

## **JONATHAN YORKE LLB (HONS) – SOLICITOR**

This Report has been provided to ALL Scheme Limited solely for the purpose of being posted on its website following the Convening Hearing in order to provide information to Scheme Creditors regarding the outcome of the Convening Hearing on 8 March 2022 and subject to the terms of my agreement with Amigo Holdings PLC. I assume no duty or responsibility to, and I accept no liability whatsoever to, any third party (including without limitation, any Scheme Creditor or any of the media organisations mentioned in this report) under or in connection with this report and/or my role as Customer Advocate or otherwise.

## **INDEPENDENT CUSTOMER ADVOCATE – REPORT RELATING TO THE OUTCOME OF THE APPLICATION FOR LEAVE TO CONVENE SCHEME MEETINGS.**

6 APRIL 2022

### **1. INTRODUCTION**

#### **1.1. Experience**

I have practised as a solicitor for almost 35 years. For the last 25 years I have advised extensively in relation to schemes of arrangement for financial services companies. I am fully cognisant of the issues arising in relation to the implementation of schemes of arrangement for such companies and the issues facing the creditors of those companies when considering whether a scheme is a viable route forward.

Most recently, I acted as the Customer Advocate in respect of the scheme of arrangement proposed by Provident SPV Ltd. That scheme raised similar issues to those arising in the schemes proposed by ALL Scheme Limited.

#### **1.2. Background**

- 1.2.1. ALL Scheme Limited ("**the Company**") is a wholly owned subsidiary of Amigo Holdings PLC ("**Holdings PLC**"). The Company has proposed two scheme of arrangement under Part 26 of the Companies Act 2006 ("**the Schemes**") in respect of in respect of (i) certain current and past customers and guarantors of Amigo Loans Limited ("**Amigo**"), (ii) certain current and past customers and guarantors of Amigo Management Services Limited ("**AMSL**"), Holdings PLC and the Company, and (iii) the Financial Ombudsman Service ("**FOS**") (together "**Scheme Creditors**").

- 1.2.2. Amigo provided guaranteed mid-cost credit and online loans to consumers in the UK.
- 1.2.3. Amigo has suffered financial difficulties for the last two years. It has been the subject of an increasing number of consumer complaints made against it for loans which Amigo customers believe were issued incorrectly. Amigo was required to ensure that, amongst other things, loans given and guarantees taken met certain creditworthiness requirements; and in certain cases, Amigo may have failed to meet these requirements. This has resulted in a number of complaints made against it for breach of the regulatory requirements applying to them. As a consequence, Amigo has made a number of compensation payments to consumers in recent years.
- 1.2.4. The purpose of the proposed Schemes, as described in section one of the Explanatory Statements, is as follows:

“The first scheme being proposed is called the New Business Scheme and has two potential outcomes. The main terms of the New Business Scheme were shaped through speaking to a committee of Amigo’s customers who represented their interests (the ‘Customers’ Committee’).

- First, the ‘Preferred Solution’ – Amigo will try to raise new funds by selling shares and to start lending again. Amigo believes this will provide more compensation than would otherwise be available in other outcomes. Even so, not every customer that Amigo owes money to will be paid the full amount they are owed. Also, because Amigo might not be able to restart lending again or raise money, this option might not go ahead.
- Second, the ‘Fallback Solution’ – if the Preferred Solution does not work (for example if Amigo is unable to raise money through selling its shares), Amigo’s business will be wound down, with no new money to pay customers owed compensation and Amigo will be ‘liquidated’. A wind down means that Amigo will go out of business. Amigo will still collect money owed from the loans which it has already made, and this money (but not any new money) will be paid to all the customers it owes money to. However, customers will not be paid in full and they are likely to receive less than they would under the Preferred Solution.

The second, standalone scheme being proposed at the same time is called the Wind-Down Scheme, which is essentially the Fallback

Solution on its own and does not involve trying the Preferred Solution first. The Wind-Down Scheme could be implemented if Customer Creditors (which here and throughout this document means Amigo's customers who have a right to compensation but also includes the Financial Ombudsman Service (the 'FOS')) or the Court do not approve the New Business Scheme. Together, the New Business Scheme and the Wind-Down Scheme are called the 'Schemes'."

1.2.5. The Company is jointly and severally liable with Amigo, Holdings PLC and AMSL in respect of the claims of the Scheme Creditors pursuant to the terms of a deed poll dated 14 March 2022 ("**the Deed Poll**").

1.2.6. I have been asked to prepare this Report so that it can be posted on the Amigo website in order to inform Scheme Creditors as to a) the nature of responses to the proposed Scheme that I received from Scheme Creditors and media bodies and consumer protection groups, b) the questions and challenges that I raised with the Company following my review of those responses, and c) the decision of the Court and the reasons for it.

### **1.3. The Purpose of the Convening Hearing**

1.3.1. The Convening Hearing on 8 March 2022 enabled the Court to consider three principal questions:

- a) Whether the Court is able to order that meetings of Scheme Creditors be held, and if so the directions for those meetings.
- b) Whether there any 'roadblocks' that would prevent the Schemes from going ahead.
- c) Whether, when voting for or against the Schemes, all Scheme Creditors should vote together in the same class; or whether they should be placed into different classes depending their interest in the outcome of the Scheme.

1.3.2. As set out further below, the Court gave the directions sought. The judgment of Lord Justice Snowden was handed down on 15 March 2022 and can be found <https://www.amigoscheme.co.uk/documents/convening-judgment> ("**the Judgment**").

- 1.3.3. There will be a further hearing before the Court to decide whether to sanction the Schemes on 23 and 24 May 2022, assuming sufficient Scheme Creditors vote for them at the meeting (“the **Sanction Hearing**”).

#### **1.4. My Role in Relation to the Convening Hearing**

- 1.4.1. I was obliged to review all communications sent to me from, and posted on certain social media sites by, Scheme Creditors in respect of the Schemes.
- 1.4.2. In addition, I was obliged to engage with media bodies and consumer protection groups identified by the Company to understand any concerns they may have in relation to the Schemes. I spoke extensively with Debt Camel, which is a personal blog that covers debt advice. As appears in the Judgment, on certain matters I drew the Court’s attention to issues raised by Debt Camel.
- 1.4.3. I then had to produce a report which summarised any objections, challenges or comments concerning the matters set out in para 1.3.1 above, being the matters relevant to the Convening Hearing.
- 1.4.4. To be clear, I was not required to give an opinion on whether the Schemes are fair or in the best interests of the Scheme Creditors. I was also not required to include in the report matters raised by the Scheme Creditors which are not relevant to the issues to be considered at the Convening Hearing. I have, however, agreed to report on other matters, such as fairness, which have been raised by the Scheme Creditors and Debt Camel: see para 4 below.
- 1.4.5. I attended the Convening Hearing represented by a barrister in order to answer any questions the Court had about my role as Customer Advocate and the work I have done.
- 1.4.6. I am required to write a short report (this report) to Scheme Creditors summarising the responses received from Scheme Creditors, relevant media bodies and consumer groups, my observations made to Amigo and the response I received from Amigo on those observations together with the decision of the Court.
- 1.4.7. It is important to note that in respect of my role as Customer Advocate it has been specifically agreed that:
- a) I will act in an independent capacity and will not have any regard to the interests of Holdings PLC, AMSL and Amigo or its advisers in promoting the Schemes;

- b) I will owe no duty and will incur no liability to Holdings PLC, AMSL or Amigo in the event that my Report contains adverse comments relating to the Schemes or in the event either Scheme is not approved by the Scheme Creditors or sanctioned the Court;
- c) I will make the terms of my Agreement freely available to the Scheme Creditors and the Court in order to demonstrate my independence from Holdings PLC, AMSL and Amigo; and
- d) Holdings PLC, AMSL and Amigo will provide me with reasonable access to their books, records and other resources so as to enable me to perform my role.

1.4.8. Finally, my role as Customer Advocate does not affect or in any way limit the rights held by the Scheme Creditors in respect of the Court process for the approval of the Schemes.

## **1.5. Scope and Exclusion of Liability**

- 1.5.1. This report is provided to the Company so that it can be posted on its website. No Scheme Creditor should construe the contents of this report as containing legal, financial, tax or other professional advice. A Scheme Creditor should consult their own professional advisers as to the legal, financial, tax or other matters relevant to the actions they should take in relation to the Schemes.
- 1.5.2. Neither me as Customer Advocate nor any of my advisers, or other person acting on behalf of me, nor any of their respective successors, assume any duty or responsibility to, nor shall have any liability directly or indirectly whatsoever to, any party (including, but not limited to, any media organisation, Scheme Creditors and any intermediaries acting on behalf of any Scheme Creditors (including any claims management companies)) other than the Company (and then only subject to the terms of the Agreement) under or in connection with this Report and my role as Customer Advocate or otherwise.

## **2. CONVENING HEARING**

### **2.1. Summary**

- 2.1.1. As noted above, the Convening Hearing took place on 8 March 2022 and the Judgment was handed down on 15 March 2022 and can be found <https://www.amigoscheme.co.uk/documents/convening-judgment>.

- 2.1.2. The Court gave leave to convene a meeting of the Scheme Creditors for each of the proposed Schemes (which for all intents and purposes will have the appearance of one meeting). This meeting will be held on 12 May 2022 and will start at 1pm.
- 2.1.3. There will be a single class of creditors in each Scheme. The Court was satisfied that there should be a single class of creditors as all of the Scheme Creditors have a sufficiently aligned economic interest that means they should be in a single class.
- 2.1.4. The Court also gave detailed directions as to how the Company should give notice of, and concerning the conduct of, the meeting.
- 2.1.5. Finally, the Court concluded that it was able to give permission to convene the meeting, and that there were no 'roadblocks' that the Court could see which would prevent the Scheme from going ahead.
- 2.1.6. I give some further detail on these issues below.

## **2.2. Class composition**

- 2.2.1. At the Convening Hearing, the Company proposed that all Scheme Creditors should vote in a single class.
- 2.2.2. Having conducted a review of the communications received from Scheme Creditors, I am aware of no objections to or comments on the proposed single class of Scheme Creditors by the Scheme Creditors.
- 2.2.3. Debt Camel indicated that it has not received any comments relating to class composition issues and that it has no issue with the proposed single class of Scheme Creditors.
- 2.2.4. The Court concluded that there should be a single class, including the Financial Ombudsman Service (whose interest is the same as other Scheme Creditors in circumstances where its unsecured claim for fees against the Company will be treated in the same way as the other Scheme Creditors). See Judgment, paragraphs 52 – 58.

## **2.3. Procedural issues**

- 2.3.1. The Court agreed that the Scheme meetings could be held entirely online given the likely inconvenience and cost of attending in person or a hybrid set-up. See Judgment, paragraph 66.
- 2.3.2. Having conducted a review of the communications received from Scheme Creditors, I am aware of no objections to or comments on procedural issues the Scheme Creditors. A small number of creditors indicated that they did not understand what was being proposed or how to proceed. These responses were exhibited to my report to the Court, and this fact was drawn to the Court's attention during the hearing.
- 2.3.3. Debt Camel did not express any concerns as to the timing of the Scheme approval process. On the contrary, Debt Camel would favour a speedy consideration of the Scheme by Scheme Creditors as any delay would serve no good purpose. The Court expressed no concern as to timing.
- 2.3.4. Debt Camel was concerned, however, that a number of Scheme Creditors who took out loans with Amigo some time ago may not be aware that the Schemes are being proposed. Debt Camel proposed that a substantial online advertisement campaign may deal with this. The Company agreed that the Court order should include a direction that a more extensive advertising campaign should take place. See Judgment, paragraph 67.
- 2.3.5. Debt Camel raised certain concerns relating to the valuation of claims for voting purposes. I did not agree that these concerns were valid. In accordance with the understanding I have with Debt Camel I included these concerns in my report to the Court. The Court considered Debt Camel's concerns in some detail at the hearing and in the Judgment and concluded that the proposals put forward for voting by the Company were, in fact, correct and made the order accordingly. See Judgment, paragraphs 68 to 70.
- 2.3.6. Debt Camel also raised concerns that the proposed Explanatory Statement might be too complex. I should add that Debt Camel had not seen the Explanatory Statement at the time it raised those concerns. The Explanatory Statement is a long document. It seeks to explain complex issues in a number of ways. The judge at the hearing made some minor suggestions as to what further means of explaining the position could be included, but concluded that "in contrast to the complex and turgid documents which have often accompanied schemes and plans in recent years, which can serve as much to obfuscate as to reveal, it is pleasing to see that an effort has clearly been made in the instant case to produce a relatively short draft explanatory statement which is couched in plain language and contains useful "question and answer" sections, flow charts and tables to assist the reader": Judgment, paragraph 62.

## **2.4. Roadblocks**

- 2.4.1. The Court considered that there were no obvious “roadblocks” which would inevitably lead the Court at the Sanction Hearing to reject the Schemes. See Judgment, paragraph 51.

## **2.5. Outcome of the Convening Hearing**

- 2.5.1. The Court ordered that the proposed online Scheme meetings should go ahead. See Judgment, paragraph 72.

## **3. OTHER MATTERS**

### **3.1. General**

- 3.1.1. Under my Agreement, it is not part of my role to express an opinion on whether the proposed Scheme is fair or in the best interests of the Scheme Creditors. I am, however, obliged to report back separately to the Company on other matters, such as fairness, raised by Scheme Creditors or media bodies and consumer protection groups. The Company agreed that I could include such matters in my report to the Court and in this report, and I set out below those I consider the most relevant.

### **3.2. Comments Received from Scheme Creditors**

- 3.2.1. The majority, if not all, of the negative comments or objections relating to the Schemes that I have seen are either that any attempt to pay less than 100% of the value of Scheme Creditors’ claims is felt to be unfair or that it is unfair to wait until 2023 to be paid any compensation.
- 3.2.2. In my view, these matters do not go to the fairness of the proposed Scheme. Rather, they are a consequence of the Company having, in the case of the Preferred Solution, to rely on an injection of funds which will be insufficient to pay all Scheme Creditors in full or in the case of the Fallback Solution or Wind-Down Scheme, to fully realise the existing loan book; together with the unavoidable delay that the process to implement the Scheme will cause, e.g. to properly and fairly assess and adjudicate claims submitted.

### **3.3. Comments Received from Debt Camel**

- 3.3.1. Debt Camel provided me with a number of comments that it believes go to the question of whether the Schemes are fair. I have considered those comments



and concluded that they are similar to those put forward by the Scheme Creditors. I do not believe that these matters go to the fairness of the proposed Schemes. Rather, they are matters that will be considered by Scheme Creditors when deciding whether to vote for or against the Schemes.

3.3.2. The concerns of Debt Camel are as follows:

- a) Amigo has agreed to pay certain amounts into a trust fund where creditors have brought claims any repayments they make after 30 November 2021 are paid into a trust fund in order to preserve their rights to equitable set-off. In contrast Debt Camel has suggested that all repayments received after 30 November 2021 be paid into the trust fund regardless of whether or not the borrower or guarantor make a complaint and ultimately become Scheme Creditors. The Company and I have issues with the approach proposed by Debt Camel in that it could lead to certain creditors being preferred over others. I do not consider that this point goes to fairness of the Schemes but it is something that may be considered at the final hearing before the Court.
- b) Debt Camel has raised a concern that, in circumstances where a Scheme Creditor has taken out a validly issued initial loan which was then repaid in whole or in part by a second loan which should not have been issued (and gives rise to a valid claim), the Company is planning to make certain deductions from claims to reflect the fact that the second loan was used in whole or in part to repay the earlier loan.. The Company's approach is that the amount of the interest rebate given to the Scheme Creditor when the first loan was repaid should be deducted from the damages claim. Debt Camel says that this deduction should not take place. The Company and I believe that the deduction is valid in that it is a principle of law that damages should reflect the loss a person has suffered. In this case although the Scheme Creditor has suffered a loss as a result of being granted an unaffordable loan the creditor concerned has had the advantage of the interest rebate on the first loan.
- c) Debt Camel is concerned that the illustrative dividend of 41 pence in the pound may be too high and is concerned that it has not seen the figures behind that calculation. The Company's assumptions have been independently reviewed and held to be reasonable by Ernst & Young LLP.<sup>1</sup> I take the view that the prospective dividend is something that the creditors will consider to be important when deciding how to vote, and while an illustrative dividend may be helpful, it is impossible to say at this stage

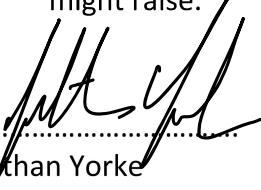
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<sup>1</sup> <https://www.amigoscheme.co.uk/ey-report>.

precisely what the eventual dividend will be, due to the number of variables that need to be taken into account when determining what it will be.

#### 4. NEXT STEPS

- 4.1. As mentioned above the online portal for voting on the Schemes is now open and will remain open until 5pm on Tuesday 10 May. It is also open to Scheme Creditors to attend and vote at the Scheme meetings that will be held online at 1pm on 12 May 2022.
- 4.2. The Court hearing to sanction either of the Schemes will be held on 23 and 24 May 2022 and Scheme Creditors can attend that hearing in person if they wish.
- 4.3. I will continue to seek the views and concerns of creditors and other interested parties. In addition I will prepare a report to Scheme Creditors prior to the Sanction Hearing. That report will be submitted to the Court for the Sanction Hearing and I will attend the Sanction Hearing by counsel in order to explain any queries the Court might raise.



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Jonathan Yorke  
6 April 2022