DRN-3350767

The complaint

Mr N complains that Loans 2 Go Limited lent to him in an irresponsible manner.

What happened

Mr N suffers from a serious mental health illness. He has been assisted in making his complaint by members of his community medical team. But in this decision, for ease, I will generally refer to all communication as having been with, and from, Mr N himself.

Mr N was given a loan by Loans 2 Go in August 2019. He borrowed £1,200 and agreed to repay the loan in 18 monthly instalments. Mr N has faced problems repaying his loan and a balance remained outstanding when he made his complaint.

Mr N's complaint has been assessed by one of our adjudicators. She thought that the results of Loans 2 Go's checks should have led the lender to probe deeper into Mr N's finances. And she thought the additional checks would have shown the lender that Mr N was facing serious problems managing his money. So she didn't think the loan should have been agreed and she asked Loans 2 Go to put things right for Mr N.

Loans 2 Go didn't agree with that assessment. So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process. If Mr N accepts my decision it is legally binding on both parties.

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.

We've set out our approach to unaffordable/irresponsible lending complaints on our website and I've kept this in mind while deciding Mr N's complaint.

The rules and regulations at the time Loans 2 Go gave this loan to Mr N required it to carry out a reasonable and proportionate assessment of whether he could afford to repay what he owed in a sustainable manner. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower" focused – so Loans 2 Go had to think about whether repaying the credit sustainably would cause difficulties or adverse consequences for Mr N. In practice this meant that Loans 2 Go had to ensure that making the repayments wouldn't cause Mr N undue difficulty or adverse consequences. In other words, it wasn't enough for Loans 2 Go to simply think about the likelihood of it getting its money back, it had to consider the impact of any repayments on Mr N.

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.

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 repayments to credit from a lower level of income);

- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet higher repayments 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 the credit is likely to be greater and the customer is required to make repayments for an extended period).

There may also be other factors which could influence how detailed a proportionate check should’ve been for a given application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. I’ve kept all of this in mind when thinking about whether Loans 2 Go did what it needed to before agreeing to lend to Mr N.

Loans 2 Go gathered some information from Mr N before it agreed the loan. It asked him for details of his income, and his normal expenditure. It then checked what Mr N had said using an income verification service. And it checked his credit file to assess how much he was repaying to other creditors and how he’d managed credit in the past. As a result of its checks Loans 2 Go reduced Mr N’s declared income by around 40%, and increased his declared expenditure by around 15%. Overall his disposable income was reduced by almost two thirds.

Mr N was entering into a significant commitment with Loans 2 Go. He would need to make monthly repayments for a period of two years. So I think it would be right for Loans 2 Go to gather, and independently check, some detailed information about Mr N’s financial circumstances before it agreed to lend to him. For the reasons I will go on to explain I don’t think that the checks it did were enough. I think it would have been proportionate for Loans 2 Go to independently check the true state of Mr N’s finances before agreeing the loan.

The loan that Loans 2 Go gave to Mr N was regulated by the Financial Conduct Authority (FCA). Its rules relating to consumer credit are contained in the CONC section of its handbook. In particular I think that section 5.2A.36 is relevant here, and says;

> *“A firm must not accept an application for credit under a regulated credit agreement where the firm knows or has reasonable cause to suspect that the customer has not been truthful in completing the application in relation to information relevant to the creditworthiness assessment.”*

In the circumstances here I'm not persuaded that the above regulation means that it would have been necessary for Loans 2 Go to simply refuse Mr N's loan application. Instead I think it might have been reasonable for Loans 2 Go to seek additional information from Mr N so that it could validate what was happening with its finances. It would be aware that the checks it had done showed a significant difference to what Mr N had declared, about his income in particular. So I think further checks would have been appropriate here and Loans 2 Go could then have allowed Mr N to correct the information he'd provided as part of his application.

But although I think Loans 2 Go needed to do additional checks, that in itself doesn't mean that Mr N's complaint should succeed. I'd also need to be persuaded that what I consider to be appropriate checks would have shown Loans 2 Go that Mr N couldn't sustainably afford the loan. So I've looked at Mr N's bank statements, and what he's told us about his financial situation, to see what better checks would have shown Loans 2 Go.

At this stage I want to be clear that I am not suggesting that this is the exact check that Loans 2 Go should have carried out. I do think Loans 2 Go needed further information to explain the differences between what Mr N said was happening with his finances and what its checks had showed. And looking at Mr N's bank statements is one way of achieving that although there are of course many other ways that level of detail could be established. But I think that by looking at Mr N's bank statements I can get a good idea of what better checks might have shown.

Mr N told Loans 2 Go that he was self-employed as a music teacher. But the evidence from his bank statements suggests that the entirety of Mr N's income in the months leading up to his loan application was from state benefits. He received both Personal Independence Payment benefits and Employment and Support Allowance benefits. The receipt of those benefits would suggest that Mr N was facing significant challenges with his health and was unable to work as a result. And the nature of benefits of this nature should have led Loans 2 Go to consider whether it was likely that Mr N would have sufficient disposable income to afford what were significant loan repayments that would take more than 25% of his income .

Mr N's bank statements show that he was facing serious problems managing his money. In the month before he took the loan he was charged for 8 payments being returned unpaid. And he had spent almost half his normal income on what appear to be online gambling transactions. From what Mr N has told us, much of that spending arose as a result of his mental health problems. I accept that he didn't make Loans 2 Go aware of that illness and so it couldn't reasonably take account of it when making its lending decision. But the pattern of Mr N's spending suggested he was facing serious problems with his finances regardless – I don't think Loans 2 Go needed to be aware of his mental health problems to decide it shouldn't lend to him.

So I think the results of better checks would have shown Loans 2 Go that Mr N would be unlikely to be able to repay a loan in a sustainable manner. So I don't think Loans 2 Go should have given him the loan, and needs to put things right.

Putting things right

I don't think Loans 2 Go should have agreed to lend to Mr N in August 2019. So Loans 2 Go should;

- Remove any interest and charges still outstanding on the loan and treat all the payments Mr N made towards this loan as payments towards the capital.

- I believe that reworking Mr N's loan account as I've directed will result in Mr N effectively having made payments above the original capital borrowed. Loans 2 Go should refund these overpayments with 8% simple interest calculated on the overpayments, from the date the overpayments would have arisen, to the date of settlement†.

- But if reworking Mr N's loan account leaves an amount of capital still to be paid, then I remind Loans 2 Go that it should take a sympathetic view when seeking to agree an affordable repayment plan with Mr N for the remaining capital.

- remove any adverse information recorded on Mr N's credit file in relation to the loan.

† HM Revenue & Customs requires Loans 2 Go to take off tax from this interest. Loans 2 Go must give Mr N 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 N's complaint and direct Loans 2 Go Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 7 April 2022.

Paul Reilly
Ombudsman