

complaint

Miss A complains that Amigo Loans Ltd ("Amigo") did not carry out proper checks before providing guarantor loans that she couldn't afford and failed to provide an appropriate response when she experienced financial problems.

background

Miss A got three loans from Amigo in 2017. She borrowed £2,000 in early January, then another £3,000 a month later and £2,000 more in April 2017. Amigo asked Miss A for evidence of her regular income but not proof of her declared outgoings. Miss A thinks Amigo should have done more checks to ensure that the loan repayments were affordable for her. She says Amigo would have realised the loans were not affordable if it had checked her bank statements and credit file. Miss A also feels Amigo treated her unfairly when she was in financial difficulties. Amongst other things, she wanted to set up a temporary payment plan so her guarantor wouldn't have to get involved - but Amigo said she'd have to pay off arrears quite quickly or it would ask her guarantor to pay. Miss A wants Amigo to write off the balance owing, refund interest, rectify her credit file and pay compensation for stress and upset.

Amigo says it spoke to Miss A to check her situation before lending. It verified her identity and checked the income and expenditure she declared against payslips and her other credit commitments. Amigo considers it was entitled to rely on information Miss A provided and this, taken with information obtained from other sources, suggested the loan repayments were affordable so it wasn't irresponsible to lend. Amigo acknowledged it could have provided better service when Miss A had financial problems and offered to pay £25 compensation in recognition of that.

Our investigator thinks the checks Amigo did for the first loan were appropriate and it looked as if Miss A should be able to afford the repayments so it wasn't wrong to lend. He thought Amigo should perhaps have asked more questions when Miss A applied for her second loan, so soon after the first. But, Amigo said it asked Miss A about that and she explained the first loan was for travel abroad and the top-up would provide more funds for the trip. Amigo didn't think that seemed unusual - especially for travel to the part of the world that Miss A said she was going to. Taking this into account, our investigator thought the checks Amigo did seemed reasonable and it wasn't wrong to provide the second loan.

Our investigator says the third loan application should have prompted further checks as this was made just a few months after the first two and Miss A's total borrowing increased significantly over four months - by 400% to £7,000. He considers Amigo should have taken additional steps at this stage to verify the information Miss A provided about her finances. He didn't think it would have been too difficult for Amigo to check Miss A's bank statements, for example. And he's satisfied, if it had done so, Amigo would have seen numerous online gambling transactions and realised it would be irresponsible to lend. He recommends Amigo should refund interest and charges on Miss A's third loan, pay interest on the refund and remove any negative information about the third loan from her credit file.

Our investigator also looked into Amigo's response when Miss A said she was having financial trouble. He wasn't persuaded it was wrong of Amigo to ask the guarantor to step in and make payments when Miss A wasn't able to do so. He considers Amigo responded

positively and sympathetically overall and he didn't think it should have to do anything further.

Amigo accepted our investigator's recommendations but Miss A didn't. She thinks Amigo should have done more checks before agreeing to provide the second loan. She's also unhappy with the way Amigo responded when she had problems meeting repayments. She says Amigo carried on chasing payment after she tried to do the right thing and she was upset that a call handler responded unsympathetically when she tried to explain about her gambling addiction. She felt dismissed and ignored by Amigo which increased the considerable stress she was already under. She says it's unfair for lenders to respond in this way and she doesn't think £25 is enough compensation. She asked for an ombudsman to review the matter.

my provisional decision

I issued a provisional decision on 5 February 2019. I've summarised my provisional findings below.

"Lenders like Amigo are required to take reasonable and proportionate steps to ensure that a borrower like Miss A is likely to be able to repay the money she borrowed sustainably. But Amigo wasn't required to do any one check in particular - what's appropriate depends on a number of factors including the amount of money borrowed as well as the frequency and size of repayments.

Miss A agreed to repay nearly £2,500 over 24 months at £206 a month when she took out the first loan. I listened to a phone call she had with Amigo before this loan was provided. I was satisfied that Amigo asked for payslips to verify income and considered Miss A's other credit commitments and regular outgoings. Miss A told Amigo that she lived at home, had no dependants and received a regular income of about £1,400 a month. And the routine outgoings she declared indicated she would still have monthly disposable income of over £1,000 after she'd made the monthly repayment for the first loan.

I thought the checks Amigo did seemed reasonable and proportionate. And Amigo was entitled to rely on information that Miss A provided - unless it had reason to think that might not be correct. I didn't think Miss A's declared disposable income sounded unreasonable and I wasn't persuaded that Amigo should reasonably have undertaken additional checks. I didn't think it was irresponsible to provide the first loan.

I wasn't persuaded that Amigo should have suspected there might be a problem when Miss A asked for the second "top up" loan either, in these particular circumstances. There was no dispute that she told Amigo that she wanted the first loan to pay for a holiday. I was satisfied that she also told Amigo she wanted to borrow another £3,000 the following month to pay for her trip and I didn't think that sounded implausible.

I accepted the second loan (which paid off the first) increased the amount Miss A had to repay each month to over £550. But, I was satisfied that Amigo had checked Miss A's income and other credit commitments and taken her declared routine outgoings into account and the increased repayments looked affordable. I understood Miss A felt Amigo should have thought something might be wrong because someone with her disposable income wanted to borrow more money. And she thinks Amigo should have researched flight prices and other information to check the cost of her trip. But, I didn't think it was unusual for a

consumer to pay for a holiday using credit - even if they had a relatively high disposable income. And I wasn't persuaded that Amigo should have undertaken further checks.

I thought the checks Amigo did before it provided the first two loans seemed reasonable and proportionate. I was unable to say either loan looked unaffordable - in light of what Miss A had told Amigo about her finances and the additional information Amigo obtained from other sources. I didn't think Amigo had reason to undertake further checks at this stage and I was not persuaded it was wrong to provide the first two loans.

Miss A asked to borrow another £2,000 about two months after she got the second loan and agreed to pay back over £10,000 at over £400 a month over two years under the terms of the third loan. For broadly the same reasons as our investigator, I considered Amigo should have looked more closely at Miss A's situation at this point and I thought it would likely have refused to lend if it had done so. Amigo accepted our investigator's recommendations and agreed to provide a refund in respect of the third loan and rectify Miss A's credit file. I thought that sounded fair.

I considered what Miss A said about Amigo's actions after she found herself in financial difficulties. I acknowledged Miss A has had a difficult and stressful time and she was doing her best to try and sort things out. I understood it took a lot for her to contact Amigo about the problems she'd been having - and I could see why she was disappointed and upset by Amigo's response. I accepted Miss A would have preferred to agree a repayment plan so that her guarantor wouldn't be asked to make payments. But, I was satisfied Amigo agreed to consider this and a suitable repayment plan couldn't be arranged as, having considering Miss A's income and expenses, Amigo didn't think she'd have enough left each month to pay her priority debts.

I found it understandable that Miss A was unhappy when Amigo said it was going to ask her guarantor to meet her monthly repayment. But, I was satisfied the loan terms say Amigo can ask the guarantor to step in and pay if the borrower can't - and Amigo drew Miss A's attention to this possibility specifically in a number of conversations before she took out the loans. I was unable to fairly find it was wrong of Amigo to tell Miss A it would be contacting her guarantor in this situation.

I considered Amigo's contact with Miss A about repaying the debt. Having listened to some collections calls I could see why she found one particular call handler unsympathetic. Miss A said this increased the stress she was under significantly - affecting her relationship with her guarantor, who is a family member. Amigo accepted Miss A should have received better service and apologised. And I was satisfied it did ultimately listen to what Miss A had to say and the response was positive and sympathetic overall. But, I considered service failures had caused Miss A additional and unnecessary stress and inconvenience and I thought Amigo should pay Miss A £75 compensation for that.

I invited both parties to think about my provisional findings and let me have any further submissions before I reviewed the matter and made my final decision.

the responses received from the parties

Amigo accepted my provisional findings but Miss A still feels strongly that it was irresponsible to lend. She says Amigo failed her as a customer by not undertaking more extensive checks. She asked me to consider the following (in summary):-

- the fact that she borrowed so much (£7,000 within 4 months) with her declared income of around £1,550 per month (excluding overtime) should have created suspicion as to why she needed to borrow so much within a short space of time;
- flights to her destination cost no more than a few hundred pounds and hotels could be booked for similarly modest amounts so Amigo should have realised she was unlikely to need as much as she said for the trip and checked her finances more closely before agreeing to the second loan;
- after she disclosed her gambling addiction Amigo promised to treat her (and this information) sensitively but she was asked the same questions repeatedly and Amigo lost her income and expenditure form which she had to resend which was inconvenient and distressing;
- a call handler was unprofessional and rude and accused her of telling lies. This had such a negative impact on Miss A's emotional wellbeing that she requested communication via email going forward but Amigo carried on making requests for her to phone when it should have known she was unable to do so;
- Amigo also continued sending unnecessary communications which she feels pretended to be informative but were intended to add pressure to pay;
- she was told she was eligible for a £10,000 loan top up even after disclosing her gambling addiction and was accepted with the aid of a guarantor;
- Amigo says if a customer falls into arrears it will always work with the borrower first before approaching the guarantor but it failed to do that in her case; and
- the loan was not affordable for her guarantor.

Miss A thinks Amigo lent to her irresponsibly and provided very poor service so it should pay much more compensation.

my findings

I've re-considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of

I want to thank Miss A for her detailed response to my provisional decision. I am sorry it's taken so long to reach this point and I want to assure her that I have considered everything that she has said carefully. I'm afraid however that this has not persuaded me to change my mind and I'll explain why below.

irresponsible lending

My role here is to decide what's fair and reasonable in all of the circumstances of this complaint - taking the relevant rules, guidance and good industry practice into account. As I explained in my provisional decision, Amigo was required to do reasonable and proportionate checks before lending in order to satisfy itself that Miss A was likely to be able pay back the money she borrowed in a sustainable way.

For the reasons I set out in my provisional findings, I remain of the view that the checks Amigo did for loans one and two were reasonable and proportionate. I accept Miss A told Amigo she had a relatively high disposable income but I don't think Amigo had reason to question that, in this situation. I'm satisfied Amigo checked proof of income and asked Miss A about her outgoings in some detail. I acknowledge Miss A's declared outgoings were fairly

low, compared to national averages. But Miss A told Amigo that she lived at home with no dependants and I don't think that sounded unreasonable.

I am satisfied that Amigo checked Miss A's credit history as well before providing the first two loans. Amigo told us the information it saw indicated Miss A had two credit cards and a telecommunication debt and there was no reason to think she might struggle to meet the relevant loan repayments. I've seen a copy of Miss A's credit file for the relevant time that she provided. I accept there's some historic adverse information but I don't think that should reasonably have raised a red flag for Amigo, in these circumstances. It looks as if Miss A took out some high cost short term loans around the same time that she applied for the first two loans with Amigo. But, I think it's likely these weren't recorded on her credit file for a month or so and Amigo wouldn't have seen this information when it considered her first two applications.

For the reasons I've set out already, I think Amigo was entitled to accept the information that Miss A provided - which sounded credible and was not inconsistent with information it had obtained from reasonable and proportionate checks with third party sources. And I'm not persuaded that Amigo should reasonably have undertaken any additional checks - or investigated the likely cost of Miss A's trip - before providing the first two loans.

By the time Miss A came to apply for the third loan however, I think Amigo should have done more checks. I'm satisfied that Amigo could see, from information on Miss A's credit file, she'd taken on more debt with other lenders. I don't think Miss A's explanation that this was being repaid by others was sufficient - taken with the fact that she'd also applied to Amigo for three relatively large loans in quite quick succession and increased her total borrowing significantly. Amigo accepts it was wrong to provide the third loan and agreed to refund related interest and charges, pay interest on the refund and remove any related information from Miss A's credit file. And I remain of the view that's fair and reasonable overall.

did Amigo act unfairly or unreasonably in some other way?

It's clear that Miss A has experienced some very difficult personal and financial problems. I'm satisfied that she told Amigo about her financial issues and her gambling addiction in October 2017. I can see that she wanted to repay the debt herself under a repayment plan without involving her guarantor and I understand she was unhappy with the way Amigo got in touch.

Where a customer tells a lender that they're having difficulty with money and other issues we expect the lender to listen and try to get some idea of the borrower's circumstances. This might include asking for details of income and expenditure and then making efforts to try and agree the best way forward. We'd also expect the borrower to work with the lender and provide any reasonable information that's requested. But, I accept a lender shouldn't ask for more information than it needs and lenders should deal with the borrowers appropriately depending on the circumstances, including taking account of the way the borrower wants to be contacted.

Amigo has supplied notes relating to the contact it had with Miss A after she said she was having financial problems. I have also listened to recordings of several collections calls. It's clear that Miss A had a poor experience with one telephone adviser. This call was handled badly and I have no doubt Miss A found it upsetting. I appreciate she also found it frustrating and upsetting to have to tell different call handlers about her difficulties and provide information about her finances when she had already done so.

I'm satisfied however that Amigo signposted free sources of debt advice early on. And it also asked Miss A about any relevant medical conditions, explained that it would need up to date information about her financial situation from time to time, offered some "breathing space" and allowed Miss A some time to pay off arrears. I think these were positive and sympathetic steps and what we would expect a lender to do in these circumstances. It looks as if Amigo also took account of the fact that Miss A didn't want to be contacted in certain ways and explained it could communicate with her in different ways but some correspondence would still need to be sent for legal reasons. I can't fairly criticise Amigo for that.

Ultimately Amigo wasn't satisfied that Miss A had enough disposable income for a suitable payment arrangement and told her it would be looking to her guarantor to pay back the debt. I realise this wasn't what Miss A wanted to happen and I can see why she found it upsetting. But, I don't think it was unreasonable for Amigo to keep the situation under review. And, looking at Miss A's financial situation at the relevant time, I can't fairly say Amigo should reasonably have agreed a payment plan.

Amigo accepts it should have provided better service here and I'm satisfied it has apologised for that. Taking everything into account, I remain of the view that it is fair and reasonable for Amigo to pay Miss A £75 compensation. I am not persuaded that I can reasonably require Amigo to pay more, in all of the circumstances. I appreciate this decision is likely to come as a disappointment to Miss A. And I have sympathy for the situation she finds herself in. But, for the reasons I've set out already, I see no fair and reasonable grounds to depart from my provisional conclusions.

my final decision

My decision is I uphold this complaint and I require Amigo Loans Limited to

1. refund interest and charges in respect of Miss A's third loan;
2. pay interest on the refund at 1 above at 8% simple a year from the date of payment to the date of settlement;
3. apply the total refund due from 1 and 2 above to reduce any balance owed and, if there's any surplus, pay that to Miss A;
4. remove any adverse information recorded about the third loan from Miss A's credit file; and
5. pay Miss A £75 compensation for distress and inconvenience.

If Amigo considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Miss A how much it's taken off. It should also give her a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 15 May 2020.

Claire Jackson
ombudsman