DRN-2796068

The complaint

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

What happened

L2G provided Mr S with a loan of £5,000 in May 2015. The interest rate was 120%, (315.4% APR). The loan was to be repaid over 36 months with monthly repayments of £638.89. If Mr S made each payment when it was due, he'd pay £23,000 in total. Mr S fell into arrears with the loan and L2G agreed to accept a payment of £5,700 in full and final settlement of the loan balance which was paid in late November 2015.

The loan was a 'log book' loan. It was granted on the basis that Mr S provided L2G with a bill of sale for his car. This meant that if Mr S didn't make his loan repayments, L2G could potentially recoup its losses through the sale of the car.

Mr S said that L2G's loan should have never been granted as he believed that if sufficient checks had been carried out, it would have been clear that he couldn't afford the loan from the outset. He said that he wasn't working at the time he took out the loan and he was gambling heavily.

In its final response letter, L2G said that it had conducted a thorough affordability assessment prior to approving the loan. It said that it verified Mr S's declared income via an income verification tool and reviewed his credit file. L2G said that it verified that Mr S received an average monthly income of £1,862. In addition, following a review of Mr S's loan application and his credit file, L2G calculated Mr S's monthly expenditure and credit commitments to total £937. It then added £60 as a buffer to account for any fluctuations in his monthly income or expenditure. This made his expenditure total £997 and it said that the contractual loan repayment of £638.89 would still have been affordable.

Our adjudicator's view

Our adjudicator recommended that the complaint should be upheld. She said that L2G had obtained information about Mr S's income and expenditure as well as carrying out a credit check and obtaining bank statements covering a period of three months prior to giving him this loan. She said that the bank statements L2G saw showed a total of seven gambling transactions on 17 April 2015 and 20 April 2015. These transactions totalled around £342 which was roughly the balance of Mr S's account at the time. Because of this, there weren't enough funds available in the account to pay a number of direct debits. The adjudicator said that this suggested that Mr S was having problems managing his money and that it was unlikely he'd be able to sustainably repay the loan.

L2G disagreed. It accepted there were gambling transactions on Mr S's bank statements, but it didn't agree that Mr S had a significant gambling problem. Given that the bank statements were over a three month period, this would equate to a monthly gambling expenditure of £114 per month. L2G didn't agree that this was a significant percentage of Mr S's income of at least £1,862. When L2G assessed Mr S's application, it found that his monthly disposable income was £925. So even if it were to factor in the gambling, the loan would have been affordable.

The adjudicator responded to say that whilst the amount Mr S spent on gambling in this instance was affordable based on his declared income, the fact he spent all his remaining balance in his account on gambling was concerning. She thought there was a high chance Mr S would have used any further funds lent to him for this same purpose. She said that this activity was unsustainable and for that reason, she didn't think L2G should have given him this loan.

L2G responded to say that given the fact that out of a three month period there was only a record of gambling for two days, it didn't agree with the adjudicator's assertion that he would have used any other funds lent to him for the same purpose.

As this complaint hadn't been resolved informally, it was passed to me, as an ombudsman, to review and resolve.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr S and to L2G on 20 April 2021. I summarise my findings:

I'd noted that when L2G lent to Mr S 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 those 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 S 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 S 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 S.

In general, I thought that a reasonable and proportionate check ought generally to have been more thorough:

- the *lower* a consumer'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 period of time a borrower would be indebted for (reflecting the fact that the total cost of credit was likely to be greater and the borrower was required to make repayments for an extended period).

Bearing all of this in mind, in coming to a decision on Mr S's complaint, I'd considered the following questions:

- Did L2G complete reasonable and proportionate checks when assessing Mr S'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 carry out reasonable and proportionate checks when it provided the loan?

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

I'd reviewed L2G's credit check. It wasn't clear whether the results were correct for Mr S as the address shown in the credit check was incorrect and not that provided by Mr S. In any event, the results of the credit check were very brief and showed that the person checked wasn't insolvent and didn't have any county court judgements against him. There was also no information about other credit commitments.

Mr S declared in his application form that he was self-employed and that his monthly income was £5,000. He also said that his expenses were £937 including credit commitments of £52. L2G had amended Mr S's monthly income to £1,862 and it applied a £60 buffer so that Mr S had a disposable income of £865 after the buffer.

I thought the fact that Mr S was self-employed meant that his income might have been sporadic or likely to fluctuate. His declared income might not have been his available income and might not have been net of all tax, national insurance and business expenses. There was also an element of uncertainty – especially as Mr S was unlikely to receive any sick pay or holiday pay. So, I thought that L2G should have taken steps to verify Mr S's available income as carefully as possible as any error – even if slight - was likely to have a significant impact on his ability to repay this loan.

I could see that L2G obtained bank statements from Mr S for the three months prior to the loan and it also obtained correspondence from HMRC about Mr S's tax return for 2013/2014. L2G had provided this service with copies of these. It seemed on the face of it that L2G had carried out reasonable checks by requesting Mr S's bank statements and tax information in addition to asking about his income and expenses. However, I thought the information it had gathered should have raised concerns and prompted further checks.

I noted that the tax return correspondence was for the tax year 2013/2014. So, I didn't think this would have provided sufficient evidence of Mr S's monthly income at the time of the loan application in May 2015. It was clear from the tax return that Mr S's net income for the year was around £25,600 after expenses. After HMRC's tax and national insurance computation, this left around £18,667. The monthly equivalent was around £1,555 which was rather less than the figure of £1,862 L2G had used.

I could also see that as of May 2015, Mr S hadn't paid HMRC all his tax and national insurance for 2013/2014 and was being charged interest and late payment fees. At that point he owed it almost £1,600. I thought these arrears should have concerned L2G.

I could also see from the bank statements L2G obtained that there appeared to be no evidence of any income being received in those three months. There were two deposits totalling £2,800 in cash made by Mr S in early March 2015. I could see that Mr S's account was overdrawn immediately before these deposits and his account didn't appear to have an overdraft arrangement.

Mr S had told this service that he was out of work at the time of the loan application. But I'd noted that L2G had said that Mr S's monthly income was £1,862. I couldn't see how this was calculated and evidenced, and whether it was net of tax. As there didn't appear to be any income received on the bank statements L2G saw, I thought it should have gathered more information about Mr S's recent income. Mr S was entering into a significant commitment, the repayment amount was a significant percentage of his income (as calculated by L2G), the loan term was 36 months and Mr S could have lost his car if he ran into difficulty making the repayments.

I'd also noted that Mr S had said in his application form that he was paying £200 tax each month and I could see some payments to HMRC on the bank statements. I didn't know if L2G had taken Mr S's tax payments into account when calculating his income to be £1,862. And as I'd said above, I thought Mr S's net monthly income (after payment of tax and national insurance) on the basis of his 2013/2014 tax return was more likely to be around £1,555.

I could also see on the bank statements that Mr S had an additional monthly credit commitment for around £110 which he hadn't mentioned in his application form. I thought it was likely that L2G would have seen this payment on Mr S's bank statements.

I'd also noted that CONC 5.3.7R said that:

A firm must not accept an application for credit under a regulated credit agreement where the firm knows or ought reasonably to suspect that the customer has not been truthful in completing the application in relation to information supplied by the customer relevant to the creditworthiness assessment or the assessment required by CONC 5.2.2R (1).

I thought L2G should have had concerns about Mr S's financial situation because there was a discrepancy between what Mr S had said about his monthly income and expenses and what L2G could see through its bank statement checks.

I also couldn't see that L2G had used the bank statements to verify Mr S's expenses or his business expenses. It seemed that it relied on the amounts declared by Mr S. Overall, it didn't appear L2G had properly scrutinised the information it did see to ensure that Mr S did have enough money to be able to make the monthly repayments.

I could see that the adjudicator had referred to some gambling transactions on the bank statements which were made on two days in April 2015, and that L2G didn't agree with the adjudicator's assertion that Mr S would have used any other funds lent to him for the same purpose. I could understand why the lender had said this and agreed that the gambling transactions it would have seen on the bank statements weren't frequent enough to make it think that the gambling would continue in the same pattern.

But I thought the adjudicator's main reason for upholding the complaint was the fact that Mr S used most of the remaining balance on his account for gambling purposes which caused three direct debits for financial commitments to be returned and that this suggested that Mr S was having difficulties managing his money.

I could see from the bank statements L2G saw that there were six gambling transactions on 17 April 2015 followed by another one on 20 April 2015. The seven transactions totalled £342.95. When Mr S started gambling on 17 April 2015, there was £345.27 in his account. So, the amount gambled was almost equal to the balance available in Mr S's account at the time. Mr S spent almost all his available balance on his account on gambling. This resulted firstly in a direct debit for a loan repayment of £109.73 being returned unpaid on 27 April 2015 and a direct debit to another lender for £5 being returned on 30 April 2015. Then a third direct debit for an insurance provider for £11.31 was returned twice on 11 May 2015 and 22 May 2015. Mr S printed his bank statements on 28 May 2015, the day he'd applied for the loan, when the balance on his account was just £2.32. All this was shown on the bank statements that L2G were provided with. So, I thought it ought to have seen that Mr S appeared to be having significant problems managing his money which should have caused L2G concerns.

Ultimately, I could see from L2G's loan account statement that Mr S did have difficulty meeting his loan repayments. He was unable to make most of his monthly repayments in full from June 2015 until October 2015.

Overall, I thought L2G was irresponsible to have agreed to lend to Mr S based on the information it already had. I didn't think L2G had a complete picture of Mr S's financial circumstances when it agreed to provide this expensive loan to him. He was, after all, committing to repay £23,000 altogether over the 36 months.

I thought L2G should have been concerned that the bank statements it had seen appeared to show no evidence of any income being received and I couldn't see that it had seen any other recent evidence of Mr S's income. I could also see that the bank statements showed other commitments that L2G ought to have taken into account when assessing whether the loan would be affordable. There were also discrepancies between what Mr S had declared and the information L2G had received. And I also thought L2G would have likely seen that Mr S was having difficulties managing his money from his bank statements and correspondence from HMRC.

I hadn't gone on to consider what proportionate checks would likely have shown L2G, because as I'd explained above, I thought L2G was irresponsible to have agreed the loan on the basis of the information it already had, and I thought that it made an unfair lending decision.

So, subject to any further representations by Mr S or L2G my provisional decision was that I intended to uphold this complaint and say that L2G should put things right as shown below.

Putting things right – what L2G needs to do

As I intend to conclude that L2G was irresponsible to have lent to Mr S, he shouldn't have to pay any interest, fees or charges for the loan.

So L2G should:

- Refund any interest and charges paid by Mr S on the loan;
- Add simple interest at a rate of 8% per annum to each of these amounts from the date they were paid to the date of settlement*; and
- Remove any adverse information recorded on Mr S's credit file in relation to the loan.

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

Mr S said he was happy with my provisional decision.

L2G responded to my provisional decision to say that it accepted it.

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.

Given that Mr S and L2G have given me nothing further to consider, I see no reason to depart from the conclusions I reached in my provisional decision. It follows that I uphold the complaint and require L2G to pay Mr S some compensation and take the steps as set out below.

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:

1. Refund any interest and charges paid by Mr S on the loan;

2. Add simple interest at a rate of 8% per annum to each of these amounts from the date they were paid to the date of settlement*; and

3. Remove any adverse information recorded on Mr S's credit file in relation to the loan.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 1 June 2021.
Roslyn Rawson
Ombudsman