

The complaint

Mr F complains that the loan he had from Loans 2 Go Limited was unaffordable to him.

What happened

Mr F took out a fixed sum loan with Loans 2 Go on 30 March 2019. He borrowed £400 and was due to repay £91.42 monthly for 18 months, finishing on 30 September 2020.

Mr F says that he had multiple short-term loans when he applied for the loan from Loans 2 Go. He says that Loans 2 Go should have realised he couldn't afford the repayments as he was in a short-term loan trap. Mr F adds that he feels that Loans 2 Go took advantage of his situation by charging an obscene interest rate. He says he had to borrow further to make the repayments and his debt spiralled out of control due to the loan term and the interest rate.

Loans 2 Go says it carried out a thorough affordability assessment which included verifying Mr F's declared income and checking his credit file. It says that although it needed to adjust both his declared income and credit expenditure, it still found the loan repayments to be affordable.

Our adjudicator recommended the complaint should be upheld. She said that she wasn't satisfied Loans 2 Go had carried out proportionate checks. She said, had it done so, it's likely to have found Mr F's expenditure substantially exceeded his income. Our adjudicator found Mr F had borrowed over £4,000 from short term loan providers in the lead up to the Loans 2 Go loan and was spending significant amounts on gambling. She said Mr F was consistently being charged for his overdraft and had a returned direct debit in the month before the loan.

So our adjudicator concluded that sufficient checks would have shown Loans 2 Go that further lending was unsustainable and recommended that Loans 2 Go should deduct any payments Mr F made from the principal, and refund any overpayments plus 8% interest. She said it should also ensure that any associated negative information is removed from Mr F's credit file.

Loans 2 Go responded to say, in summary, that it considered its checks were proportionate given the loan and repayments were a small proportion of Mr F's income. It added that Mr F should have been aware of his obligations not to give false information, given his position at a Finance Conduct Authority (FCA) regulated company.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and

reasonable in the circumstances of this complaint.

I need to take into account the relevant rules, guidance and good industry practice.

The Financial Conduct Authority (FCA) was the regulator when Loans 2 Go lent to Mr F. Its rules and guidance obliged it to lend responsibly. As set out in the regulator's Consumer Credit Sourcebook (CONC), this meant that Loans 2 Go needed to take reasonable and proportionate steps to assess whether or not a borrower could afford to meet its loan repayments in a sustainable manner over the lifetime of the agreement.

CONC 5.2A.4R states that:

A firm must undertake a reasonable assessment of the creditworthiness of a customer before:

- 1. entering into a regulated credit agreement; or*
- 2. significantly increasing the amount of credit provided under a regulated credit agreement.*
- 3. significantly increasing a credit limit for running-account credit under a regulated credit agreement.*

Repaying debt in a sustainable manner was defined as being able to meet repayments out of normal income without the customer having to borrow to meet the repayments, without failing to make any other payment the customer has a contractual or statutory obligation to make and without the repayments having a significant adverse impact on the customer's financial situation (CONC 5.2A.12R).

In general, I'd expect a lender to require more assurance the greater the potential risk to the borrower of not being able to repay the credit in a sustainable way. So, for example, I'd expect a lender to seek more assurance, potentially by carrying out more detailed checks

- the *lower* a person'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 borrower is required to make payments for an extended period).

In addition, as per CONC 5.2A.16G (3): *For the purpose of considering the customer's income, it is not generally sufficient to rely solely on a statement of current income made by the customer without independent evidence (for example, in the form of information supplied by a credit reference agency or documentation of a third party supplied by the third party or by the customer).*

And CONC 5.2A.17R (2) says: *The firm must take reasonable steps to determine the amount, or make a reasonable estimate, of the customer's current non-discretionary expenditure.*

Bearing all of this in mind, in coming to a decision on Mr F's case, I have considered the following questions:

- Did Loans 2 Go complete reasonable and proportionate checks when assessing Mr F's loan application to satisfy itself that he would be able to repay the loan in a sustainable way?
 - If not, what would reasonable and proportionate checks have shown?
- Did Loans 2 Go make a fair lending decision?
- Did Loans 2 Go act unfairly or unreasonably in some other way?

I've seen evidence to show Loans 2 Go asked about Mr F's financial circumstances, checked his credit file and verified his income. But I'm not satisfied that these checks went far enough. I say that because:

- The loan was over a term of 18 months and Loans 2 Go needed to ensure the repayments were sustainable over that period;
- Loans 2 Go's analysis showed significant discrepancies between its checks and Mr F's declared income and credit expenditure;
- I can see Loans 2 Go increased Mr F's declared credit expenditure by over £1,000, based on its checks. But it still estimated that Mr F's disposable income each month was around £460 which I don't consider to be consistent with the need for a high cost loan of £400;
- The credit check showed:
 - Mr F was utilising 93% of the credit limits on his six credit cards;
 - He had already borrowed £5,000 since December 2018;
 - This included two short-term loans, one of which was taken out the month before the Loans 2 Go application;
 - A bank account with an overdraft almost up to its £2,500 limit.

For the above reasons, I consider Loans 2 Go's checks should have included a full review of Mr F's financial circumstances, including further verification of his income and expenditure. I acknowledge what Loans 2 Go says about Mr F's job and his obligations not to give false information, but this doesn't change its requirement to complete reasonable and proportionate checks.

So, I've had a look at Mr F's bank statements to see what they showed as a reasonable proxy for what Loans 2 Go might have found out had it looked into Mr F's finances in more depth:

- Mr F's income was roughly in line with the £3,000 he'd declared, although I acknowledge that Loans 2 Go had adjusted it downwards based upon its own checks;
- As well as the two longer term loans reflected on Mr F's credit file, he owed money to at least seven other short-term loan companies at the time of the loan application, of which only two were showing on the credit file;
- He was regularly having direct debits returned;
- There was a payment to a debt recovery company;
- Mr F was regularly gambling over £3,000 per month.

In summary, Mr F's bank statements clearly showed he was struggling to manage his money in the lead up to the Loans 2 Go loan. He wasn't making any real inroads to his existing debt levels (his credit cards were all at or near their limits) and had recently taken on additional expensive debt.

So I'm satisfied reasonable and proportionate checks were very likely to have shown it was irresponsible to lend to Mr F and Loans 2 Go did not make a fair lending decision, although I cannot conclude that it acted unfairly or unreasonably in any other way.

But I do find that Mr F was unlikely to be able to sustainably repay the loan and that Loans 2 Go was wrong to lend to him.

My final decision

My decision is that I uphold this complaint. Loans 2 Go Limited should:

- Refund all interest and charges that Mr F paid on loan;
- Pay interest of 8% simple a year on all refunds from the date of payment to the date of settlement*;
- Write off any unpaid interest and charges, apply the refund to reduce any capital outstanding and pay any balance to Mr F;
- Remove any negative information about the loan from Mr F's credit file.

*HM Revenue & Customs requires Loans 2 Go to take off tax from this interest. Loans 2 Go must give Mr F a certificate showing how much tax it's taken off if he asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 2 February 2021.

Amanda Williams

Ombudsman