Financial Ombudsman Service

complaint

Miss G has complained that Amigo Loans Ltd ("Amigo") provided her with a number of unaffordable guarantor loans.

She says that if Amigo had checked properly before providing the loans it would have seen from her credit record that she had missed payments and defaults and that she was also in a debt management plan. And, in these circumstances, Amigo ought to have realised that she was in financial difficulty.

background

Amigo provided Miss G with a total of five guarantor loans. On three occasions, Miss G was given further funds ("top-ups") while she still had an outstanding balance. As Amigo doesn't allow borrowers to have more than one outstanding loan at a time, Miss G entered into completely new loan agreements where the new loan included a sum to clear the outstanding balance on the previous one, as well as the additional funds Amigo agreed to provide.

Miss G's overall lending history with Amigo is as follows:

Loan	Provided	Term	Amount	Funds paid	Paid to previous loan	Repayment
1	March 2014	12 months	£2,500	£2,500	£0	£257.65
2	August 2015	24 months	£4,500	£4,500	£0	£278.17
3	February 2016	24 months	£7,000	£3,301.32	£3698.68 (Loan 2)	£432.71
4	March 2017	24 months	£9,000	£4,996.56	£4003.44 (Loan 3)	£556.34
5	January 2018	24 months	£7,500	£548.41	£6951.59 (Loan 4)	£463.62

One of our investigators looked at what Amigo and Miss G said. He thought that Amigo hadn't treated Miss G unfairly or done anything wrong when providing these loans. So he didn't uphold Miss G's complaint.

Miss G disagreed with our investigator's assessment and asked for an ombudsman to review her complaint.

my provisional decision

On 2 May 2019, I issued a provisional decision setting out my initial findings on Miss G's complaint. I won't copy that decision in full, but I will instead provide a summary of my findings.

Firstly, I summarised the regulatory framework, relevant law, relevant publications, what I consider to be good industry practice, and the content of Amigo's own website at the time (this is copied in full in the appendix to this decision and I ask Amigo and Miss G to read this again in order to give proper context to this final decision).

In light of the relevant rules, guidance, good industry practice and law, I explained that there were three overarching questions I needed to consider in order to decide what's fair and reasonable in the circumstances of this complaint. These were:

1. Did Amigo complete reasonable and proportionate checks to satisfy itself that Miss G would be able to repay her loans in a sustainable way?

    - If so, did it make a fair lending decision?
    - If not, would those checks have shown that Miss G would've been able to do so?

2. 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 Miss G's indebtedness in a way that was unsustainable or otherwise harmful and so shouldn't have provided further loans?

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

In considering the first overarching question – whether Amigo completed reasonable and proportionate checks to satisfy itself that Miss G would be able to repay her loans in a sustainable way – I explained that the rules and regulations throughout the time Amigo lent to Miss G required it to carry out a reasonable and proportionate assessment of whether she could afford to repay any loan in a sustainable manner.

I explained that the checks had to be both "borrower-focused" and "proportionate". So Amigo had to think more widely than simply whether it would get its money back from Miss G. What Amigo needed to do was think about whether repaying the loan sustainably would cause difficulties or adverse consequences *for Miss G*.

In practice this meant that Amigo had to reasonably conclude that making the payments to the loan wouldn't cause Miss G undue difficulty or adverse consequences. And the existence of a guarantee and indemnity agreement and the potential for Amigo to pursue the guarantor instead of Miss G, for the loan payments didn't alter, lessen, or somehow dilute this obligation.

I also explained that what constitutes a proportionate affordability check was dependent upon a number of factors including – but not limited to – the particular circumstances of the borrower (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different loan applications.

In light of this, I provisionally found that a reasonable and proportionate check ought generally to have been *more* thorough:

- the *lower* a customer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);

- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);

- the *longer* the term of the loan (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make payments for an extended period); and

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

I explained that there may also be other factors which could influence how detailed a proportionate check should be for a given loan application – including (but not limited to) any indications of borrower vulnerability, any foreseeable changes in future circumstances.

I found that Amigo appeared to be relying heavily on the online questionnaires, which it asked Miss G to complete, as well as the telephone calls it had with her, in order to assess her expenditure and determine her ability to sustainably repay this loan.

I said this as Amigo told us:

"We expect customers to provide accurate information in their budget assessments, and it was Miss G's responsibility to ensure that the information provided was correct"

I thought that this statement was suggestive of Amigo overlooking its responsibility to scrutinise any information provided and to not proceed with an application in circumstances where it ought reasonably to have suspected the information provided is inaccurate. I also thought this was likely, in this case, because I had significant concerns about the weight Amigo placed on the information on the questionnaire Miss G completed.

I thought this was the case because, in my view, the word "assessment" in the title of the documentation provided didn't, in itself, mean that an assessment, let alone a reasonable and proportionate one of Miss G's ability to sustainably repay her loans took place.

I thought that an assessment required some kind of evaluation, judgement, appraisal or scrutiny. And, in this case, I thought Amigo simply accepted the information provided without question and without any attempt to scrutinise or evaluate it. I thought this was the case because for loan one Miss G was recorded as having a monthly income of £1400 and having little in the way of household expenditure as her partner paid for all of this. And Miss G was recorded as having had a monthly disposable income of nearly £1000.

In my view, this was contradicted by the other information Amigo had. I saw that there was an information section entitled credit file, on the questionnaire, and it recorded a combined balance of over £2300 on two current accounts. I thought that this meant Miss G had overdrawn balances of over £2300 on these accounts. This section also showed that Miss G had a credit card balance of over £1300 – across three cards – and an outstanding balance of £390 on a payday loan, which she was going to consolidate with these funds.

I couldn't see how Amigo could have reasonably concluded the completed questionnaire was accurate and that Miss G had a disposable income of almost £1000 a month, bearing in mind what it saw on her credit file. This is especially as she was taking out a loan to pay off an existing payday loan of £390.

I also had concerns with the monthly payments recorded for Miss G's existing debts. I couldn't see how a monthly payment of £65 was sustainable for an overdraft balance of around £1900 or a monthly payment of £40 was sustainable for a credit card balance approaching £1300 – after all I couldn't see how this ensured the respective balances were repaid within a reasonable period of time. And given how habitually Miss G had taken payday loans, in the period up to this loan being taken, I was surprised that this wouldn't have shown up on Amigo's credit search and alerted it to the fact that she was far from an occasional user of this type of borrowing.

I then went on to explain that the rules and guidance suggested that the risk of any credit not being sustainable directly related to the amount of credit granted and the total charge for credit relative to the customer's financial situation. In my view, Amigo was providing an expensive loan and its own website suggested that its loans were marketed as means of rehabilitating those who had previously had *'bad credit'*. And, in any event, irrespective of Amigo's marketing, the credit search carried out on Miss G showed wasn't in a great financial position.

I wasn't persuaded that the later credit searches carried out (at the time of the later applications) showed that Miss G was in a materially better financial position either. For example, at the time of loan two, while Miss G's overdraft balance had reduced, she owed £3000 on credit cards and around £2600 on catalogue shopping accounts. And by the time of loan four, Miss G had five credit cards with a combined balance of approaching £6000, catalogue accounts with a combined balance of approaching £6000 and outstanding balances on six unsecured loans.

Miss G's loan statements also showed that she'd missed payments on her Amigo loans too. So I wasn't persuaded by Amigo's argument that Miss G's loans were well managed. There were also significant arrears – as well as a default - on other accounts. And I thought that all of this painted a picture of someone whose finances were getting significantly worse during the course of her relationship with Amigo. I found that the information recorded on the income and expenditure questionnaire and then accepted by Amigo could be described as being, at best, optimistic and, at worst, wholly inaccurate.

I then explained that (bearing in mind the relevant law, regulations and good industry practice) a less detailed affordability assessment, without the need for verification, was only really likely to be fair, reasonable and proportionate in circumstances where the amount to be repaid was relatively small, the consumer's financial situation was stable and they would be indebted for a relatively short period.

But, in circumstances – such as in Miss G's case - where the customer's finances were showing telling signs of possible strain and distress, they were expected to maintain payments for a longer period of time and there was the potential that a guarantor would be required to step in and make payments, I thought it was far more likely that any affordability assessment would need to be more detailed and contain a greater degree of verification, in order for it to be fair, reasonable and proportionate.

I pointed out that CONC defines "sustainable" as being without undue difficulties and in particular the customer should be able to make repayments on time, while meeting other reasonable commitments; as well as without having to borrow to meet the repayments. And, in my view, this went further than a lender simply assessing whether the loan repayments were technically affordable in the sense of a strict calculation.

I noted that Amigo said it wouldn't have declined a loan application on the basis of an applicant's credit history alone. But in light of the information on Miss G's credit file, I couldn't see how Amigo could fairly and reasonably have concluded that Miss G would be able to make her repayments on time, without difficulty, without first getting a thorough understanding of her financial circumstances and some kind of reassurance that they weren't as distressed as the credit file was suggesting.

Taking all of this into account, I thought that Amigo needed to get a thorough understanding of Miss G's financial position in order to properly assess whether she would more likely than not have been able to sustainably make the loan payments she was committing to – especially for the later loans where any objective scrutiny of Miss G's credit file – on its own and irrespective of anything else - demonstrated a clear worsening of Miss G's financial position.

So, in these circumstances, I thought that as well as asking Miss G about the details of her income and expenditure, Amigo needed to take steps to verify what it was being told. It could have done this by asking for information such as bank statements, copies of bills, or even proof of Miss G's income.

As there wasn't any evidence that Amigo did properly scrutinise the information provided, or that it asked Miss G to provide documentary evidence to support the income and expenditure declarations made even where it was clear that her financial position was deteriorating, I found that it didn't complete fair, reasonable and proportionate affordability checks before providing Miss G with any of her loans.

I then went on to consider whether reasonable and proportionate checks, for these loans would more likely than not have indicated to Amigo that Miss G would have been unable to sustainably repay her loans.

I started by explaining that Amigo was required to establish whether Miss G could sustainably make her loan repayments. And this was wider than simply assessing just whether the loan payments were technically affordable on a strict pounds and pence calculation. I went on to explain that the loan payments being affordable on this basis could sometimes be an indication that a consumer could sustainably make their repayments.

But this in itself won't automatically mean that this is the case. This was because the rules and guidance were all clear in saying that a borrower shouldn't have to borrow further in order to make their payments. And, in my view, it followed that a lender should realise, or it ought fairly and reasonably to realise, a borrower would be unlikely to be able to sustainably make their repayments if it was on notice the borrower was unlikely to be able to make their repayments without borrowing further.

I considered the information that had been provided in light of this.

I started by explaining that it wasn't in dispute Miss G was substantially overdrawn when she was provided with loan one. And that she was continually in her overdraft in the months leading up to this loan application. I then explained that as Miss G's income was only half the amount she was overdrawn by, she was never likely to see a credit balance even when she received her monthly salary. I also observed that Miss G was struggling to make ends meet. And that is why she had taken out so many payday loans in the period leading up to loan one and she continued doing so after this.

I also found that Miss G's finances had actually worsened by the time of loan two. She owed more on credit cards and by that stage had accrued catalogue debt and a number of other loans too. By the time of loan two, Miss G was taking even more short-term loans, from even more providers, as she, in vain, attempted to try and stabilise her finances.

Having borne all of this in mind, I found that reasonable and proportionate checks would more likely than not have demonstrated that Miss G would not have been able to make the loan repayments to loans one and two without borrowing further – either from Amigo, or others, or using her overdraft. And as that was the case, I found that reasonable and proportionate checks would more likely than not have alerted Amigo to the fact that Miss G would not have been able to sustainably make the repayments to loans one and two.

I didn't recreate individual, proportionate affordability checks for loans three to five because I didn't think that was necessary to do so.

One of the reasons I thought that was the case was because there was an argument for saying that as loans three to five were top-ups of loan two and I had already found that loan two shouldn't have provided, it ought to have followed that the complaint about loans three to five fell within the scope of my findings for loan two. After all if matters had played out as they should have done, it wouldn't have been possible to top-up loan two if it wasn't provided in the first place.

But I didn't think I had to make such a finding in this case. This was because, in addition to assessing the affordability of each *individual* loan provided to Miss G by Amigo, I also thought it was fair and reasonable to look at the *overall pattern* of lending and what unfolded during the course of Amigo's lending history with Miss G.

In other words, I also had to consider the second of the three overarching questions I set out on page 2 of this decision. In considering this, I was mindful that the relevant rules and guidance – as summarised in the appendix to this decision - made it clear that a lender shouldn't continue lending where the loans were unsustainable or otherwise harmful and/or it was apparent that the customer may be experiencing financial difficulties

I had already concluded that reasonable and proportionate affordability checks weren't completed. And that based on the evidence on file, I found that such checks would more likely than not have shown that loans one and two were *individually* unaffordable. And looking beyond loan two, I found that Amigo ought fairly and reasonably to have realised that Miss G's financial position was so distressed that further loans were simply unsustainable for her.

I explained that the factors that led me to find that Amigo ought fairly and reasonably to have realised loan three was unsustainable or otherwise harmful were:

- the increasing amount of payday loans Miss G had taken;
- the increasing amount of other unsecured loans Miss G had (when she applied for loan one Miss G didn't have any but by the time of loan three she had four);
- the increasing amount of Miss G's catalogue debt, which the information recorded suggests she'd only be making minimum payments to. This wouldn't make any substantial inroads to the outstanding balance and perpetuate this debt;

I then explained that by the time of loans four and five:

- there had been missed payments on loan three and four;

- the number of unsecured loans (including a hire purchase one) had increased even though the questionnaire completed for loan three said that some of the funds were going to consolidate the balances on some of these loans;

- the number of credit cards held by Miss G had increased;

- Miss G had defaulted on other commitments and entered into a debt management plan on some of them;

- Miss G was still regularly taking a significant number of short-term loans;

- there was an outstanding bill of almost £3000 for a telecommunications provider.

I found that all of the above were clear indicators of Miss G being in a difficult and deteriorating financial position. And bearing in mind Amigo's obligation to monitor Miss G's repayment record and offer assistance should it appear that she might've been experiencing financial difficulties, I thought that Amigo should've offered assistance and/or a product that would allow her to sustainably repay what she owed.

But instead of doing this, Amigo instead kept consolidating Miss G's borrowing into further loans. I pointed out that Miss G started out with a loan requiring 12 monthly payments of around £257 in March 2014. And by the time of loans three to five Miss G was required to make payments of over £400 (and in the case of loan four approaching £600) for twenty-four months. So the payments to these loans were taking up a significant proportion of Miss G's income. And this was without even taking her existing debts into account.

I also explained that I had reached these findings while mindful of the fact Amigo itself promoted these loans as a way of rehabilitating a borrower's credit file. It was my view that with this statement, Amigo promoted these loans as a means to a borrower being able to return to obtaining mainstream credit after demonstrating their ability to keep to repayments and improving their financial position.

In these circumstances, I found it very hard to see why Amigo provided Miss G with loans three to five when it ought to have seen that the opposite was happening insofar as Miss G's finances were deteriorating and she wasn't rehabilitating her credit file. On the contrary it appeared to me that the opposite was happening and that these loans were making things worse for her.

So I found that Amigo ought fairly and reasonably to have realised that the loans from loans three onwards were unsustainable or otherwise harmful for Miss G and were unfairly and excessively increasing her overall indebtedness.

I then went on to consider whether Amigo had acted unfairly or unreasonably to Miss G in some other way. And having carefully considered all of the information provided, I hadn't seen anything to suggest that Amigo did do so. So I didn't find that Amigo acted unfairly or unreasonably towards Miss G in some other way.

All of this led me to conclude that:

- Amigo didn't complete reasonable and proportionate checks on Miss G to satisfy itself that she was able to repay any of these loans;

- reasonable and proportionate checks would more likely than not have individually shown Miss G was unable to sustainably make the repayments for loans one and two;
- Amigo ought fairly and reasonably to have realised that the loans from loans three onwards were unsustainable or otherwise harmful for Miss G and were unfairly and excessively increasing her overall indebtedness;
- Amigo didn’t act unfairly or unreasonably towards Miss G in some other way.

So overall my provisional decision found that Amigo had not acted fairly and reasonably to Miss G when providing her with her loans.

I then found that Miss G lost out as a result of having unfairly and unreasonably been provided with her loans in two key ways.

- Firstly, these loans had the effect of unfairly increasing Miss G’s indebtedness to Amigo by allowing her to take expensive credit for significant sums. These loans were expensive and as a result the increasing monthly payments took up a significant proportion of Miss G’s income at a time where she was already struggling to make ends meet.
- Secondly, the number of loans in the period of time was likely to have had implications for Miss G’s ability to access mainstream credit. The greater the presence of these loans on Miss G’s credit file the less likely Miss G was able to rehabilitate her finances (in line with Amigo’s marketing and stated purpose of this type of lending) and regain access to mainstream credit.

  In my view, Amigo giving Miss G this many loans (which it shouldn’t have done) in this period of time when she was already overstretched financially, unfairly placed her in a position where she was trapped into taking expensive high-cost loans over an extended period as no-one else would lend to her.

I finally set out a method of putting things right for Miss G, which I found addressed Amigo’s failings and Miss G’s resulting loss.

Amigo’s response to my provisional decision

Amigo responded to my provisional decision. In summary, Amigo’s response said that:

- it was disappointed that I intended to uphold Miss G’s complaint and asked me to review my conclusions in light of its further arguments;
- it disagreed that it simply accepted the information Miss G provided without any attempt to scrutinise or evaluate it;
- it completed a number of checks on the income and expenditure assessments to ensure the figures provided were reasonable and realistic. For example it compared each item of Miss G’s expenditure to the national average.

- Miss G's income was verified on each occasion. For loans one and three Miss G's declared income was compared to the average salary of those in the same or similar positions. For loan two, a Credit Reference Agency ("CRA") was consulted to check if the declared income tallied with the funds entering Miss G's account each month. For loans four and five, CRA was also used to assess whether Miss G's total expenditure, the monthly instalment and a buffer would be affordable based on her income.

- if the information provided couldn't be verified through these checks then further information would have been requested. But this wasn't necessary for any of the loans;

- at the time of Miss G's first loan her credit file showed that she was managing her creditors well. The payments to all but one of her creditors had been maintained perfectly;

- my provisional decision queried how Miss G could reasonably have had disposable income of almost £1000 a month when her credit files showed outstanding balances with other creditors and payday loans. But its decision to lend wasn't based on Miss G's credit file. Amigo's loans are designed to help people who may not have a strong credit history. How Miss G had previously chosen to manage her credit had no bearing on her ability to maintain her payments to its loans so long as the payments on the existing credit were taken into account;

- my provisional decision also raised concern with the monthly payments budgeted towards Miss G's outstanding debts. But it considers that monthly payments of £65 towards an outstanding balance of £1900 and £30 towards an outstanding balance of £1300 would settle each debt in less than three years. It doesn't agree that this isn't a reasonable period of time for these debts to be cleared;

- it acknowledges the number of creditors Miss G had outstanding balances with increased. But its checks showed that Miss G was comfortably able to afford the payments to each of her outstanding creditors alongside her priority bills.

So bearing in mind all of the above Amigo thought it hadn't done anything wrong – or acted unfairly or unreasonably in providing Miss G with any of the five loans.

Although I've summarised and only set out the main points of Amigo's response, I can confirm that I've read and carefully considered all of the arguments it has made.

Miss G's response to my provisional decision

Miss G responded confirming that she accepted that my provisional decision and that she had no further points to make.

my findings

I've considered all the available evidence and arguments provided from the outset, including the responses to my provisional decision, in order to decide what's fair and reasonable in the circumstances of this complaint.

In reaching my decision, I've taken into account the relevant law and regulations; relevant regulators' rules, guidance and standards; relevant codes of practice; and, where appropriate, what I consider to have been good industry practice at the time. I've set out all of this in the appendix to this decision.

Taking into account the relevant rules, guidance, good industry practice and law, I remain of the view that the three overarching questions that I set out in my provisional decision are what I need to consider in deciding what's fair and reasonable in the circumstances of this complaint. These are:

1. Did Amigo complete reasonable and proportionate checks to satisfy itself that Miss G would be able to repay her loans in a sustainable way?
    - If so, did it make a fair lending decision?
    - If not, would those checks have shown that Miss G would've been able to do so?
2. 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 Miss G's indebtedness in a way that was unsustainable or otherwise harmful and so shouldn't have provided further loans?
3. Did Amigo act unfairly or unreasonably in some other way?

Amigo hasn't challenged my conclusion that these overarching questions are relevant to me deciding this complaint. Indeed, Amigo's response to my provisional decision appears to accept that these are the relevant questions. The content of Amigo's response suggests it is my findings on these matters that it disagrees with.

Having carefully read Amigo's response to my provisional decision, I'm unsure as to whether it is arguing that its loans were actually affordable for Miss G, or whether it is arguing Miss G's actual financial position is irrelevant here because its checks were proportionate.

For the avoidance of doubt, I want to be clear in saying that I'm satisfied that any objective reading of Miss G's actual financial position, at the time of the loan applications, show that there was no reasonable prospect of her being able to sustainably make the payments to these loans.

Bearing this in mind, it seems to me that it would only be fair and reasonable for me to agree with Amigo and find that it wasn't unfair for it to have provided these loans to Miss G – notwithstanding Miss G's actual financial position – if its checks before lending were fair, reasonable and proportionate on each occasion.

So I've carefully considered whether this was the case.

Amigo has argued that it did scrutinise and evaluate the information it obtained from Miss G. I accept that Amigo might have taken some steps to verify Miss G's income. But I think it was clear from the content of my provisional decision that it wasn't Amigo's acceptance of Miss G's declaration of income that was the issue here. Rather it was the acceptance of the expenditure information that required more scrutiny than that applied by Amigo.

Amigo still hasn't provided a plausible explanation as to why it believed that it was fair and reasonable to proceed with the application for loan one, on the basis that Miss G had a monthly disposable income of approaching £1000, when Miss G's outstanding balances with other creditors, was overdrawn by substantial amounts on more than one current account and she was a regular user of payday loans.

To be clear, my point here isn't that a lender shouldn't ever lend to a customer that already has existing credit commitments or someone who has had a payday loan in the past. What I'm saying is that further scrutiny needs to be applied and greater care taken in these circumstances to ensure that any further lending can be sustainably repaid. This is supported by the rules and guidance referring to the borrower's financial circumstances being a relevant consideration in determining the proportionality of any checks.

In this particular case, I think that it was unreasonable for Amigo to conclude that Miss G had a monthly disposable income of approaching £1000 when her existing credit commitments and her regular use of payday loans suggested this was unlikely. And, in these circumstances, I think it would have been fair reasonable and proportionate to verify whether Miss G did have such funds left over each month, when the other information Amigo had called this into question.

I also have concerns with Amigo using national averages to verify Miss G's expenditure when it knew that she had an adverse credit history. National averages are based on the finances and expenditure of the average consumer. But Amigo knew, when it lent to Miss G, that it was providing a loan to someone who'd had an adverse credit history and therefore someone fell outside this average portfolio.

I don't think that using national averages – which were unlikely to reflect the existing commitments and expenditure of someone in Miss G's circumstances - to explain the mismatch between what had been declared and what the credit file was showing was fair, reasonable and proportionate bearing in mind Miss G circumstances.

I also disagree with Amigo's argument that Miss G's credit file demonstrated that she was managing her existing creditors well. I've noted that in making this argument Amigo has chosen to focus on the credit file at the time of loan one. It's unclear whether this is because it accepts that Miss G's finances were showing signs of strain after this, or whether this is an oversight.

But for the avoidance of doubt and the sake of completeness, I think that it would be useful for me to start by addressing whether Miss G was managing her existing commitments well before loans two, three, four and five. And I don't think that Miss G was. In my view, Miss G's increasing debt burden and the payments she missed on her Amigo loans were clear indicators that she wasn't managing her repayments to her existing creditors well. I'd also argue that Miss G wanting or needing to take out five loans in less than four years (for increasing amounts) was, in itself, indicative of someone who was struggling to manage their money.

In any event, even if I were to give Amigo the benefit of the doubt here and say that it is restricting its argument (that Miss G was managing her creditors well) to Miss G's circumstances at the time of loan one, I think it is taking an over-optimistic view of the circumstances. I say this because Miss G's regular and repeated use of payday loans was itself an indication that she may in an unsustainable debt position with her existing creditors.

Furthermore, Miss G appears to have only been making the minimum payment due to some of her creditors. Amigo says that these payments were enough to ensure the balances would have been cleared within three years and so it disagrees with my finding that the balances wouldn't have been cleared within a reasonable period of time.

Leaving aside my concerns as to whether three years is a reasonable period of time, I, in any event, don't think that Amigo's calculations add up here. I think that Amigo has simply divided the outstanding balances by the proposed monthly payment – or at least that's the only method I can see which produces similar numbers – to work out how many months it would take to repay what was owed.

But these were outstanding balances on an overdraft and a credit card. So the interest wasn't crystallised at that point, or factored into the budgeted payments. Indeed on the overdraft it's likely that interest added would have taken up almost all of the budgeted payment. And Amigo's calculations don't appear to take any account of the interest that would accrue during the period the balances were to be repaid.

So even if I were to agree that three years was a reasonable period of time – I want to make it clear that I don't – I, in any event, don't see how the payments Amigo recorded would have led to the balances being cleared within three years. Amigo might have drawn confidence that it would get its money back because Miss G had been making payments. But Amigo was required to do more than simply assess the likelihood of it receiving its loan payments from Miss G.

Amigo also had to consider the impact that making these loan payments would have on Miss G's financial position. And I don't think that the minimum payments Miss G was making to her existing creditors, in themselves, meant that Miss G was managing her existing commitments well or that they were an indication that she could sustainably repay the loans Amigo provided.

Finally, my provisional decision also made it clear that Miss G was overdrawn by approaching double the amount of her monthly salary. Amigo was aware of this. In these circumstances, I don't see how Amigo could possibly have seen that Miss G would make her loan payments without using her overdraft when there wasn't a reasonable or realistic prospect of Miss G clearing the balance any time in the near future.

So, in my view, Amigo ought fairly and reasonably to have realised that Miss G would more likely than not have to borrow further – either using her overdraft or other loans etc – to make her payments. And bearing in mind that a consumer being able to sustainably repay a loan was dependent on them being able to make repayments without having to borrow further, I think that Amigo ought fairly and reasonably to have concluded that Miss G was unlikely to be able to sustainably make the repayments not just to loan one but all the subsequent ones too.

Having carefully thought about all of Amigo's further points, I've not been persuaded to alter the conclusions I reached in my provisional decision. This means that having carefully thought about the three overarching questions, set out on page ten of this decision, I find that:

- Amigo *didn't* complete reasonable and proportionate checks on Miss G to satisfy itself that she was able to repay any of these loans;

- reasonable and proportionate checks *would* more likely than not have individually shown Miss G was unable to sustainably make the repayments for loans one and two;

- Amigo ought fairly and reasonably to have realised that the loans from loans three onwards were unsustainable or otherwise harmful for Miss G and were unfairly and excessively increasing her overall indebtedness;

- Amigo didn't act unfairly or unreasonably towards Miss G in some other way.

- the above means that Amigo didn't act fairly and reasonably when providing Miss G with all five of her loans.

I've already explained – on page eight of this decision - why I've found that Miss G lost out as a result of Amigo unfairly and unreasonably providing her with these five loans. I've not seen anything to persuade me that Miss G didn't lose out in this way. So I'm satisfied that this remains the case and I find that Amigo should put things right for Miss G.

fair compensation – Amigo needs to do to put things right for Miss G

I've carefully thought about what Amigo should do to put things right in this case.

Where I find that a business has done something wrong, I'd normally expect that business – in so far as is reasonably practicable – to put the consumer in the position they *would be in now* if that wrong hadn't taken place. In essence, in this case, this would mean Amigo putting Miss G in the position she'd now be in if she hadn't been given these loans.

But when it comes to complaints about irresponsible lending this isn't straightforward. Miss G *was* given the loans in question and she used the funds – albeit some of them went towards repaying earlier loans. So, in these circumstances, I can't undo what's already been done. And it's simply not possible to put Miss G back in the position she would be in if she hadn't been given these loans in the first place.

As this is the case, I have to think about some other way of putting things right in a fair and reasonable way bearing in mind all the circumstances of the case. And I'd like to explain the reasons why I think that it would be fair and reasonable for Amigo to put things right in the following way.

interest and charges on the loans

As I've explained throughout this decision, Amigo lending to Miss G, in these circumstances, left her in a position where her debt was increasing. Miss G kept having to find additional funds to pay the monthly payments on her Amigo loans. In reality it's the interest and on these loans that led to Miss G's indebtedness increasing and her financial position worsening. So to start with I think that Amigo should refund any interest and charges that Miss G paid.

Miss G also lost the use of the funds she used to pay the interest and charges, I now think that Amigo needs to refund to her. As Miss G lost the use of these funds, I think she should be compensated for this. We normally ask a business to pay 8% simple interest where a consumer hasn't had the use of funds because its actions resulted in something having gone wrong. Bearing in mind my conclusions in the paragraph above, I see no reason to depart from our usual approach here and I think awarding 8% per year simple interest, on the interest and charges paid, is fair and reasonable in the circumstances of this case.

So Amigo should pay Miss G 8% per year simple interest on the interest and charges she paid from the date those charges were paid to the date it settles Miss G's complaint.

Miss G's credit file

Generally speaking, I'd expect a lender to remove any adverse information recorded on a consumer's credit file as a result of the interest and charges on the loans they shouldn't have been given. After all it's the interest and charges that the consumer is being refunded and the expectation is they will have repaid, or they should repay what they owe.

So to start with I think that Amigo should remove any adverse information recorded on Miss G's credit file as a result of the interest and charges on loans 1 and 2, as Miss G wasn't in a position to sustainably repay these loans and she shouldn't have had to pay those interest and charges.

But I'm upholding Miss G's complaint about loans three to five because I think the overall pattern of lending increased Miss G's indebtedness in a way that was unsustainable or harmful in some other way. I explained that there were two main adverse consequences of Amigo having given Miss G these particular loans, in these circumstances. Firstly it caused her indebtedness to increase unsustainably as a result of the interest and charges. And I've already explained how Miss G should be compensated for this.

I also explained that these loans having been provided in these circumstances are likely to have had implications for Miss G's ability to access mainstream credit. The greater the number of these loans on Miss G's credit file the less likely Miss G was able to rehabilitate her finances and regain access to mainstream credit. And I think my direction in relation to Miss G's credit file needs to reflect this.

So while I recognise the importance of preserving an accurate picture of Miss G's credit history and creditworthiness so that a lender can make an informed decision on whether lend to her, I think that the mere presence of loans three to five on Miss G's credit file, in itself, constitutes adverse information. And I think that these loans appearing on Miss G's credit file is likely to continue unfairly adversely affecting Miss G going forwards.

In these circumstances, I think that it is fair, reasonable and proportionate for Amigo to remove all reference to loans three to five from Miss G's credit file, as these loans being present in these circumstances, in itself, is adverse information.

All of this means that it's fair and reasonable in all the circumstances of Miss G's complaint for Amigo to put things right in this case by:

- refunding all the interest and charges Miss G paid as a result of having been provided with her loans;

- adding interest at 8% per year simple on the above interest payments from the date they were paid by Miss G to the date of settlement†;

- removing any adverse information recorded on Miss G's credit file as a result of loans one and two;

- removing all reference to loans three to five from Miss G’s credit file.

† HM Revenue & Customs requires Amigo to take off tax from this interest. Amigo must give Miss G a certificate showing how much tax it has taken off if she asks for one.

my final decision

For the reasons I’ve explained, I’m upholding Miss G’s complaint. Amigo Loans Ltd should pay compensation to Miss G in the way I’ve set out above.

Under the rules of the Financial Ombudsman Service, I am required to ask Miss G to accept or reject my decision before 1 July 2019.

Jeshen Narayanan
ombudsman

appendix – relevant considerations as set out in my provisional decision

A the legal and regulatory framework
B other key publications and good industry practice
C information on Amigo's website

A the legal and regulatory framework

<u>*regulation by the Office of Fair Trading (up to 31 March 2014)*</u>

Amigo gave Miss G her first loan in the period up to the end of March 2014. During this time it needed a standard licence from the Office of Fair Trading ("OFT"), in order to carry out consumer credit activities.

Section 25(2) of the Consumer Credit Act 1974 set out the factors the OFT had to consider when deciding whether to grant a consumer credit licence to a lender. It said:

> *(1) In determining whether an applicant for a licence is a fit person for the purposes of this section the OFT shall have regard to any matters appearing to it to be relevant including (amongst other things)—*
>
> > *(a) the applicant's skills, knowledge and experience in relation to consumer credit businesses, consumer hire businesses or ancillary credit businesses;*
> >
> > *(b) such skills, knowledge and experience of other persons who the applicant proposes will participate in any business that would be carried on by him under the licence;*
> >
> > *(c) practices and procedures that the applicant proposes to implement in connection with any such business;*
> >
> > *(d) evidence of the kind mentioned in subsection (2A)*
>
> (2A) *That evidence is evidence tending to show that the applicant, or any of the applicant's employees, agents or associates (whether past or present) or, where the applicant is a body corporate, any person appearing to the OFT to be a controller of the body corporate or an associate of any such person, has—*
>
> > *(a) committed any offence involving fraud or other dishonesty or violence;*
> >
> > *(b) contravened any provision made by or under—*
> >
> > *(i) this Act;*
> >
> > *(ii) Part 16 of the Financial Services and Markets Act 2000 so far as it relates to the consumer credit jurisdiction under that Part;*
> >
> > *(iii) any other enactment regulating the provision of credit to individuals or other transactions with individuals;*

(c) contravened any provision in force in an EEA State which corresponds to a provision of the kind mentioned in paragraph (b);

(d) practised discrimination on grounds of sex, colour, race or ethnic or national origins in, or in connection with, the carrying on of any business; or

(e) engaged in business practices appearing to the OFT to be deceitful or oppressive or otherwise unfair or improper (whether unlawful or not) *[my emphasis]**.***

Section 25(2B) set out a direct example of the type of practice referred to in Section 25(2A(e)) and said:

For the purposes of subsection (2A)(e), the business practices which the OFT may consider to be deceitful or oppressive or otherwise unfair or improper include practices in the carrying on of a consumer credit business that appear to the ***OFT to involve irresponsible lending*** *[my emphasis].*

In March 2010, the OFT sought to produce clear guidance on the test for irresponsible lending for the purposes of section 25(2B) of the Consumer Credit Act 1974. And so it issued its guidance on irresponsible lending ("ILG").

So I consider the ILG to be of central importance in reaching a fair and reasonable outcome in Miss G's case.

The foreword to the guidance set out its purpose and it said:

The primary purpose in producing this guidance is to provide greater clarity for businesses and consumer representatives as to the business practices that the Office of Fair Trading (OFT) considers may constitute irresponsible lending practices for the purposes of section 25(2B) of the Consumer Credit Act 1974. It indicates types of deceitful or oppressive or otherwise unfair or improper business practices which, if engaged in by a consumer credit business, could call into consideration its fitness to hold a consumer credit licence.

Whilst this guidance represents the OFT's view on irresponsible lending, it is not meant to represent an exhaustive list of behaviours and practices which might constitute irresponsible lending.

Section two of the guidance sets out the general principles of fair business practice. Section 2.1 says:

In the OFT's view there are a number of overarching principles of consumer protection and fair business practice which apply to all consumer credit lending.

Section 2.2 of the guidance says:

In general terms, creditors should:

- *not use misleading or oppressive behaviour when advertising, selling, or seeking to enforce a credit agreement*

- *make a reasonable assessment of whether a borrower can afford to meet repayments in a sustainable manner*

- *explain the key features of the credit agreement to enable the borrower to make an informed choice*

- *monitor the borrower's repayment record during the course of the agreement, offering assistance where borrowers appear to be experiencing difficulty and treat borrowers fairly and with forbearance if they experience difficulties*

Section 2.3 lists other expectations of lenders. Amongst other things, it says:

In addition to the above there should be:

- *fair treatment of borrowers. Borrowers should not be targeted with credit products that are clearly unsuitable for them, subjected to high pressure selling, aggressive or oppressive behaviour or inappropriate coercion, or conduct which is deceitful, oppressive, unfair or improper, whether unlawful or not*

Borrowers who may be particularly vulnerable by virtue of their current indebtedness, poor credit history, or by reason of age or health, or disability, or for any other reason, should, in particular, not be targeted or exploited.

Section four of the guidance is concerned with the assessment of affordability that lenders were required to carry out before granting credit. Section 4.1 says:

In the OFT's view, all assessments of affordability should involve a consideration of the potential for the credit commitment to adversely impact on the borrower's financial situation, taking account of information that the creditor is aware of at the time the credit is granted. The extent and scope of any assessment of affordability, in any particular circumstance, should be dependent upon – and proportionate to – a number of factors (see paragraph 4.10 of this guidance document).

'Assessing affordability', in the context of this guidance, is a 'borrower-focussed test' which involves a creditor assessing a borrower's ability to undertake a specific credit commitment, or specific additional credit commitment, in a sustainable manner, without the borrower incurring (further) financial difficulties and/or experiencing adverse consequences.

Section 4.2 of the OFT guidance says:

Whatever means and sources of information creditors employ as part of an assessment of affordability should be sufficient to make an assessment of the risk of the credit sought being unsustainable for the borrower in question. In our view this is likely to involve more than solely assessing the likelihood of the borrower being able to repay the credit in question.

We consider that before granting credit, significantly increasing the amount of credit, or significantly increasing the credit limit under an agreement for running account credit, creditors should take reasonable steps to assess a borrower's likely ability to be able to meet repayments under the credit agreement in a sustainable manner.

"In a sustainable manner" is defined in Section 4.3 of the OFT guidance. And Section 4.3 says:

The OFT regards 'in a sustainable manner' in this context as meaning credit that can be repaid by the borrower:

- *without undue difficulty – in particular without incurring or increasing problem indebtedness*
- *over the life of the credit agreement or, in the case of open-end agreements, within a reasonable period of time*
- *out of income and/or available savings, without having to realise security or assets.*

Section 4.4 goes on to describe "undue difficulty" and says:

The OFT would regard 'without undue difficulty' in this context as meaning the borrower being able to make repayments (in the absence of changes in personal circumstances that were not reasonably foreseeable at the time the credit was granted):

- *while also meeting other debt repayments and other normal/reasonable outgoings and*
- *without having to borrow further to meet these repayments.*

Building on the proportionality principle set out in section 4.1, section 4.10 deals with the issues that might influence how detailed the affordability assessment should be. It includes factors such as:

- *the type of credit product;*
- *the amount of credit to be provided and the associated cost and risk to the borrower;*
  - *the borrower's financial situation at the time the credit is sought;*
  - *the borrower's credit history, including any indications of the borrower experiencing (or having experienced) financial difficulty*
  - *the vulnerability of the borrower*

Section 4.12 is a non-exhaustive list of the types and sources of information that a lender might use to assess affordability, including:

- *evidence of income*
- *evidence of expenditure*
- *records of previous dealings with the borrower*
- *a credit score*

- *a credit report from a credit reference agency*
- *information obtained from the borrower through a form or a meeting*

Sections 4.18 to 4.33 of the ILG set out some examples of "specific irresponsible lending practices" relating to how businesses assess affordability. Section 4.20 says this would include where a lender is:

Failing to undertake a reasonable assessment of affordability in an individual case or cases

Section 4.21 gives another example:

Failing to consider sufficient information to be able to reasonably assess affordability, prior to granting credit, significantly increasing the total amount of credit provided, or significantly increasing the credit limit (in the case of a running account credit agreement)

And Section 4.26 says a business would be acting irresponsibly if:

Granting an application for credit when, on the basis of an affordability assessment, it is known, or reasonably ought to be suspected, that the credit is likely to be unsustainable.

Sections 4.29 and 4.31 deal with a lender's treatment of information disclosed by the customer. 4.29 says it would be an unsatisfactory business practice where a lender:

fail[s] to take adequate steps, so far as is reasonable and practicable, to ensure that information on a credit application relevant to an assessment of affordability is complete and correct.

And section 4.31 says it would be unsatisfactory for a lender to:

[Accept] an application for credit under circumstances in which it is known, or reasonably ought to be suspected, that the borrower has not been truthful in completing the application for credit with regards to the information supplied relevant to inform an assessment of affordability

Section 6 of the ILG sets out other "specific irresponsible lending practices" relating to lender behaviour once loan(s) have been agreed. Section 6.2 says it would be an unsatisfactory practice where a business is:

Failing to monitor a borrower's repayment record

Section 6.2 goes on to say:

The OFT considers that creditors should take appropriate action…when/if there are signs of apparent / possible repayment difficulties.

<u>Section 55B of the Consumer Credit Act 1974</u>

On 1 February 2011 the majority of the legislation implementing the provisions of the Consumer Credit Directive 2008 came into force. At this point the ILG was amended to reflect any changes required by the Consumer Credit Directive and an additional requirement on a lender to carry out an "Assessment of creditworthiness" was set out in section 55B of the Consumer Credit Act.

It's important to note that both section 25 and section 55 remained in force until regulation of Consumer Credit providers passed to the FCA in April 2014.

Section 55B said:

Assessment of creditworthiness

55B *(1) Before making a regulated consumer credit agreement, other than an excluded agreement, the creditor must undertake an assessment of the creditworthiness of the debtor.*

(2) Before significantly increasing—

(a) the amount of credit to be provided under a regulated consumer credit agreement, other than an excluded agreement, or

(b) a credit limit for running-account credit under a regulated consumer credit agreement, other than an excluded agreement, the creditor must undertake an assessment of the debtor's creditworthiness.

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

(a) the debtor, where appropriate, and

(b) a credit reference agency, where necessary.

(4) For the purposes of this section an agreement is an excluded agreement if it is—

(a) an agreement secured on land, or

(b) an agreement under which a person takes an article in pawn.".

By the time of loan two and for all of Miss G's subsequent loans (1 April 2014 onwards) this requirement to assess creditworthiness moved from S55B of the Consumer Credit Act, to the rules of the new regulator the Financial Conduct Authority.

<u>*regulation by the Financial Conduct Authority (from 1 April 2014)*</u>

Amigo gave Miss G loans two to five after regulation of Consumer Credit Licensees had transferred from the 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.

It's clear there is a high degree of alignment between the Office of Fair Trading's ("OFT") Irresponsible Lending Guidance ("ILG") and the rules set out in CONC 5. As is evident from the following extracts, the FCA's CONC rules specifically note and refer back to sections of the OFT's *Irresponsible Lending Guidance* on many occasions.

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*

*[**Note**: paragraph 4.1 of ILG]*

> *(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.*

*[**Note**: paragraph 4.3 of ILG]*

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.

*[**Note**: paragraph 4.11 and part of 4.16 of ILG]*

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.

*[**Note**: paragraph 4.2 of ILG]*

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.

*[**Note**: paragraph 4.1 (box) and 4.2 of ILG]*

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.

*[**Note**: paragraph 4.3 and 4.4 of ILG]*

In respect of the need to double-check information disclosed by applicants, CONC 5.3.1G(4) has a reference to paragraphs 4.13, 4.14, and 4.15 of ILG and states:

(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.

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).

*[**Note**: paragraph 4.31 of ILG]*

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 Miss G's loans were given to her 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

(2) *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.

B other key publications and good industry practice

The ILG and CONC set out the regulatory framework that regulated/authorised lenders have to adhere to. But they represent a minimum standard for firms. And as I've explained, 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".

C information on Amigo's website

In addition to the relevant considerations set out above, I also note that in March 2014 (around the time when Miss G first applied for an Amigo loan), the Amigo homepage included the following statements (date stamped 26 March 2014):

"A cheaper way to borrow

Our flexible guarantor loans are around 100th of the APR of a payday loan and are regularly featured by price comparison sites as the cheapest option for anyone borrowing £500-£5000 with a low credit score.

Rebuilding your credit

We want to help make your financial future better; so we report back to all three credit reference agencies, each month, showing your repayments. As payments are made on time this will help to build or rebuild your credit profile. No information is reported back to credit reference agencies for guarantors, even if payments are missed, unless the account goes to court".

The '*what the papers say'* section of the homepage includes a quote from the Daily Mail (I understand that this statement remains on the homepage to this day) which says:

"Good stepping-stone loan for those with poor credit histories".