DRN-2895568

The complaint

Mr W complains about a loan provided to him by Loans 2 Go Limited ("Loans 2 Go"), which he says was unaffordable.

What happened

Loans 2 Go provided Mr W with a fixed sum loan. The details are given below:

Number	Taken	Instalment	Amount	Monthly Instalments
1	18/02/2019	114.28	500	18

Mr W says he feels that Loans 2 Go have irresponsibly lent the money to him.

Our investigator assessed the complaint and recommended that it be upheld. He thought Loans 2 Go should have sought further information and, if it had, it would have seen Mr W was having problems managing his finances. He concluded Loans 2 Go shouldn't have agreed to lend to Mr W.

Loans 2 Go disagreed with our investigator's view. It said it carried out proportionate checks when it lent to Mr W.

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

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.

When Loans 2 Go lent to Mr W the regulator was the Financial Conduct Authority and relevant regulations and guidance included its Consumer Credit Sourcebook (CONC).

Loans 2 Go was entering a regulated credit agreement. So, it had to carry out a reasonable assessment of Mr W's creditworthiness before it entered the agreement. This means that Loans 2 Go had to consider both the risk to it that Mr W wouldn't make the repayments under the agreement when due, and the risk to Mr W of not being able to make these repayments. In particular, Loans 2 Go had to consider Mr W's ability to make repayments under the agreement as they fell due over the life of the agreement, without him having to borrow to meet the repayments, without him failing to make any other repayment he had a contractual or statutory duty to make, and without the repayments having a significant adverse effect on her financial situation.

The rules don't set out any specific checks which must be completed to assess creditworthiness. But the lender should take into account the borrower's income (over the full term of the loan) and their ongoing expenditure for living expenses and other debts. Whilst it is down to the lender to decide what specific checks it wishes to carry out these should be reasonable and proportionate to the type and amount of credit being provided, the length of the term, the frequency and amount of the repayments and the total cost of the credit. So, a lender's assessment of creditworthiness would need to be flexible and what is appropriate for one person might not be for another. And what might be sufficient for a borrower in one circumstance might not be so for the same borrower in other circumstances.

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

- 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 will be indebted for (reflecting the fact that the total cost of credit is likely to be greater and the borrower is required to make repayments for an extended period).

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

- Did Loans 2 Go complete reasonable and proportionate checks when assessing Mr W's loan application to satisfy itself that he would be able to repay the loan in a sustainable way? If it did, did Loans 2 Go then make a fair lending decision?

- If not, what would reasonable and proportionate checks have shown?

Did Loans 2 Go carry out proportionate checks?

I can see that Loans 2 Go asked Mr W about his income and expenditure. It has told our service that it adjusted Mr W's income and expenditure based on an online verification tool for his income, and its own calculations using what it had in front of it for expenditure. It says it made its calculations about Mr W's expenditure by using what it saw in his credit report, it says it also used Office of National Statistics data and also added a buffer of 10% for any unexpected spend.

It says it reduced Mr W's declared income from £1250 a month to £1114.28 after verifying this. It then increased what Mr W says his expenditure was of £690, to £875.53, based on checks it carried out this included a credit search. It then added a 10% buffer for any fluctuations in spend for Mr W.

I've carefully considered what Loans 2 Go has said about how it calculated Mr W's disposable income when it agreed to the loan. I don't think its checks were proportionate for this loan for the following reasons:

- There was a discrepancy between what Mr W said about his expenditure and what it says it could see through its checks, something that I think Loans 2 Go would have wanted to find out more about.

- It would also have seen that Mr W had spent over his agreed limit on a current account within its credit search. Something that would have seemed at odds with its assessment of Mr W's monthly disposable income.

- I can also see that with the addition of this loan repayment, Mr W would have been spending around 25% of his monthly income on credit, something that I think ought to have raised concerns with Loans 2 Go.

This all leads me to think that Loans 2 Go needed to take additional steps to verify what Mr W's actual monthly expenditure was so it could fairly assess whether the loan repayments were sustainable for him. As I can't see that Loans 2 Go did do this, I don't think that the checks it carried out before providing Mr W with loan 1 was reasonable and proportionate, bearing in mind Mr W would need to meet his loan repayments over 18 months.

So, as I have concluded that Loans 2 Go needed to carry out further checks, I need to consider what it would have seen if it had done so.

What would reasonable and proportionate checks have shown?

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 Loans 2 Go that Mr W would have been unable to sustainably repay this loan.

Loans 2 Go was required to establish whether Mr W 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 including reviewing bank statements that Mr W has provided for the months leading up to his applications for the loan. Having done so, it's clear Mr W was gambling significant amounts of money at the time he asked for the loan. In these circumstances, it is apparent to me that Mr W was unlikely to have been able to repay the loan without borrowing further or experiencing financial difficulty. It is clear from what I have seen that Mr W was spending significant sums of money on gambling and was having problems managing his finances.

Bearing all of this in mind, I'm satisfied that reasonable and proportionate checks would more likely than not have shown Loans 2 Go that Mr W would not have been able to sustainably repay this loan. So, I'm satisfied that Loans 2 Go's failure to carry out proportionate checks resulted in it unfairly providing the loan to Mr W.

So, I think Loans 2 Go needs to put things right for the reasons given above.

Putting things right

In line with this Service's approach, Mr W shouldn't repay more than the capital amount he borrowed. With this in mind, Loans 2 Go should:

- add up the total amount of money Mr W received as a result of being given the loan. The payments Mr W made should be deducted from this amount. Any payments made after the total repaid exceeds the amount Mr W was given should be treated as overpayments and refunded to him;

- add interest at 8% per year simple on any overpayments from the date they were paid by Mr W to the date of settlement†;

- remove any adverse information placed on Mr W's credit file because of the loan;

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

My final decision

My final decision is that I uphold Mr W's complaint for the reasons set out above and require Loans 2 Go Limited, to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 8 November 2021.

Mark Richardson
Ombudsman