

complaint

Mr E complains that Amigo Loans Ltd irresponsibly gave him a loan and two further top-up loans.

background

In July 2014, Amigo approved a £5,000 loan application for Mr E repayable over two years. Two top-up loans were also later approved. One for £5,000 in August 2015 repayable over four years (£2,757.62 was used to settle loan one), and another for £5,750 in December 2016 repayable over two years (£4,488.64 was used to settle loan two).

Mr E complained to Amigo about being given the loans. He says he had a gambling problem and Amigo would have found this out if a thorough check had been completed. He says he told Amigo he was taking out the loans in order to consolidate his existing debts. He says they should have realised he hadn't done this each time he requested a top up.

Amigo says it carried out a thorough check each time it lent money to Mr E which included a telephone call where it asked several questions about his existing debts and ability to repay. It said for the first loan it could see Mr E had several defaults recorded on his credit file but as these were all historic it didn't suggest he was in financial difficulty anymore. It said questions were also asked about Mr E's future expenditure (as he was going to be moving out of his parents' home) and this showed he had sufficient disposable income to afford the repayments for the loan.

Amigo said that when Mr E applied for the top-up loans some of his previous debts had been paid off since the previous loan was taken out. It said this reassured it that Mr E had used its loan for debt consolidation.

I sent Mr E and Amigo my provisional decision on 22 May 2019. My provisional decision initially summarised the regulatory framework, relevant law and relevant publications (this is copied in full in the appendix to this decision in order to give proper context to this final decision). I then explained why I thought Mr E's complaint should be upheld. A copy of the relevant part of my provisional decision is below:

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

- *Did Amigo complete reasonable and proportionate checks to satisfy itself that Mr E would be able to repay his loans in a sustainable way?*
 - *If so, did it make a fair lending decision?*
 - *If not, would those checks have shown that Mr E would've been able to do so?*
- *Bearing in mind the circumstances, at the time of each application, was there a point where Amigo ought reasonably to have realised it was increasing Mr E's indebtedness in a way that was unsustainable or otherwise harmful and so shouldn't have provided further loans?*
- *Did Amigo act unfairly or unreasonably in some other way?*

Amigo was required to carry out a reasonable assessment of Mr E's ability to repay the borrowing in a sustainable way. This is sometimes referred to as an 'affordability risk' check. These checks should be sufficient to ensure the borrower can repay the debt sustainably without undue difficulty.

The thoroughness of the check Amigo carries out should be proportionate to the situation, taking into consideration:

- the customer's circumstances (including their lending history);*
- the amount of credit and total repayable;*
- the term of the loan;*
- the size of the repayments; and*
- any other relevant factors.*

The checks Amigo carried out for all three loans were broadly the same.

Did Amigo complete reasonable and proportionate checks to satisfy itself that Mr E would be able to repay her loans in a sustainable way?

Amigo had a discussion with Mr E prior to approving the initial loan. It asked him about the reason he needed the loan, which Mr E said was for paying off existing debts and a lump sum towards the cost of moving out of his parent's house. Amigo asked him about his expected future outgoings once he'd moved out (as these were likely to be higher), and it is these higher figures it used to assess his regular outgoings.

Amigo also asked about Mr E's existing debts. I've seen that Amigo had completed a credit check which showed Mr E owed around £10,500 to 14 other creditors. Only one of those debts didn't have adverse data recorded against it in the previous six months, eight were defaulted and a further three were at least five months in arrears. So I don't agree with Amigo when it says Mr E's financial difficulties appeared to be historic. From the information it had available it ought to have been very clear that he'd had recent problems managing debts and that there was a possibility he might have been struggling financially.

Mr E explained to Amigo that he had £2,000 in savings and his parents were also going to give him another £2,000 to help clear his debts. He said he'd also use a little over half of the £5,000 borrowed from Amigo to pay back his existing debts. Amigo's representative seems to have had some concerns about what Mr E was saying. He asked Mr E to confirm that he was certain he had these savings available to pay back his existing debts. The way this was positioned in the call persuades me that Amigo wouldn't have granted the loan unless this money was available to Mr E.

But instead of seeking proof of the savings which appeared important to its lending decision, Amigo granted the loan anyway. I don't think this was a reasonable decision to make. There were already clear signs that Mr E might be in financial difficulty and Amigo was willing to rely on self-declared savings, which on the face of it wouldn't seem reasonably plausible that he had access to. I say this because Mr E was clearly thousands of pounds in debt and four of those debts were payday loans. Mr E's use of payday lending called into question whether he really had these funds available.

So taking all of this into consideration, I don't think Amigo carried out a proportionate check for the first loan. I don't think Amigo did enough to establish that Mr E would be able to sustainably repay the borrowing over the term.

would proportionate checks more likely than not have shown that Mr E couldn't sustainably repay these loans?

As I've concluded that Amigo didn't carry out proportionate checks, I now need to consider whether its lending decision ought likely to have been any different if a proportionate check had been carried out.

I can't be certain what additional information and evidence Amigo would have asked for if it had picked up on the concerns I've mentioned earlier in my decision. But I do think it would have been proportionate for it to have verified Mr E's declared savings and outgoings. This is because of the number of concerns (as I've highlighted earlier) about possible financial difficulties and his ability to sustainably repay the borrowing.

I've reviewed Mr E's current account statements from around the time each loan was granted to get an idea of what information Amigo would likely have seen if it had asked to verify his outgoings. His account shows a significant volume of gambling transactions which often exceeded his monthly income and relatively regular use of payday lending. This suggest to me that Mr E was reliant on payday loans and other forms of unsustainable borrowing to meet his essential living costs and to further fund his gambling. So I think that proportionate checks would more likely than not have shown that Mr E's ability to repay these loans was largely dependent on his success as a gambler. This indicates Mr E was unlikely to be able to repay any of the loans Amigo gave him in a sustainable way.

For these reasons, I think a proportionate check would likely have shown Amigo that Mr E couldn't afford the borrowing. It follows, that the initial loan wasn't lent responsibly.

bearing in mind the circumstances, at the time of each application, was there a point where Amigo ought reasonably to have realised it was increasing Mr E's indebtedness in a way that was unsustainable or otherwise harmful and so shouldn't have provided further loans?

As I've provisionally found that loan one shouldn't have been given, it follows that the two subsequent top-up loans should also be automatically upheld. This is because had the initial loan not been granted it wouldn't have been possible for Mr E to apply for top-ups. But in any event, I think it would be helpful to set out why I think Amigo ought to have realised with both loans two and three that further borrowing was unsustainable for Mr E.

loan two

Mr E applied for the first top up loan around a year after the initial loan. Again there was a phone call with Amigo before the loan was granted. Mr E said he wanted the top up loan to consolidate his existing debts (including his current loan with Amigo). Mr E said he was still living with his parents and had decided not to move out until all of his debts were cleared.

Amigo's credit check showed Mr E had ten outstanding creditors (one of which was Amigo) with a combined debt of around £9,500. Mr E explained that all of the outstanding debts would be consolidated by the new loan or paid off through savings that he had. He told Amigo he had managed to save around £2,800.

Amigo says that because Mr E had used the previous loan to consolidate some of his existing debts (as he said he would) then it didn't have any concerns about granting him the second loan. But given what Amigo knew, I don't think this was a reasonable decision to make without completing further checks first.

I say this because Mr E had told Amigo previously that he had access to £4,000 which he'd use to pay off his existing debts. He said his aim was to clear all of his debts in order to be able to buy his own property. But Mr E's overall debt had only reduced by £1,000 between the first and second loans. So Amigo ought to have realised Mr E either may not have had the £4,000 savings he initially claimed, or may have used them for something other than reducing his debt.

Amigo could also see that of the four debts Mr E said he'd use loan one to pay off in full, only one of those debts had actually been paid off when he applied for loan two. This should have raised concerns with Amigo about (a) how accurate Mr E's self-declared savings and outgoings were and (b) his ability to sustainably repay the loan.

As well as granting further credit, Amigo was also agreeing to increase the term of the loan by an additional four years. So I don't think it was proportionate to only carry out essentially the same check as it did with loan one – particularly because of the other concerns I've highlighted above.

loan three

The checks Amigo carried out for loan three were equally if not even more insufficient than for loan two. It had been a little over a year since loan two was taken out. Once again Amigo spoke to Mr E on the phone before granting the loan. Mr E explained that the new top up was for debt consolidation and a little bit for Christmas.

The call was surprisingly brief, when compared to the calls that took place before the first two loans were approved. There was very little scrutiny applied to what Mr E had said. Although I acknowledge the number of creditors showing on Mr E's credit file had halved between loan two and loan three. And this does indicate he likely used loan two to consolidate some of his existing debts.

But Mr E's overall debt had again only reduced by around £1,000. This was despite him claiming to have had £2,800 in savings to pay off his debts when he took out loan two. I think this ought to have raised concerns with Amigo for the same reasons I explained above (about loan two).

It's also worth highlighting here that Mr E had declared he had in excess of £1,000 in disposable income each month. I think that Amigo ought reasonably to have suspected that this information may have been inaccurate. I say this because Mr E having disposable income of this amount meant that he would have been able to clear not only his existing loan with Amigo but his four other debts in around eight to nine months. So on the face of it, Amigo ought fairly and reasonably to have questioned why Mr E needed to take out borrowing for a further two years and pay a high rate of interest on it, if he genuinely had this level of disposable income.

Mr E was also now entering into a pattern of borrowing with Amigo. This was his third loan in as many years. And he hadn't managed to clear his previous two loans without taking out further borrowing from Amigo. This might suggest he was relying on borrowing to meet everyday living costs. This combined with the other points I've mentioned ought to have prompted Amigo to complete more thorough checks before agreeing to lend as it suggested further borrowing was likely to be unsustainable for Mr E.

was there any other reason Amigo acted unfairly in granting the credit?

I've not seen anything that makes me think Amigo acted unfairly or unreasonably towards Mr E in some other way.

putting things right

Mr E has had the benefit of being able to use the money Amigo lent to him. It does appear he did use the majority of it to pay off existing borrowing. So it would be unfair to say he doesn't have to pay anything back to Amigo. But Mr E shouldn't have been given these loans.

Mr E has borrowed a total of £8,503.74 across all three loans so this should be all he has to pay back to Amigo. If he's already paid back more than this, then Amigo needs to treat any payments made after £8,503.74 as overpayments. Amigo should refund any overpayment to Mr E adding 8% simple interest per year from the date of overpayment to the date of settlement.

If there is still a balance for Mr E to pay, after all this has been done, Amigo should arrange an affordable (interest free) repayment plan with him. As these loans shouldn't have been granted, it wouldn't be fair for Amigo to report any adverse information on Mr E's credit file.

Both Amigo and Mr E accepted my provisional decision and had no further comments to make.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. As neither party has provided anything further, I see no reason to depart from the conclusions I reached in my provisional decision.

my final decision

For the reasons given above, I uphold this complaint and direct Amigo Loans Ltd to:

- Remove all interest and charges from the three loans so that Mr E only owes Amigo a total of £8,503.74.
- If Mr E has already paid more than £8,503.74 to Amigo then it should refund any overpayment to him. It should add 8% simple interest per year from the date of any overpayment to the date of settlement.
- Remove any adverse data entries for these three loans from Mr E's credit file.

If Amigo considers tax should be deducted from the interest element of my award it should provide Mr E with a certificate showing how much it's taken off. This is so Mr E can reclaim that amount, assuming he is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 20 July 2019.

Tero Hiltunen
ombudsman

appendix – relevant considerations as set out in my provisional decision

the regulatory framework

regulation by the Financial Conduct Authority (from 1 April 2014)

Amigo gave Mr E all three loans after regulation of Consumer Credit Licensees had transferred from the Office of Fair Trading (“OFT”) to the Financial Conduct Authority (“FCA”) on 1 April 2014. Amigo initially obtained interim permission to provide consumer credit before it went on to successfully apply for authorisation as a consumer credit provider.

Amigo’s interim permission to provide consumer credit and its eventual authorisation to do so meant that it was subject to the FCA rules and regulations from 1 April 2014.

- *the FCA Principles for Business (“PRIN”)*

The FCA’s Principles for Business set out the overarching requirements which all authorised firms are required to comply with.

PRIN 1.1.1G, says

The Principles apply in whole or in part to every firm.

The Principles themselves are set out in PRIN 2.1.1R. And the most relevant principle here is PRIN 2.1.1 R (6) which says:

A firm must pay due regard to the interests of its customers and treat them fairly.

- *the Consumer Credit sourcebook (“CONC”)*

This sets out the rules and guidance which apply to guarantor loan providers like Amigo when providing loans. CONC 5 sets out a firm’s obligations in relation to responsible lending.

Section 5.2.1R (2) of CONC sets out what a lender needs to do before agreeing to give a borrower a loan. It says a firm must consider:

- (a) the potential for the commitments under the regulated credit agreement to adversely impact the customer’s financial situation, taking into account the information of which the firm is aware at the time the regulated credit agreement is to be made; and*
- (b) the ability of the customer to make repayments as they fall due over the life of the regulated credit agreement, or for such an agreement which is an open-end agreement, to make repayments within a reasonable period.*

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

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

CONC 5.3 contains further guidance on what a lender should bear in mind when thinking about affordability.

CONC 5.3.1G(1) says:

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

CONC 5.3.1G(2) then says:

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

CONC 5.3.1G(6) goes on to say:

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.

In respect of the need to double-check information disclosed by applicants, CONC 5.3.1G(4) says:

- (a) 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 CONC 5.3.7R says that:

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).

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

As the guarantor isn't a party to this complaint, I don't think that it's necessary to set out all the rules and guidance relating to the additional obligations owed to guarantor in this decision. That said I do think it's useful for me to set out CONC 5.2.6G which says:

- (2) The provision of the guarantee or indemnity (or both), and the assessment of the guarantor under CONC 5.2.5R, does not remove or reduce the obligation on the lender to carry out an assessment of the borrower under CONC 5.2.1R or CONC 5.2.2R. Firms are reminded of the rule in CONC 5.3.4R that the assessment of the borrower must not be based primarily or solely on the value of any security provided by the borrower.*

Section 140 of the Consumer Credit Act 1974

All of Mr E's loans were given to him after Section 140 of the Consumer Credit Act came into force on 6 April 2007. Section 140A sets out circumstances where the court may determine that the relationship between a creditor and a debtor is unfair to the debtor.

Section 140A says:

140A Unfair relationships between creditors and debtors

- (1) The court may make an order under section 140B in connection with a credit agreement if it determines that the relationship between the creditor and the debtor arising out of the agreement (or the agreement taken with any related agreement) is unfair to the debtor because of one or more of the following—*
 - (a) any of the terms of the agreement or of any related agreement;*
 - (b) the way in which the creditor has exercised or enforced any of his rights under the agreement or any related agreement;*
 - (c) any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement).*
- (2) In deciding whether to make a determination under this section the court shall have regard to all matters it thinks relevant (including matters relating to the creditor and matters relating to the debtor).*
- (3) For the purposes of this section the court shall (except to the extent that it is not appropriate to do so) treat anything done (or not done) by, or on behalf of, or in relation to, an associate or a former associate of the creditor as if done (or not done) by, or on behalf of, or in relation to, the creditor.*
- (4) A determination may be made under this section in relation to a relationship notwithstanding that the relationship may have ended.*
- (5) An order under section 140B shall not be made in connection with a credit agreement which is an exempt agreement [for the purposes of Chapter 14A of Part 2 of the Regulated Activities Order by virtue of article 60C(2) of that Order (regulated mortgage contracts and regulated home purchase plans)]*

Section 140B sets out the types of order the court could make should it determine that the relationship between the creditor and debtor is unfair to the debtor. Section 140B says:

140B Powers of court in relation to unfair relationships

- (1) An order under this section in connection with a credit agreement may do one or more of the following—*
 - (a) require the creditor, or any associate or former associate of his, to repay (in whole or in part) any sum paid by the debtor or by a surety by virtue of the agreement or any related agreement (whether paid to the creditor, the associate or the former associate or to any other person);]*
 - (b) require the creditor, or any associate or former associate of his, to do or not to do (or to cease doing) anything specified in the order in connection with the agreement or any related agreement;*

- (c) *reduce or discharge any sum payable by the debtor or by a surety by virtue of the agreement or any related agreement;*
- (d) *direct the return to a surety of any property provided by him for the purposes of a security;*
- (e) *otherwise set aside (in whole or in part) any duty imposed on the debtor or on a surety by virtue of the agreement or any related agreement;*
- (f) *alter the terms of the agreement or of any related agreement;*
- (g) *direct accounts to be taken, or (in Scotland) an accounting to be made, between any persons.*

other relevant publications

CONC sets out the regulatory framework that regulated/authorised lenders have to adhere to. But they represent a minimum standard for firms. I'm also required to take into account any other guidance, standards, relevant codes of practice, and, where appropriate, what I consider to have been good industry practice.

the FCA's 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 Officer of all 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 sets out its view of the key causes of harm. It says:

"To assess how firms in the High Cost Lenders portfolio could cause harm, we analysed their strategies and business models. We considered a wide range of information and data, including firms' regulatory histories, the number and nature of complaints, and findings from the HCCR. We also carried out diagnostic work on guarantor lenders, which involved issuing a data request to firms in October 2018.

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, in the section entitled '**Complaints**' it says:

"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".

Further detail in relation to the FCA's future work was provided on page four of the letter. The section entitled '**Additional focus for firms providing guarantor lending**' said:

As well as the areas of focus above, we will also prioritise our supervisory work with firms that provide guarantor loans in the following area:

Payments made by guarantor:

Our diagnostic work on guarantor lending showed that many guarantors make at least one repayment and the proportion of guarantors making payments is growing. We want to understand the root causes for this increase, and whether firms are conducting adequate affordability assessments. We are also concerned that guarantors may not fully understand how likely it is that they will be called upon to make a payment. So, as well as our broad portfolio-wide work on relending, we will start a piece of complementary work on guarantor lending. This will establish whether potential guarantors have enough information to understand the likelihood and implications of the guarantee being enforced.

the FCA's Dear CEO letter on affordability of High-Cost Short-Term Credit ("HCSTC") loans

On 15 October 2018, the FCA wrote a 'Dear CEO' letter to the Chief Executive Officer of all HCSTC providers. The letter was about the issues surrounding the increase in complaints about unaffordable lending.

The third paragraph of this letter said:

"We note that the Ombudsman has recently published four examples of determinations of individual complaints about payday loans to illustrate its approach to the issues raised in those complaints (see: <https://www.financial-ombudsman.org.uk/publications/technical.htm>). If relevant, firms should take these examples of determinations into account as part of establishing their own effective procedures for complaints handling (see DISP 1.3.1R)".

Paragraph eight of the letter went on to say:

"We would highlight in particular the risks in relation to repeat borrowing. These were flagged in our price cap proposals in CP14/10, in July 2014, in which we said that we were concerned that repeat borrowing could indicate a pattern of dependency on HCSTC that is harmful to the borrower. We noted that rigorous affordability assessments were key to avoiding harm in this area, and firms should ensure they are making responsible assessments of the sustainability of borrowing".

the FCA Executive Director of Supervision's (Retail and Authorisations) speech at the Credit Summit, London, on 21 March 2019

The FCA's Executive Director of Supervision gave a speech at the Credit Summit, which took place on 21 March 2019, entitled "What can the consumer credit sector expect from the FCA?".

The speech reiterated much of what was said in the High Cost Credit portfolio strategy letter (set out above) issued on 6 March 2019. And in his speech the Executive Director of Supervision said:

"Over the last few years we have seen a dramatic increase in the use of guarantor loans by consumers. Balances on guarantor loans are fast approaching £1 billion and these have more than doubled since 2016.

While these products provide an opportunity for those with thin credit files - poor or limited credit history - we do have concerns. Concerns about affordability. Recent work we have done in this area showed that many guarantors are making at least 1 payment and the proportion of guarantors making these payments is growing.

There is also growing anecdotal evidence that guarantors may not understand how likely it is that they will be called upon to make a payment. Our work will therefore focus on affordability and on

understanding whether potential guarantors have enough information to understand the likelihood and implications of the guarantee being enforced.

We have already amended certain rules to ensure that the protections they provide to borrowers also extend to guarantors, for example rules requiring forbearance, pre-contractual explanations and fair treatment. In assessing creditworthiness, we have clarified that firms must undertake a reasonable assessment of the potential for the guarantor's commitment to have a significant adverse impact on their financial situation.

And if the guarantor is called upon, we have published guidance on our view of what constitutes 'enforcement' of the guarantee under the CCA – in practice this means we expect firms to provide guarantors with adequate notice before exercising a Continuous Payment Authority (CPA).

There are also questions over the level of interest rates charged on these products considering that these guarantors are deemed to be credit worthy, we will therefore be considering this and the business models of these firms”.