complaint

Miss H has complained that Amigo Loans Ltd ("Amigo") provided her with an unaffordable guarantor loan.

She says that if Amigo had carried out enough checks before providing the loan, it would have seen that her monthly income and outgoings showed the loan wasn't affordable for her. She also says that her guarantor shouldn't have been accepted as one because she was on maternity leave and was on a reduced income.

background

Amigo provided Miss H with a loan of £750 in June 2018. The loan was secured by way of a guarantee and indemnity agreement and the APR was 49.9%. This loan had a 12 month term and was due to be repaid in 12 instalments of £77.29.

One of our adjudicators looked at this complaint and thought that Amigo hadn't carried out proportionate checks before lending and that such checks would more likely than not have shown Amigo Miss H wasn't able to sustainably repay the loan. Amigo disagreed with our adjudicator and asked for an ombudsman to review this complaint.

my findings

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

We've set out our general approach to complaints about unaffordable/irresponsible lending - including the key rules, guidance and good industry practice - on our website. And I've referred to this when deciding Miss H's complaint.

Having carefully thought about everything, I think that there are two overarching questions that I need to answer in order to fairly and reasonably decide Miss H's complaint. These two questions are:

1. Did Amigo complete reasonable and proportionate checks to satisfy itself that Miss H would be able to repay her loan in a sustainable way?
    - If so, did it make a fair lending decision?
    - If not, would those checks have shown that Miss N would've been able to do so?
2. Did Amigo act unfairly or unreasonably in some other way?

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

Amigo provided this loan while it was authorised and regulated by the Financial Conduct Authority ("FCA"). The rules and regulations in place required Amigo to carry out a reasonable and proportionate assessment of whether Miss H could afford to repay her loan in a sustainable manner. Amigo was required to carry out this borrower focused assessment in addition to a similar one on the guarantor. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower" focused – so Amigo had to think about whether repaying the loan sustainably would cause difficulties or adverse consequences *for Miss H*. In practice this meant that Amigo had to ensure that making the payments to the loan wouldn't cause Miss H undue difficulty or adverse consequences.

In other words, it wasn't enough for Amigo to simply think about the likelihood of it getting its money back, it had to consider the impact of the loan repayments on Miss H. The existence of a guarantee and the potential for Amigo to pursue the guarantor instead of Miss H, for the loan payments doesn't alter, lessen, or somehow dilute this obligation.

Checks also had to be "proportionate" to the specific circumstances of the loan application. In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (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 applications.

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

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

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

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

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

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

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

Were Amigo's checks reasonable and proportionate?

Amigo says that Miss H completed an online income and expenditure assessment. It then ran a number of automatic checks against the details Miss H provided. These checks ensured Miss H met its initial lending criteria and included a full credit check to ensure she wasn't insolvent.

Miss H told Amigo that her monthly income was around £650 – this was made up of £500 from earnings as a self-employed cleaner and £149.07 from Child Benefit. Miss H was also recorded as having monthly expenditure of £289.75. I say recorded rather than declared because Amigo considered some of the information provided to be inaccurate and increased some of the expenditure – for example the amount Miss H said she spent on food was increased to £88 from £0 – to 'account' for this. That said it's also interesting to note that Amigo also tells us that it was entitled to rely on the information provided.

In any event, Amigo concluded that Miss H had over £350 in disposable income available each month and would have approaching £200 left over after her Amigo loan repayments and an additional £100 for any unforeseen expenses were taken into account.

I've carefully thought about what Amigo has said but I have significant concerns about the rigour it applied to its affordability assessment.

To explain, I accept that being self-employed doesn't necessarily mean that Miss H's income was sporadic or likely to fluctuate. But there was an element of uncertainty – especially as Miss H was unlikely to have received any sick pay or holiday pay. In any event, what I'm most concerned about here is that Miss H's self-declared income was very low and this was even when her in work benefits were included. In my view, the amount of Miss H's declared income meant that Amigo should have taken steps to verify it as any error – even if slight - was likely to have a significant impact on her ability to repay this loan.

I have also concerns with the expenditure information Amigo obtained. The copy of the questionnaire provided suggested that Miss H declared that most of the household bills were paid by her partner. But Amigo tells us that it wasn't prepared to accept that this was indeed the case because it substituted Miss H's declared food expenditure amount of £0 with its own figure of £88.

Amigo will be aware that CONC 5.3.7R says that a lender shouldn't proceed with an application for credit where it knows or ought reasonably suspect that information provided which is relevant to the affordability assessment is inaccurate. Amigo's actions in rejecting Miss H's declaration of her monthly food expenditure suggested that it considered at least some of the information provided to be inaccurate.

Furthermore, even if I were prepared to accept that Miss H's partner did cover all the rest of her monthly expenditure (for the avoidance of doubt I'd like to make it clear that I don't), I'm still concerned at the fact that Miss H said that she covered all of childcare costs. But that she only paid £15 a month for this. This seems to me to be an unreasonably low amount for monthly childcare costs. And, in my view, Amigo ought reasonably to have suspected that this part of the declaration was also unlikely to be accurate.

I'm also concerned that Amigo seems to have accepted at face value that Miss H had a monthly disposable income of some £350 a month, yet needed to borrow £750 at an APR of 49.9% and also involve a guarantor, for the purpose of going on holiday. So I'm satisfied that Amigo's checks threw up a number of questions which meant that it would have been reasonable and proportionate for Amigo to verify the income and expenditure Miss H provided.

I want to confirm that I've also seen what Amigo has said about different ombudsmen in other unrelated cases confirming that similar checks for loans provided for similar amounts were proportionate. But I don't think that it is appropriate for me to review the conclusions reached by other ombudsmen on completely separate and unrelated cases.

In any event, I've already explained that Amigo was required to carry out a borrower focused check. And it is the particular circumstances of the borrower (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) together with the type, amount and cost of credit being provided that's the main driver in determining whether a check is proportionate. So it's entirely possible that a proportionate check – for similar loan amounts - could look different depending on the individual circumstances of the prospective borrower.

Bearing all of this in mind, as Amigo didn't take steps to verify Mrs H's income and expenditure and instead chose to rely on an over optimistic (and somewhat unrealistic) declaration of her monthly disposable income, I don't think that its checks before providing Miss H with this loan were reasonable and proportionate.

Would reasonable and proportionate checks have indicated to Amigo that Miss H would have been unable to sustainably repay this loan?

As reasonable and proportionate checks weren't carried out before this loan was provided, I can't say for sure what they would've shown. So I need to decide whether it is more likely than not that a proportionate check would have told Amigo that Miss H would've been unable to sustainably repay this loan.

Miss H has now provided us with evidence of her financial circumstances at the time she applied for this loan. Of course, I accept different checks might show different things. And just because something shows up in the information Miss H has provided, it doesn't mean it would've shown up in any checks Amigo might've carried out.

But in the absence of anything else from Amigo showing what this information would have shown, I think it's perfectly fair, reasonable and proportionate to place considerable weight on it as an indication of what Miss H's financial circumstances were more likely than not to have been at the time.

As I've already explained, Amigo was required to establish whether Miss H could sustainably make her loan repayments – not just whether the loan payments were technically affordable on a strict pounds and pence calculation.

Of course the loan payments being affordable on this basis might be an indication that a consumer could sustainably make the repayments. But it doesn't automatically follow that this is the case. And as a borrower shouldn't have to borrow further in order to make their payments, it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower won't be able to sustainably make their repayments if it is on notice that they are unlikely to be able to make their repayments without borrowing further.

I've carefully considered the information Miss H has provided in light of all of this.

The information I've been provided with shows that Miss H's income was substantially less than what she'd declared to Amigo. I understand that her actual earnings were sporadic and her main income was in effect made up of the Child Benefit and Child Tax Credit payments she received.

The information provided also shows that Miss H was gambling unsustainable amounts of money. In these circumstances, I don't think that Amigo would have lent if it knew, as I think it ought to have, that Miss H's ability to repay this loan would, to in all intent and purpose, be based on her success as a gambler.

Bearing all of this in mind, I'm satisfied that reasonable and proportionate checks would more likely than not have demonstrated that Miss H would not have been able to make the repayments to this loan without borrowing further and/or suffering undue difficulty. And, in these circumstances, I find that reasonable and proportionate checks would more likely than not have alerted Amigo to the fact that Miss H would not be able to sustainably make the repayments to this loan.

Did Amigo act unfairly or unreasonably towards Miss H in some other way?

I've carefully thought about everything provided. Having done so, I've not seen anything here that leads me to conclude that Amigo acted unfairly or unreasonably towards Miss H in some other way.

So I find that Amigo didn't act unfairly or unreasonably towards Miss H in some other way.

Did Miss H lose out as a result of Amigo unfairly providing her with this loan?

As Miss H has paid or is being expected to pay interest and charges on a loan that she shouldn't have been provided with, I'm satisfied that she has lost out as a result of what Amigo did wrong.

So I think that Amigo needs to put things right.

fair compensation – what Amigo needs to do to put things right for Miss H.

Having thought about everything, I think it would be fair and reasonable in all the circumstances of Miss H's complaint for Amigo to put things right by:

- removing all interest, fees and charges applied to the loan from the outset. The payments Miss H has made should be deducted from the new starting balance. Amigo should treat any payments made once the new starting balance has been cleared as overpayments. And any overpayments should be refunded to Miss H;

- adding interest at 8% per year simple on any overpayments, if any, from the date they were made by Miss H to the date of settlement†;

- removing any adverse information recorded on Miss H's credit file as a result of this loan.

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

For the reasons I've explained, I'm upholding Miss H's complaint. Amigo Loans Ltd should put things right for Miss H in the way I've set out above.

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

Jeshen Narayanan
ombudsman