DRN-2543430

Complaint

Mr R has complained that Loans 2 Go Limited ("L2G") provided him with an unaffordable loan. He says L2G should have known the loan was unaffordable.

Background

L2G provided Mr R with a loan of £750 in November 2018. This loan had an APR of 1,242.8% and a 78-week term. This all meant the total amount repayable of £3,058.38 was due to be repaid in 78 weekly instalments of £39.21.

One of our adjudicators looked at this complaint and thought that L2G unfairly provided this loan to Mr R as proportionate checks would have shown it was unaffordable. L2G disagreed with our adjudicator and asked for an ombudsman to review the 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 Mr R'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 Mr R's complaint. These two questions are:

1. Did L2G complete reasonable and proportionate checks to satisfy itself that Mr R would be able to repay his loan in a sustainable way?

    o If so, did it make a fair lending decision?
    o If not, would those checks have shown that Mr R would've been able to do so?

2. Did L2G act unfairly or unreasonably in some other way?

Did L2G complete reasonable and proportionate checks to satisfy itself that Mr R would be able to repay his loan in a sustainable way?

L2G provided this loan while it was authorised and regulated by the Financial Conduct Authority ("FCA"). The rules and regulations in place required L2G to carry out a reasonable and proportionate assessment of Mr R's ability to make the repayments under this agreement. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower" focused – so L2G had to think about whether repaying the loan would cause significant adverse consequences *for Mr R*. In practice this meant that L2G had to ensure that making the payments to the loan wouldn't cause Mr R 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 the loan repayments on Mr R. 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 L2G's checks reasonable and proportionate?

L2G says that it carried out an income and expenditure assessment with Mr R prior to providing him with this loan. It also carried out a credit check. Mr R declared that he was earning around £2,400.00 a month and had expenditure of around £820 a month. L2G's checks suggested his income was closer to £1,470.00 and his expenditure was closer to £1,050.00. But this still left him with enough to cover the payments to this loan.

I've carefully considered what L2G has said. But the credit check it carried out showed Mr R was at his credit limit on a number of accounts. So I'd dispute that the credit file showed he was managing his existing credit well. And this together with L2G not being confident in the expenditure information Mr R provided, such that it adjusted the figures and its adjustments not capturing all of Mr R's expenditure lead me to think that L2G needed to take steps to verify Mr R's actual monthly expenditure.

As I can't see that this L2G did do this, I don't think that the checks it carried out before providing Mr R with his loan were reasonable and proportionate.

Would reasonable and proportionate checks have indicated to L2G that Mr R would have been unable to 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 L2G that Mr R would have been unable to sustainably repay this loan.

L2G was required to establish whether Mr R could make his loan repayments without experiencing significant adverse consequences – not just whether the loan payments were technically affordable on a strict pounds and pence calculation.

I've carefully considered the information provided. Having done so, it's clear that Mr R was gambling significant sums of money was borrowing from a number of different lenders to gamble as well as try and manage his existing commitments. So I think that proportionate checks would have shown L2G that Mr R was likely to use this loan for these purposes, or to at least cover the hole this left in his finances, which meant he was unlikely to be able to repay it without borrowing further or suffering significant adverse consequences.

Bearing all of this in mind, I'm satisfied that reasonable and proportionate checks would more likely than not have demonstrated that Mr R 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 L2G to the fact that Mr R was in no sort of position to make the payments on this loan without suffering significant adverse consequences.

Did L2G act unfairly or unreasonably towards Mr R in some other way?

I've carefully thought about everything provided. And having done so, I've not seen anything to suggest that L2G acted unfairly or unreasonably towards Mr R in some other way. So I don't think L2G acted unfairly or unreasonably towards Mr R in some other way.

Did Mr R lose out as a result of L2G unfairly providing him with this loan?

As Mr R paid a high amount of interest and charges on a loan that he shouldn't have been provided with, I'm satisfied that he has lost out as a result of what L2G did wrong.

So I think that L2G needs to put things right.

Fair compensation – what L2G needs to do to put things right for Mr R

Having thought about everything, L2G should put things right for Mr R by:

- removing all interest, fees and charges applied to the loan from the outset. The payments made should be deducted from the new starting balance – the £750 originally lent. L2G should treat any payments made, whether to it or any third-party debt party purchaser, should the new starting balance be cleared as overpayments. And any overpayments should be refunded to Mr R;

- adding interest at 8% per year simple on any overpayments, should there be any, from the date they were made by Mr H to the date of settlement†

- removing any adverse information recorded on Mr R’s credit file as a result of this loan.

† HM Revenue & Customs requires L2G to take off tax from this interest. L2G must give Mr R a certificate showing how much tax it has taken off if he asks for one.

If L2G sold the outstanding balance on this account to a third party debt purchaser, it either needs to buy the account back from the third party and make the necessary adjustments; pay an amount to the third party so it can make the necessary adjustments; or pay Mr R an amount to ensure that it fully complies with this direction.

My final decision

For the reasons I’ve explained, I’m upholding Mr R’s complaint. Loans 2 Go Limited needs to put things right in the way set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr R to accept or reject my decision before 28 April 2021.

Jeshen Narayanan
Ombudsman