also says that it can offer credit on more advantageous terms for many of those who might not be able to obtain such credit elsewhere. And so, I'm still inclined to think that it was suggesting that its responsibilities as a lender should be viewed in that context.

But, as I said and as Amigo will be aware, there are two primary components to creditworthiness: affordability and credit risk. And while I continue to accept that it's Amigo's prerogative to manage the latter when it lends to those who have or are moving on from a poor credit history, the same still can't be said of the former.

The FCA said in August 2020 that *“High-cost credit customers are more likely to be vulnerable, have low financial resilience and poor credit histories. They often hold multiple credit products and have to juggle repayments, sometimes having to decide which priority debts to pay when they don't have enough for all”*.

And in the Narrative Report that accompanied the FCA's review of relending by high-cost lenders¹, the section on guarantor loans said:

“Of the 6 products within the scope of this research, guarantor loans sat near the top in terms of their impact on borrower wellbeing. Two fifths (40%) of borrowers regretted their decision to reborrow, and of those, 44% claimed their additional borrowing has had an overall negative impact on their wellbeing. In the qualitative interviews it emerged that guarantor loan customers often had a wide portfolio of credit products, and as a result, the stress and anxiety experienced by reborrowers came from their general financial situation, rather than their guarantor

¹ P47 <https://www.fca.org.uk/publication/research/relending-high-cost-credit-market-narrative-report.pdf>

loan specifically — although guarantor loans certainly contributed. Additionally, the involvement of a guarantor had the potential to increase the pressure felt by borrowers to repay, as they did not want to default and the guarantor has to bear the consequences.

The qualitative research showed that borrowers often had complex borrowing histories. Many had got into difficulty in the past with mainstream and/or high cost credit. This led to them needing a guarantor in order to secure credit due to their own poor credit scores. There was also evidence of the total cost of borrowers' loans snowballing after multiple top ups. Consideration of the total cost of the loan tended to be secondary to the perceived need for the top up and the affordability of monthly repayments. Given the large sums of money involved with this type of credit, there was a high potential for harm in this area due to the long term burden of debt and increasing monthly repayments. When speaking to the guarantors, in the main they appeared to be well informed about and involved in the top up process — although this was not always the case. All the guarantors we spoke to were close to the borrower; typically a parent but also other relatives, friends and in one case a partner. The guarantors all wanted to help their loved one out and had high levels of trust in them. However, borrowers did not always appear to have disclosed the full extent of their financial situation, or their use of other credit products, to their guarantor."

For these reasons, the point I think Amigo was trying to make when it stressed the importance of the market it operated in cuts both ways. It remains – in my view – precisely because of the nature of Amigo's customer base that the importance of reasonable and proportionate checks can't be over-stated.

So, while Amigo offered a product that it believes may have had certain advantages over other types of credit, guarantees and indemnities didn't diminish or dilute Amigo's obligation to assess whether a customer (Miss S on this occasion) could meet the prospective repayments without undue difficulty. Putting in place a guarantor who could (in theory) step in on behalf of Miss S if she was unable to make her repayments didn't change that; Amigo still had to take appropriate steps to establish that she could afford what she wanted to borrow in her own right. And for that reason, I still think that the market Amigo operated in is relevant to this complaint to the extent that it highlights the importance of its obligations.

There are, of course, many factors that could be relevant when determining how detailed proportionate checks should have been. CONC 5.2.3G, quoted earlier on in this decision, lists some examples. And while much will depend on the circumstances in question, the more obvious factors include – though aren't necessarily limited to – the type of credit Miss S was applying for along with the size, length and cost of the borrowing.

In general terms, therefore, I still don't think it's unreasonable to suggest that reasonable and proportionate checks ought to have been more thorough when:

- the customer's income was lower – reflecting the possibility that it could have been more difficult to make the repayments as a result;
- the amount repayable was higher – reflecting the possibility that it could have been more difficult to meet a higher repayment, especially from a lower level of income;
- the loan term was longer – reflecting the fact that the more time over which repayments had to be made, the greater the total cost of the credit; and
- there was repeated borrowing, especially if it was frequent and/or it increased the period during which a customer was indebted – all of which reflects the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable.

And as a result, I still think it follows that the circumstances in which it's reasonable to conclude that a less detailed affordability assessment is reasonable and proportionate are more likely to be limited to applicants whose financial situation was stable and whose borrowing was relatively insignificant.

Amigo's Checks: Loan One

Miss S started her application for a loan online – completing an income and expenditure assessment when doing so. She was then phoned by Amigo shortly afterwards to discuss the application and complete the process.

Having listened to that phone call, it's apparent that Amigo relied heavily on what Miss S had declared about her income and expenditure when determining her ability to repay this loan sustainably. And I say this because the conversation between the parties focused very little on unpacking or elaborating on much of what Miss S had declared online.

That might have been because Amigo says that, subject to testing how reasonable an applicant's declaration was, it relied heavily on the information that applicants provided as part of the formal application process.

I don't think it was or is unreasonable of Amigo to expect applicants – including Miss S – to answer questions about their financial circumstances in good faith when applying for a loan. But as I said in my Provisional Decision, to go further than this and rely heavily on an applicant's declaration in the way Amigo appears to have done on this occasion did run the risk of it overlooking its responsibility to properly scrutinise the information Miss S had provided – especially when it was apparent that her ability to make the repayments hinged on contributions from her partner to her rent.

Amigo says that it verified the information provided by applicants in two ways using automated checks:

1. It used industry data – like information from a credit reference agency called Callcredit – to compare and assess what was disclosed as monthly income; and
2. It used data from the ONS to compare and assess declared expenditure against national averages.

Amigo will be aware that we asked it to provide us with copies of the scorecards and lending policy that were in place when Miss S took this loan to help us understand what its process looked like in more detail. But – having told us that this request wasn't straightforward to address in practice and risks giving a misleading picture – it didn't provide either of those before I issued my Provisional Decision. And it still hasn't done so.

As a result, I still only know that Amigo verified an applicant's income and expenditure declaration in two ways. And as Amigo still hasn't given us a breakdown of the data it got when assessing Miss S's application in September 2016 nor an explanation of the data it relied on and why, it still isn't clear – for example – how proximate to the industry and national averages Miss S's declared income and expenditure were according to the data Amigo saw.

What's more, national averages are – as I said in my Provisional Decision – based on the finances of the average individual. And as Miss S had an impaired credit record, it's possible for the reasons I've set out below that she wasn't comparable to the control group Amigo chose to use. Yet Amigo still hasn't explained why it was appropriate to use national averages as a means of verification.

And with all of that continuing to be the case, the lack of information and explanation from Amigo continues to make it difficult to assess the veracity of its results and, in turn, determine how meaningful its verification was at the time of this loan – especially when the FCA, as I've said before, has described seeing evidence of some lenders accepting customer declarations even when their validation checks against third party data gave grounds for only low levels of confidence in those declarations.

But, as I said in my Provisional Decision, I do have concerns about Amigo's decision to rely on its automated checks on this occasion anyway.

I say this because Amigo calculated that Miss S – whose declared monthly income was recorded as £1,287 – had disposable income of £700 each month before the monthly repayments for this loan were taken into account. And it came to that calculation largely because it accepted, without much question, the information declared by Miss S – including what she said about her partner paying the rent for the property she was living in.

Yet the information Amigo got from both its credit search and Miss S during its phone call with her raised a number of questions about the information she had provided.

Miss S's main wage appears to have been recorded by Amigo as £1,200 from one full-time position at a bar. However, 5 minutes and 56 seconds into the call between the parties, she mentioned – albeit in passing – that she had two jobs. And while I acknowledged in my Provisional Decision that Amigo did appear to recognise the apparent discrepancy between the information provided by Miss S online and her declaration during its phone call with her, it didn't prompt a further conversation at that time.

However, Amigo will be aware that CONC 5.3.1G (4)(b) says that *'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 as Amigo's automated check of Miss S's income still appears to have been run against one job rather than two, it looks like the result was in question. And with that being the case, it's still not entirely clear why that part of the conversation wasn't subject to more scrutiny when it arguably should have been given the apparent discrepancy.

What's more, Miss S's credit file indicated that she had three accounts in default. And while I realise that they went into default some time before this loan, they still hadn't been settled. As a result, I still find it difficult to explain why – if Amigo's calculation that Miss S had £700 in disposable income each month was reliable – she was applying for a loan with an interest rate of 49.9%. After all, the total amount outstanding across all three defaulted accounts was £1,151. And for someone whose disposable income was calculated to represent over 50% of what she took home each month, I continue to find it surprising that the accounts still hadn't been settled years after they first went into default. Instead, I think there were real questions, based on the information Amigo had, as to whether Miss S's financial circumstances were as it had recorded.

However, as I've said before, I'm not saying that there aren't circumstances in which Amigo could lend to a customer who has an impaired credit file. The point I'm making here is that greater care needed to be taken in these circumstances to ensure that this loan could be sustainably repaid based on her position as it was at the time – a point CONC makes when it refers to the borrower's financial circumstances being relevant to determining the proportionality of any checks.

And while I still recognise that Miss S hadn't taken new credit in the six months prior to this loan and had relatively little by way of existing debt, there remains – in my view – a fundamental tension between the accounts in default and how much disposable income she was calculated to have – which, in turn, cast some doubt over her ability to make the repayments on time and without undue difficulty. And without a more thorough understanding of Miss S's financial circumstances with that being the case, I'm still not convinced that Amigo could have reassured itself that there wasn't an issue when the information it was using to make its decision was, at best, inconsistent and, at worst, inaccurate.

And this is, as I've said, especially the case when it was apparent that Miss S's ability to make the repayments hinged on her partner – who Amigo knew was running his own business – paying at least a proportion of her rent each month.

As a result, I remain unconvinced that Amigo could have reasonably concluded that Miss S's declared income and outgoings didn't warrant further scrutiny. And while I know that it says that it would have made certain efforts to get to the bottom of anything that had been unclear, incongruous or clearly important to understand, it didn't – in my view – do that on this occasion. Amigo's call with Miss S was relatively brief and it focused very little on much of what she had declared online. And as there still isn't any other persuasive evidence to indicate that it made such efforts at some other time, I can only conclude that it doesn't appear to have taken the steps that it says it would have done.

Overall, therefore, as the checks Amigo carried out threw up a number of questions that I still think it needed to answer to ensure it wasn't brushing over a possible affordability concern, it follows that I'm still not persuaded that it carried out reasonable and proportionate checks having left those questions unanswered.

Amigo's Checks: Loan Two

Having listened to the call between Amigo and Miss S on 1 December 2016, it's apparent that Amigo continued to rely heavily on what she had declared about her income and expenditure when determining her ability to repay this loan sustainably as the conversation on this occasion – like the conversation three months or so earlier in September – didn't focus an awful lot on unpacking or elaborating on much of what Miss S had declared.

At roughly 1 minute and 58 seconds into the call (which was 6 minutes and 33 seconds in total), Amigo did ask Miss S if her income had changed since Loan One before going on to list her outgoings, make one or two observations about the findings of its credit search and ask her if she anticipated any changes in her circumstances over the term of this loan. But, having covered all of that by roughly 4 minutes and 20 seconds, it did so – in my view – in only a very passing way.

Amigo says that, subject to testing how reasonable an applicant's declaration was, it relied heavily on the information that applicants provided as part of the formal application process. And as I've said before, that might explain why Amigo went to the lengths it went to during the application process for this loan as well.

However, as I've also already said, relying heavily on an applicant's declaration in the way Amigo appears to have done at the time of this loan as well as Loan One did run the risk of it overlooking its responsibility to properly scrutinise the information Miss S had provided – especially when, on this occasion, she was now a repeat borrower whose ability to make the repayments continued to hinge on contributions from her partner to her rent.

And when a customer's debt is on the rise and they have to make and maintain a higher monthly payment for a longer period of time as a result (which was the situation that Miss S found herself in on this occasion), an affordability assessment should – in my view – be more thorough and subject to a greater degree of verification in order to be deemed reasonable and proportionate.

I know that Amigo says that it verified the information provided by applicants in two ways using automated checks. But I've already explained why a lack of information about and explanation of these checks makes it difficult to assess the veracity of Amigo's results and,

in turn, determine how meaningful its verification was. And, as I've said before, I continue to have some concerns about Amigo's decision to rely on its automated checks anyway.

Amigo calculated that Miss S – whose declared monthly income was recorded as £1,287 – had disposable income of just over £670 each month before the monthly repayments for this loan were taken into account. And it reached that calculation largely because it accepted, without much question, the information declared by Miss S.

But it remains my view that Amigo appears to have treated Miss S's application for this loan in isolation from Loan One. And with that being the case, it looks like it failed to consider the whole picture and take into account what she had declared only a few months earlier when assessing the plausibility of what she was now declaring.

For example, while it's unclear what role (if any) the purpose of an applicant's loan plays in an application, the purpose of both of Miss S's loans included the purchase of a car. Yet, on this occasion, Amigo appears to have accepted that she was borrowing more money to purchase a car without questioning why she was purchasing two of them in the space of just under three months – especially when the difference between the amount lent for this purpose and Miss S's disposable income since Loan One only raises further questions.

What's more, the information Amigo got from its credit search indicated that there were still three accounts in default despite what Miss S said about the purpose of Loan One being their consolidation.

For that reason, I still find it even more difficult to explain why – if Miss S had just over £670 in disposable income each month – she was applying for another loan, for more money over a longer term, with an interest rate of 49.9% only a few months after taking the first. After all, the total amount outstanding across all three accounts wasn't hugely different to what it was at the time of Loan One. And for someone whose disposable income was calculated to still represent over 50% of what she took home each month, I find it surprising that the accounts still hadn't been settled – unless, as I've said already, Miss S's financial circumstances weren't as they seemed.

I still recognise that Miss S doesn't appear to have taken new credit apart from Loan One and had relatively little by way of existing debt. But there remains, in my view, a fundamental tension between the accounts in default and how much disposable income Miss S was calculated to have. And without a more thorough understanding of her financial circumstances with that being the case, I'm still not convinced that Amigo could have reassured itself that there wasn't an issue when the information it was using to make its decision was, as I've said before, inconsistent if not inaccurate.

And as this continues to be the case when it was apparent that Miss S's ability to make the repayments continued to hinge on her partner paying at least a proportion of her rent each month, I'm still not convinced that Amigo could have reasonably concluded that Miss S's declared income and outgoings didn't warrant further scrutiny this time around. And while Amigo says that it would have made certain efforts to get to the bottom of anything that had been unclear, incongruous or clearly important to understand, there still isn't any persuasive evidence to suggest that it did that.

As a result, the checks that Amigo carried out still look like they threw up a number of questions that I remain satisfied it needed to answer to ensure it wasn't brushing over a possible affordability concern for a second time. And for that reason, I'm still not persuaded that it carried out reasonable and proportionate checks having left those questions unanswered on this occasion.

Reasonable and Proportionate Checks: Loan One

While I've concluded that reasonable and proportionate checks weren't carried out by Amigo before it agreed to grant this loan, it isn't possible to determine with certainty what such checks would have shown Amigo in practice as I still don't know what checks it would have decided to carry out.

As a result, what I'm deciding here is the likelihood of reasonable and proportionate checks showing Amigo that Miss S would have been unable to sustainably repay this loan. And to make that decision, it remains not only reasonable but necessary to now consider information that Amigo hadn't considered at the time.

Given the discrepancies that I've continued to argue were present when Miss S applied for this loan, Amigo could have verified the relevant aspects of her declaration by asking her for bank statements, copies of bills and/or payslips for example.

However, as the crux of our adjudicator's argument focused on what Miss S had declared about her rent being paid by her partner at the time, Miss S provided us with bank statements for accounts held with Halifax and Lloyds TSB.

I accept that something that we can now see from the information Miss S has provided wouldn't necessarily have been disclosed by whatever reasonable and proportionate checks Amigo might have decided to carry out. But, in the absence of anything else from Amigo, I still don't think it's unreasonable to rely on Miss S's bank statements when determining what her financial circumstances were likely to have been like before she applied for this loan.

As I've explained before, Amigo had a responsibility to ensure that Miss S could make her loan repayments sustainably – even if that meant going further than a simple pounds and pence calculation.

Miss S's bank statements weren't and still aren't the easiest to decipher as she regularly transferred money between her accounts while a lot of what went into her accounts was in cash – including, as she says, her wages. And as a result, it remains difficult to determine what the bank statements say about Miss S's monthly income before this loan. But, despite that, I'm still not persuaded that it's likely to have been less than what she declared at the time.

Miss S told us that she was earning £300 a week – which, being the monthly equivalent of £1,300, is more than the monthly income she declared to Amigo. Her bank statements for June, July and August 2016 suggest that £1,535, £1,410 and £1,770 was deposited in cash in each month respectively. And having looked at her Lloyds TSB statements, I can see what appear to have been Child Benefit payments of £82.80 on 21 June, 18 July and 16 August.

The bank statements do reveal a number of Miss S's regular outgoings over the course of June, July and August 2016 more clearly – including average payments of roughly:

- £53 to Sky Digital;
- £10 to Sky Protect (which look like they ended after July);

- £31 to Capital One;
- £102 to Halifax;
- £50 to Rossandales;
- £10 to BW Legal;
- £24 to AXA Insurance;
- £24 to TV Licencing;
- £10 to AIG Life (which look like they started in August); and
- £680 for rent.

They also suggest that Miss S spent an average of approximately £250 per month in supermarkets over those same three months.

However, I still can't identify Miss S's spending on travel/transport and clothing. And I still can't see any obvious payments for utilities or council tax – assuming the payments to Torbay Council in June, July and August 2016 were for parking tickets as Miss S says.

As a result, it remains difficult to verify all of Miss S's declared monthly outgoings using the bank statements we've got. But I'm still not convinced that being able to do so in even more detail is crucial.

As I said in my Provisional Decision, the list immediately above suggests that Miss S had regular commitments of roughly £494 a month on average if I exclude her rent, Sky Protect and the payments to Rossandales and BW Legal – which I still understand were a large part of what she paid towards the outstanding balances she told Amigo she intended to consolidate when she took this loan.

And with that being the case, once Miss S's utilities, council tax, travel, transport and clothing are included, I still don't think it's implausible to suggest that her regular monthly outgoings appear to have been higher than what had been declared and recorded by Amigo – which must mean, in my view, that the gap between her net monthly income and her overall expenditure month-to-month was narrower than calculated at the time.

I know that Miss S told us that she had been behind on her council tax for a year when she applied for this loan and eventually entered a Debt Relief Order in July 2017 as a result.

Had Amigo seen the bank statements I've seen, and cross referenced them with the various outgoings Miss S had declared at the time, I still think it's likely to have noticed the following debit card payments to 'Torbay Council':

- £75 on 20 June 2016;
- £70 on 7 July 2016; and
- £70 on 24 August 2016.

But, as two of the three payments match what Miss S had declared as her monthly council tax payment, I'm still not convinced that these transactions – when looked at in isolation – should and would have led Amigo to go further and question her about this outgoing.

As for Miss S's rent, £680 was taken from one of her accounts on the 1st of all three months prior to September 2016. And there's still nothing persuasive to suggest that those payments were matched by contributions from her partner for the same amount.

However, I remain conscious that Miss S did declare that her partner covered the rent in full when she applied for this loan online – which she went on to repeat during her phone call with Amigo when questioned about it. She told us on more than one occasion that he

contributed to the household bills, including the rent, each month. And as I've said before, this was also something she made a point of saying she was honest about when she applied for this loan.

Miss S did tell us not that long before my Provisional Decision that her partner's contributions weren't as significant as she suggested when she applied for this loan. But I still think that was at odds with much of what she had to say on the subject throughout this complaint. And as it is apparent from the bank statements we have that there was a transfer into one of Miss S's bank accounts of £150 on 15 July 2016 from her partner with the reference 'Rent', I still find Miss S's most recent submissions difficult to reconcile with the information I've seen – including the numerous occasions on which she willingly suggested the opposite.

When Miss S told us in an email on 10 March 2020 that her partner helped her to pay the household bills, she did say that he sometimes did so in cash. And with that being the case, I did compare how much cash was deposited into her accounts in June, July and August 2016 with what she told Amigo and has since told us her declared income from earnings was.

As I said in my Provisional Decision, £1,535, £1,410 and £1,770 was deposited in cash in June, July and August respectively. So, it does look like there was cash going into her accounts over and above her earnings. We did ask Miss S to explain the cash deposits going into her accounts. But her efforts to explain her bank statements in response – as well as the explanations that she had voluntarily given us at various points throughout this complaint – were very general in nature. And while I still don't find that especially surprising given how long ago this loan was applied for, it did and still does make it more difficult to pin point what was going into her accounts in order to determine the state of her financial circumstances – including, in particular, whether the excess cash I've referred to above can be explained as contributions from her partner each month.

I did acknowledge in my Provisional Decision that it's *possible* that some of the cash deposited into Miss S's accounts over the course of June, July and August was the money she says her partner kept in her account following his divorce. But as she hadn't and still hasn't made any specific reference to the amounts that he put into her account for that purpose, or the length of time that he did that for, there still isn't the evidence to persuade me that's a more plausible and probable explanation.

In my view, therefore, while the evidence we have may not be the clearest, it still looks like Miss S's partner probably was contributing in some shape or form at the time of this loan. And had Amigo seen the bank statements I've seen, and questioned Miss S about her finances, I'm still not persuaded – in light of what I've said above – that she wouldn't have told Amigo that some of the money over and above her earnings was the result of contributions from her partner given how consistent she has been about the issue.

However, as I've said before, Miss S's bank statements don't make it easy to determine the likely size and regularity of the contributions from her partner without a line by line explanation from her – which, four years on, has inevitably proved difficult.

As things stand, there was only one payment prior to this loan from Miss S's partner for her rent over the course of June, July and August 2016 – and that was the £150 on 15 July. And as there's nothing persuasive in the bank statements I've looked at to suggest that her partner was giving her £680 each month, I still think it follows that Amigo's calculation of Miss S's disposable income would have been lower than it was had it seen what I've seen.

Exactly how much lower Amigo's calculation would have been is difficult to determine given the nature of Miss S's bank statements. But even if I accept – for argument's sake – that all of the cash deposited into Miss S's accounts in June, July and August over and above her earnings can be explained as contributions from her partner to the household bills (rent included), I'm still not persuaded that Amigo could have reasonably recorded her rent as £0 as part of its income and expenditure assessment had it seen and interrogated the information I've seen as a result of its own reasonable and proportionate checks.

Indeed, if the cash going into Miss S's accounts over and above her income from earnings can be explained in that way, the average amount given to her by her partner in June, July and August 2016 was either:

- £371.66 if Miss S's net monthly income from earnings was £1,200 – which is the amount she declared at the time of this loan; or
- £271.66 if Miss S's net monthly income from earnings was the equivalent of £300 a week – which is the amount she declared more recently.

That, in turn, would have meant that Miss S was paying – on average in very rough terms – either £258 or £358 of the £680 payable in rent in each of those months once the £150 transferred on 15 July is averaged out over the three months in question. And when those averages are added to the £494 in outgoings I've listed above, her monthly expenditure looks more like £752 or £852. But if I include Miss S's utilities, travel/transport, clothing and council tax, and even if I assume – for argument's sake once again – that those were more likely to reflect what was declared at the time of this loan rather than what Miss S shared more recently, for example, her monthly expenditure only increases to £1,092 or £1,192.

And on either of these measures, I still think that this loan is likely to have been unaffordable on a simple pounds and pence basis as it doesn't look like Miss S would have had enough disposable income once her verified outgoings had been taken into account.

What's more, even if the size of Miss S's partner's contributions before this loan were more significant than the current evidence suggests, how sustainable this loan was also turned on whether it would have been reasonable of Amigo to rely on her partner's contributions – whatever they were – when making that determination using the information I've now seen.

And in short, I still don't think it would have been reasonable.

When Miss S applied for this loan, she did so in only her name – which means she was the only person responsible for the repayments. As a result, Amigo had to satisfy itself that she could afford the loan on her own. And as I've said before, it had to ensure that she could make the repayments sustainably when doing that. That means she had to be able to repay this loan without undue difficulty – which includes not having to forgo other reasonable commitments or borrow to meet the repayments.

Yet, were it not for a *minimum* contribution from Miss S's partner *each and every* month, she simply wouldn't have had the money to make the repayments given what the evidence suggests her income and expenditure looked like.

I acknowledge that Miss S did tell Amigo in September 2016 that she was confident that her partner would pay the rent for loan term. But there's nothing in the bank statements covering the three months before this loan that suggests that her partner had set up a mandated payment each month – like a Standing Order for example. And the statements don't – in my view – suggest that he was making contributions that Amigo could have reasonably described as consistent – assuming, of course, that it would have even been willing to

assume, for more than the sake of an argument, that the cash going into Miss S's accounts over and above her income from earnings was from her partner to help pay the rent.

And with that being the case, I still don't think there's the evidence to argue that Amigo could reasonably have had the confidence to conclude that Miss S's partner would have made the requisite contributions *each and every* month for the not insignificant period of three years.

As a result, I still think that reasonable and proportionate checks are likely to have demonstrated that Miss S would not have been able to make the repayments for this loan without a real risk of undue difficulty. And if Amigo knew, as I still think it ought to have, in light of such checks that her ability to repay this loan would be based on contributions from her partner that were difficult to argue as consistent, I'm still not persuaded that it would have lent to her as it would have discovered that she was at risk of being in a position from which she couldn't make the repayments sustainably.

Amigo did argue in response to our adjudicator's assessment that, if Miss S actively chose to misrepresent her finances, then it doesn't seem reasonable or appropriate to reward her. And, as I said in my Provisional Decision, this is something I've thought about carefully.

Lenders like Amigo are entitled to expect prospective borrowers to answer questions about their financial circumstances in good faith. But as I've said, the regulatory expectations at the time imposed on Amigo a responsibility to verify the income and expenditure declared by Miss S should the circumstances warrant it. And CONC, as I read it, anticipated that applicants may not always provide entirely accurate information. After all, that's why the rules and guidance at the relevant time asked lenders to ensure that they had clear and effective processes and procedures in place to assess affordability (CONC 5.3.2R) – which included taking adequate steps to ensure that the information provided by an applicant was complete and correct (CONC 5.3.3G).

So, while I still acknowledge that there is clearly some variance between Miss S's declared outgoings in September 2016 and what her bank statements now appear to suggest was the case, I remain of the view that focusing on this when determining the merits of Amigo's decision risks overlooking its responsibility to properly scrutinise the information she had provided.

Reasonable and Proportionate Checks: Loan Two

As this loan was used to repay and add to Loan One, which I've already concluded was granted irresponsibly for the reasons I've set out above, I still think it's logical to argue that Miss S' complaint about this loan can and should be upheld without even having to recreate reasonable and proportionate checks.

After all, if matters had played out as the evidence suggests they should have done in September 2016, Miss S wouldn't have been able to repay and add to Loan One in December that year by taking this loan because Loan One wouldn't have been granted to her in the first place.

But, for completeness, there still isn't any persuasive evidence to suggest that there had been the sort of significant and sustained improvement in Miss S's financial circumstances that might reasonably lead to the conclusion that Loan Two – which only increased her indebtedness after Loan One – was likely to have been deemed sustainable and affordable after more thorough checks.

Was there a point when Amigo ought reasonably to have realised that it was increasing

Miss S's indebtedness in a way that was unsustainable or otherwise harmful – such that it shouldn't have lent her any more money?

At the point of applying for Loan One, Miss S had relatively little by way of existing debt. And, except for the loan she took in September 2016, that more or less remained the case in December that year when she took Loan Two.

There is an argument for saying that the proximity of Loan Two to Loan One should have led Amigo to question whether it was doing more harm than good by lending more money to Miss S after only a few months of having first done so.

But because of the findings I've already made in this decision, I still don't think it's necessary to explore the answer to this question in more detail than I already have.

Did Amigo act unfairly or unreasonably in some other way?

Miss S has expressed some concern about the nature of Amigo's emails to her guarantor when she fell into arrears. But, as I said in my Provisional Decision, those are a matter for her guarantor and Amigo. So, they aren't something I have considered as part of this complaint.

And while Miss S remains understandably worried about her financial circumstances, including her arrears on the lending in question, the crux of her complaint remains Amigo's decision to lend her money in September and December 2016.

As a result, I haven't seen anything to suggest that Amigo acted unfairly or unreasonably towards Miss S in some other way.

Did Miss S lose out as a result of Amigo's mistakes?

Miss S has had the benefit of the money that Amigo lent to her. So, this isn't a straightforward question to answer.

But, as I've said before, Amigo's decisions to lend to Miss S in September and December 2016 had the effect of increasing her indebtedness at a time when it looks like she was already struggling financially. And as she has since described the challenge she's had making the repayments, I still think the loans have proved to be unsustainable and harmful as a result.

And for those reasons, I still think that Miss S lost out as a result of Amigo's mistakes.

Conclusion

In light of everything I've said, and in summary, I think that Amigo:

- *didn't* complete reasonable and proportionate checks on Miss S to satisfy itself that she was able to sustainably repay Loans One and Two;
- *would* have probably found that Miss S couldn't make the repayments sustainably given her circumstances had it carried out reasonable and proportionate checks on both occasions;
- *didn't* act unfairly or unreasonably towards Miss S in some other way; but

- *did* cause Miss S detriment by lending to her irresponsibly.

Fair Compensation: Putting Things Right for Miss S

When I find that a business has done something wrong, I'd normally direct that business – 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 Miss S in the position she would now be in if she hadn't been given the loans in question.

However, this isn't straightforward when the complaint is about unaffordable lending. Miss S was given the loans and she 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 Miss S back in the position she would be in if she hadn't been given Loans One or Two in the first place.

Instead, I have to consider if there's another way of putting things right fairly and reasonably given the circumstances of this complaint. And having done that, here's what I think Amigo should do:

1. Amigo should refund all the interest and charges Miss S has paid to date.
2. As Loan Two is still in place, Amigo should reduce the outstanding capital balance by the amount calculated at Step 1.
3. If, after Step 2, there remains an outstanding capital balance, Amigo should ensure that it isn't subject to any historic or future interest and/or charges.

But if Step 2 leads to a positive balance, the amount in question should be given back to Miss S and 8% simple interest should be added to the surplus.

4. Amigo should remove any adverse information recorded on Miss S's credit file as a result of the interest and charges on Loans One and Two.

However, to be clear, Miss S still needs to repay the proceeds of the loans she received. But Amigo should ensure that any ongoing repayments are set at a level that is affordable for her given her current financial circumstances.

My Final Decision

For the reasons I've set above, I've decided to uphold this complaint about Amigo Loans Ltd. And as a result, I direct Amigo Loans Ltd to compensate Miss S in keeping with the steps I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 2 March 2021.

Morgan Rees
Ombudsman