

Complaint

Mr W has complained that Loans 2 Go Limited (“L2G”) provided him with unaffordable loans. He says proportionate checks would have shown L2G he’d be unable to repay these loans.

Background

L2G provided Mr W with two loans for £400 and £250 in November 2018 and November 2019. One of our adjudicators looked at this complaint and thought that L2G didn’t act unfairly when providing loan 1 but it shouldn’t have provided loan 2 as proportionate checks would have shown this loan was unaffordable.

Mr W’s representative accepted the findings in relation to loan 2 but wasn’t really clear in its position on loan 1. L2G didn’t respond to our adjudicator so the complaint was passed to an ombudsman for review.

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 industry codes of practice - on our website. And I’ve referred to this when deciding Mr W’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 W’ complaint. These two questions are:

1. Did L2G complete reasonable and proportionate checks to satisfy itself that Mr W would be able to repay his loans in a sustainable way?
 - o If so, did it make a fair lending decision?
 - o If not, would those checks have shown that Mr W 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 W would be able to repay his loans 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 W’ 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 W*. In practice this meant that L2G had to ensure that making the payments to the loan wouldn’t cause Mr W 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 W. 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 W prior to providing him with both his loans. It also carried out credit checks. L2G’s checks suggested Mr W had more than enough to cover the payments to these loans.

I've carefully considered what the parties have said. The first thing for me to say is that Mr W's representative didn't really say anything about what it thought our adjudicator got wrong, or what it disagreed with in terms of his assessment on loan 1. In any event, loan 1 was Mr W's first loan with L2G. The information provided suggests Mr W was asked to provide details of his income and expenditure.

L2G also carried out external checks and didn't simply rely on what it was told. It carried out a credit search which didn't show anything too alarming (there were some historic defaults) but there was improvement in Mr W's recent history. Bearing in mind the amount of the repayments, and Mr W's lack of any previous lending with L2G, I don't think it was unreasonable for L2G to proceed on the basis of the information it obtained as, on the face of things, it appeared to be accurate. So I'm satisfied that the checks L2G carried out before providing loan 1 were reasonable and proportionate.

But when Mr W applied for loan 2, L2G would have been aware that Mr W had missed a number of payments on loan 1. And the credit search carried out also showed Mr W had had problems managing other credit during the period he had loan 1 too. So I think that L2G should have been concerned about Mr W's ability to make the payments to this loan.

Bearing in mind these circumstances, I think it's reasonable and proportionate to have expected L2G to have taken additional steps to verify the information it received. And I think that L2G needed to take additional steps to verify Mr W'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 W with loan 2 were reasonable and proportionate.

Would reasonable and proportionate checks have indicated to L2G that Mr W would have been unable to repay loan 2?

As reasonable and proportionate checks weren't carried out before loan 2 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 proportionate checks would have told L2G that Mr W would have been unable to sustainably repay this loan.

L2G 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. Having done so, it's clear that Mr W was struggling to manage his finances. Most of his income was being taken up by his existing living costs and repayments to his existing commitments. So I think that proportionate checks would have shown L2G that Mr W was unlikely to be able to repay loan 2 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 W 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 W 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 W 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 W in some other way. So I don't think L2G acted unfairly or unreasonably towards Mr W in some other way.

Did Mr W lose out as a result of L2G unfairly providing him with loan 2?

As Mr W 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 W

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

- refunding all interest, fees and charges Mr W paid on loan 2;
- adding interest at 8% per year simple on any refunded amounts from the date they were paid by Mr W to the date of settlement†
- removing any adverse information recorded on Mr W' credit file as a result of this loan.

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

My final decision

For the reasons I've explained, I'm upholding Mr W'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 W to accept or reject my decision before 18 July 2022.

Jeshen Narayanan
Ombudsman