DRN-2410982

The complaint

Mr B complains about a personal loan provided to him by Loans 2 Go Limited, trading as Loans 2 Go, ("L2G"), which he says was unaffordable.

What happened

L2G agreed a loan for £250 for Mr B in July 2018. The loan was repayable by 18 monthly payments of £56.64. The loan hasn't been repaid and the account was sold to a third party, ("T"), in April 2019.

Mr B said that at the time of the loan he had got himself into debt due to getting loan after loan and borrowing more than he could afford. Mr B felt like L2G took advantage of his desperate position without doing proper checks. During this time, he was also addicted to gambling. His debt has caused him health issues.

In its final response letter, L2G said that when Mr B applied for the loan it had conducted a thorough affordability assessment and considered Mr B's declared income and verified this via an online income verification tool along with a review of Mr B's credit file. It noted that Mr B declared his monthly income as £1,470, and it verified that he received a minimum of £1,455.57 monthly. L2G said that Mr B declared his monthly expenditure and credit commitments to total £652. But following a review of his application and credit file, it calculated them to total £1,251.83. L2G also then added a buffer of 10% to his verified expenditure to account for any fluctuations in his monthly income or expenditure, even after which, his contractual loan repayment of £56.64 would have still been affordable. L2G determined that Mr B had enough disposable income to afford his contractual instalments.

Our adjudicator recommended that the complaint should be upheld. She thought reasonable and proportionate checks would've involved L2G obtaining a thorough knowledge of Mr B's financial circumstances including evidence. Looking at the evidence provided, the adjudicator said that the checks would most likely have shown that Mr B was unable to afford the repayments and unable to repay this loan in a sustainable manner.

L2G disagreed. It said that before approving Mr B's loan, it took his monthly income and expenditure into consideration. Based on all the information available to it at the time, there was no clear indication of any affordability issues. From reviewing Mr B's credit file, it could see that he had several settled accounts, which showed his commitment and ability to keep up with his financial obligations and he was up to date with all his credit commitments. Had it been given sufficient reason to request further documentation after Mr B had made his application, it would have requested his bank statements. Due to no clear evidence of financial difficulty while conducting its affordability assessment, the need to request further evidence of Mr B's financial circumstances at the time did not arise.

As this complaint hasn't been resolved informally, it has come to me, as an ombudsman, to review and resolve.

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 have also taken into account the law, any relevant regulatory rules and good industry practice at the time.

I’m sorry to hear that Mr B’s health has been affected by the pressures on his finances.

When L2G lent to Mr B the regulator was the Financial Conduct Authority and relevant regulations and guidance included its Consumer Credit Sourcebook (CONC). Its rules and guidance obliged L2G to lend responsibly. As set out in CONC, this meant that L2G 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. Repaying debt in a sustainable manner meant being able to meet repayments out of normal income while meeting normal outgoings and not having to borrow further to meet these repayments.

The lender was required to carry out a borrower focussed assessment each time - sometimes referred to as an “affordability assessment” or “affordability check”. Neither the law nor the FCA specified what level of detail was needed to carry out an appropriate assessment or how such an assessment was to be carried out in practice. The FCA said that the level of detail would depend on the type of product, the amount of credit being considered, the associated cost and risk to the borrower relative to the borrower’s financial situation, amongst other factors.

The checks had to be “borrower” focussed – so L2G had to think about whether Mr B could sustainably repay his loan. In practice this meant that the lender had to ensure that making the payments to the loan wouldn’t cause Mr B undue difficulty or adverse consequences. In other words, it wasn’t enough for L2G to simply think about the likelihood of it getting its money back, it had to consider the impact of loan repayments on Mr B.

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);

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

- Did L2G complete reasonable and proportionate checks when assessing Mr B’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 L2G make a fair lending decision?

Did L2G complete reasonable and proportionate checks when assessing Mr B’s loan application to satisfy itself that he would be able to repay the loan in a sustainable way?

The loan was for £250. The interest rate was 205.2 % (990.1% APR). The loan was to be repaid by 18 monthly repayments of £56.84. Although that meant Mr B's monthly repayments would be relatively modest compared to what he'd said about his income and expenditure, he was still making a relatively lengthy commitment to L2G. If Mr B made each payment when it was due, he'd pay £1,019.52 in total.

As set out above, L2G gathered some information from Mr B about his income and expenses before it agreed the loan. It also carried out a credit check.

I've reviewed L2G's credit checks. L2G was aware from these that Mr B wasn't in an Individual Voluntary Arrangement, he wasn't bankrupt and there were no county court judgements against him. There were also no defaulted accounts in the six months prior to the loan application. Mr B had a total credit balance of £3,460 outstanding. The credit checks show that Mr B had one current account, one credit card, and one large loan for £4,500 taken out in the previous year. More worryingly, Mr B had taken out two loans totalling £600 less than two months prior to his application for L2G's loan. One of these loans was described as a short term loan with a balance of £282. There had also been four credit searches in the last month which may have indicated a recent need for credit. Altogether, I think the results of its checks should have caused L2G concerns as Mr B's finances appeared to be under pressure as shown by Mr B's relatively recent short term borrowing to supplement his income.

I also note that L2G had said in its final response letter that:-

"when a lender carries out a credit search, the information it sees does not usually provide the same level of detail that a customer's credit report will, and it isn't necessarily up to date. A lender might only see a small portion of a borrower's credit file, or some data might be missing or anonymised. Also, not all payday and short-term lenders report to the same credit reference agencies. So, you may have taken other payday or short-term loans prior to the loan which may not have been identified by our credit check."

So, L2G was aware that its credit checks may not have revealed the full extent of Mr B's credit commitments.

L2G was also aware that Mr B had declared an income of £1,470 and £652 for his living costs and credit commitments on his application form. I can see that L2G verified Mr B's income by obtaining Mr B's payslip which showed an income of £1,442.23. Mr B's declared expenses consisted of £120 for travel, £32 for utilities and £500 for credit commitments with no other amounts provided for living costs. I think L2G might have been concerned that Mr B apparently had no other living costs and that he was already spending over a third of his income on debt.

Mr B's declared income and expenses left him with a disposable income of £818. This seems unlikely given that he wanted to borrow £250. I also note that L2G's final response letter said that it had increased the total amount of Mr B's living costs and credit commitments to £1,251.83 after reviewing his application and credit file. The same letter referred to *"verified expenditure"* but I don't think that a review of an application and credit file amounts to a verified assessment of Mr B's actual expenses.

I note that CONC 5.3.1(4) said:

If a firm takes income or expenditure into account in its creditworthiness assessment or its assessment required under CONC 5.2.2R (1):

1. (a)

the firm should take account of actual current income or expenditure and reasonably expected future income or expenditure (to the extent it is proportionate to do so) where it is reasonably foreseeable that it will differ from actual current income or expenditure over the anticipated repayment period of the agreement;

2. (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;

So, I think it would have been proportionate for L2G to have verified Mr B's actual expenses before agreeing to lend.

But that in itself doesn't mean that Mr B's complaint should succeed. I'd also need to be persuaded that what I consider to be proportionate checks would have likely shown L2G that Mr B couldn't sustainably afford the loan. So, I've looked at Mr B's bank statements to see what better checks would have shown L2G.

What would reasonable and proportionate checks have shown? And did L2G make a fair lending decision?

Mr B has provided bank statements from around the time he applied for the loan. I'm not suggesting here that these are the checks that L2G should have done. But I think looking at these gives me the best picture of what the lender was likely to have seen had it made better checks.

I note that Mr B's monthly income on the statements was around £1,442 which was also shown on the payslip he'd provided to L2G when applying for the loan. But had L2G sought some verification of Mr B's spending, I think L2G would've been in a better position to understand Mr B's financial situation before it decided to lend to him.

I've reviewed Mr B's spending on his bank statements. His living costs are higher than he'd declared with spending on insurance and cable TV as well as phone charges and food. But more worryingly, the statements show that Mr B was spending a substantial amount on gambling. He'd spent around 60% of his income on gambling in June 2018. I don't think this was conducive to him being able to sustainably repay this loan.

The statements also show that Mr B's financial circumstances were somewhat strained. He was persistently overdrawn and there were a number of returned payments. When Mr B reached his overdraft limit of £300 from May 2018 to early July 2018, I can see that he supplemented his income by taking out short term loans. In May 2018, he took out a short term loan on three occasions when he reached his overdraft limit and, in that month, he borrowed a total of £850 in short term loans. In June 2018, he borrowed two short term loans totalling £380. At the time he applied for L2G's loan, he had also exceeded his overdraft limit and had also borrowed another short term loan for £300 three days earlier. So, further checks would likely have shown that Mr B had other debts it didn't know about and that Mr B was having significant difficulties managing his money.

So, it's clear that further checks wouldn't likely have provided the assurance L2G needed. As Mr B was borrowing a significant amount of short term loans just to fund his existing expenditure, I think there was a very real prospect that he would need to borrow again in order to repay his new loan and that would likely have a significant adverse effect on his financial situation.

I note that L2G said that Mr B had enough disposable income to afford his contractual instalments. But it seems to me that B was focussing on its calculation of whether the loan was affordable for C on a pounds and pence basis. But the lender was required to establish whether C could sustainably make his loan repayments – not just whether the loan payments were technically affordable on a strict pounds and pence calculation. 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 also note that L2G said that there was no clear evidence of financial difficulty while conducting its affordability assessment, so the need to request further evidence of Mr B's financial circumstances at the time did not arise. But as I've said above, I think its credit checks did reveal Mr B's financial difficulties by his relatively recent short term borrowing.

I can also see that Mr B only managed to make the first four repayments on the loan before the account fell into arrears.

So, if L2G had carried out the independent view of Mr B's circumstances that I think was needed for this loan, I think L2G ought reasonably to have realised that it was unlikely that Mr B would have been able to sustainably repay his loan. So, it should reasonably have concluded that it wasn't appropriate to lend to him and so I consider it was irresponsible to have done so. I think L2G treated Mr B unfairly when it agreed to lend to him, and that it should put things right as shown below.

Putting things right – what L2G needs to do

I understand that the loan hasn't been fully repaid. In order to put Mr B back into the position he would have been had the loan not been agreed for him, L2G needs to ensure that Mr B only repays the principal borrowed of £250. As L2G has sold the outstanding debt to T, it should buy it back if it is able to do so or chooses to do so and then take the following steps. If L2G isn't able to buy the debt back or chooses not to, then it should liaise with T to bring about steps a) to e) below.

So, L2G needs to:

a) remove any interest and charges applied to Mr B's account from when it was opened;
b) treat all payments that Mr B has made towards the loan as payments towards the principal amount borrowed;
c) if Mr B has made payments above the capital amount of £250, then these should be refunded to him, along with simple interest at the rate of 8% per year on these amounts from the date they were paid to the date of settlement*;
d) if after applying the refunds, there is still an outstanding capital balance then L2G needs to treat Mr B fairly and sympathetically in this matter. This may mean agreeing a mutually agreeable repayment plan with him; and
d) remove any adverse information about the loan from Mr B's credit file once it has been settled.

*HM Revenue & Customs requires L2G to take off tax from this interest. L2G must give Mr B a certificate showing how much tax it has taken off if he asks for one. If L2G intends to apply the refunds to reduce any outstanding capital balances, it must do so after deducting the tax.

My final decision

My decision is that I uphold this complaint. In full and final settlement of this complaint I order Loans 2 Go Limited, trading as Loans 2 Go, to put things right as I've set out above under the heading "Putting things right – what L2G needs to do".

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Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 22 April 2021.

Roslyn Rawson
Ombudsman