

complaint

Ms T complains about a loan she acted as a guarantor on with Amigo Loans Ltd. She says Amigo didn't properly check whether she could afford the repayments in the event she was required to make them under the guarantee. And she's unhappy with the way Amigo has treated her since asking her to make repayments. Ms T brings her complaint through a representative.

background

Ms T agreed to become a guarantor on a loan to a third party in February 2015. The guarantee allowed Amigo to ask Ms T to step in and make repayments if the borrower did not. The monthly repayments on the loan were around £200.

Not long after the loan was taken out, the borrower failed to make the agreed repayments. So, pursuant to the guarantee, Amigo asked Ms T to make them instead.

Ms T told Amigo that she couldn't afford the contractual monthly repayments and Amigo agreed a repayment plan allowing her to pay less. Around December 2016 Ms T stopped making the reduced payments. But after agreeing another repayment plan, she was unable to keep to that either. Ms T then told Amigo, via her representative, that she didn't have any money left over each month to make the repayments.

Amigo defaulted the loan and soon after that started court proceedings against Ms T to recover the outstanding debt. This was stayed so that this service could look into Ms T's complaint first.

Our investigator thought Ms T's complaint should be upheld. He said he didn't think Amigo had completed appropriate affordability checks before allowing Ms T to guarantee the loan. He said because Ms T told Amigo that her income was made up of disability living allowance, it should've asked Ms T about any related costs she had to meet. And he said if it had done this, it wouldn't have lent to Ms T as she wasn't left with enough to get by on each month once these costs were accounted for.

The investigator asked Amigo to stop chasing Ms T for the outstanding debt and remove any record of it from her credit file.

Amigo didn't agree with the investigator and asked for an ombudsman to look at the complaint. It says, in summary:

- Ms T demonstrated a thorough knowledge of her financial circumstances during a pre-agreement telephone call so it was confident she'd weighed up the decision to become a guarantor;
- she said she kept her outgoings minimal, so it was also confident she understood the importance of giving information that accurately reflected her financial circumstances;
- it would've been unnecessary and disproportionate to ask Ms T for specific details about disability related costs;
- Ms T was given the opportunity to disclose any costs that hadn't already been specifically asked for. It can't be held responsible if Ms T has failed to do this;
- even if the extra costs are factored in to its affordability assessment, Ms T was still left with a small disposable income for emergencies;

- Ms T's budget has been reviewed on two occasions since she guaranteed the loan and she has given different information to reflect changing circumstances on these occasions. This shows Ms T was able to provide information about additional costs without being prompted.

my findings

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

Amigo was required to lend responsibly. From November 2015 the relevant rules and guidance (The Financial Conduct Authority Consumer Credit Sourcebook (CONC)) say that a lender had to make sure a guarantor could repay a loan (if required to) without it adversely impacting their financial situation. These rules relating specifically to guarantors didn't start until after Ms T agreed to become a guarantor. But nevertheless I think it was still good practice to make sure that someone who might be called upon to make loan repayments could afford to do so.

There's no set list of things that Amigo had to check. But under both the old Office of Fair Trading Irresponsible Lending Guidance (relevant guidance before CONC), and CONC, affordability checks had to be proportionate to things like (but including others) the amount being borrowed, the size of the repayments and what a lender knew about the borrower's circumstances. I've taken this into account, again as a matter of good practice.

Amigo has given us evidence showing it asked Ms T about some of her living expenses and carried out a credit check before accepting her as a guarantor. I've listened to the telephone call where Amigo says it did this.

Ms T told Amigo over the phone that she had income of around £623 per month and expenditure of around £240 per month. Ms T said her income was made up of state pension (£279) and disability living allowance (£344.50). And she said she spent around £144 on household bills, £90 on food and £8 on clothes. According to these figures Ms T had disposable income each month of around £380.

The written record of the affordability assessment that Amigo sent us shows additional income of £866.67 per month for 'severe disablement allowance'. But there's no mention of this in the telephone call with Ms T. And in a later copy of the assessment that Amigo sent us it's been removed entirely. Amigo has said this was an error and extra income wouldn't have been taken into account when deciding if the loan was affordable. And it says that the loan was affordable anyway even without the extra income. I've not considered this extra income as part of Ms T's income.

Amigo has also given us the results of the credit check. These don't show anything concerning – there are a low number of open accounts and no missed or late payments or defaults.

So, based on the things Amigo checked, the repayments of around £200 per month looked affordable for Ms T.

Ms T's representative says that Amigo didn't do enough to check the repayments would be affordable for Ms T. It says Amigo should've also asked Ms T about things such as her

disability related costs. And if it had, it says Amigo would've seen the loan repayments were not affordable.

I've given this careful thought. Ms T told Amigo that over half of her income was made up of disability living allowance. This kind of benefit is intended to contribute towards the additional costs of living with a disability. So I don't think it would've been disproportionate to ask her some more targeted questions about it. I don't think these kind of expenses are covered by any of the specific questions Amigo asked Ms T in the pre-agreement telephone call.

In the telephone call, after Amigo asked Ms T specific questions about her bills, food, travel etc. it asked her a 'catch all' question about any other expenses she had that might affect her ability to make the repayments if asked to. Amigo says it can't be held responsible if Ms T didn't disclose any other expenses she had after this.

It's true that Ms T said she didn't have any additional expenses. But the catch all question was very broad. I don't think Ms T would necessarily have thought to include the type of medical expense she says she had. And I don't think it's reasonable to shift all of the responsibility for this onto Ms T with such an open question. It was for Amigo to make sure the repayments were affordable with appropriate questions. I don't think it was reasonable to expect Ms T to decide which of her expenses were relevant.

So overall, I don't think Amigo's affordability checks were appropriate in this case.

I've thought about whether Ms T has lost out as a result this. Once Ms T's medical costs are added to the information Amigo already took from her, she would've been left with very little if asked to step in. And although Amigo would've seen a small disposable income, I don't think it was enough to be left with for a whole month in Ms T's case, especially if she was faced with an emergency. This became apparent just a few months later when Ms T couldn't afford to make the repayments in full when asked to. With proper checks I don't think Amigo would've accepted Ms T as a guarantor.

All in all, I think it was irresponsible of Amigo to accept Ms T as a guarantor without carrying out proper affordability checks. And I think Ms T has lost out as a result because with proper checks, I don't think Amigo would've accepted her as a guarantor. I think the fair thing to do in this case is stop pursuing Ms T for the debt and remove any reference to it from her credit file.

Turning now to the way Amigo has treated Ms T since asking her to make repayments under the guarantee. Amigo had to treat Ms T positively and sympathetically once it became aware she was in financial difficulties. I can see Amigo agreed a reduced repayment plan on a couple of occasions having identified what Ms T could reasonably afford. And it didn't add any interest to the debt after Ms T told it she was struggling. I think its actions were reasonable in this respect.

I can't say it was unfair for Amigo to start court proceedings. That's a choice it was free to make having tried already to work with Ms T on an affordable repayment plan. But I think this part of Ms T's complaint falls away in any event seeing as I'm asking Amigo to stop chasing her for the debt.

my final decision

For the reasons I've explained above, my final decision is that I uphold Ms T's complaint. To put things right Amigo Loans Ltd must:

- remove Ms T from the guarantee agreement and stop pursuing her for the debt;
- remove all records of the guarantee from Ms T's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T to accept or reject my decision before 10 November 2017.

Michael Ball
ombudsman