DRN-3550636

The complaint

Mr L complains about a loan provided to him by Loans 2 Go Limited, ("L2G"), which he says was unaffordable. He also complained that he felt he was being overcharged interest.

What happened

L2G entered into an agreement for a loan for Mr L in March 2019. The loan was for £750 and was repayable by 78 weekly payments of £39.56 (a monthly equivalent of £171.42). The interest rate was 207.6%, (1,276.2% APR). If Mr L made each repayment when it was due, the total amount payable would be £3,085.68. The loan was repaid in August 2020.

Mr L says that he took the loan out when he was in financial difficulty and he also feels he was overcharged interest. He had to take out a further loan to cover this loan and other loans.

In its final response letter, L2G said that whilst Mr L had declared his monthly income as £2,000, it had verified that he received a minimum of £1,003.30 monthly via an online income verification tool. L2G noted that Mr L declared his monthly expenditure and credit commitments to total £150. But following an extensive review of his application, in addition to his credit file, it estimated these to total £631.78. It also added a buffer of 10% to his verified expenditure to account for any fluctuations in his monthly income or expenditure, even after which, it said that Mr L's weekly contractual loan repayment of £39.56 would have still been affordable. L2G said that it had determined that Mr L had enough disposable income to afford his contractual instalments. With regard to Mr L's complaint that he was overcharged interest, L2G said that the interest had been charged in line with the contractual terms and conditions. This had been accepted and agreed legitimately with Mr L in line with his loan agreement. But as a gesture of goodwill, L2G offered to write off 50% of Mr L's then current outstanding balance of £632.96.

It appears that Mr L rejected L2G's offer.

Our investigator's view

Our investigator recommended that Mr L's complaint should be upheld. She said that having reviewed L2G's checks, she thought the information that the lender obtained should've triggered it to do more checks. Had L2G requested bank statements from Mr L, she thought it ought to have spotted the number of Mr L's payday loans and gambling transactions and concluded that he'd be unable to repay its loan sustainably.

L2G responded to the investigator's view by saying:-

- With regard to Mr L's expenditure, it used information from the Office of National Statistics (ONS) on UK consumer average expenditure to determine what amount of expenditure was deemed reasonable. Where an applicant was spending less than the ONS figure, it replaced the applicant's declared figure with the higher figure from the ONS. So, it didn't just accept the expenditure figure Mr L declared on his application.
- With regard to Mr L's income, it obtained information from a credit reference agency to

verify Mr L's bank account and his declared income and credit liability. Its checks showed that Mr L earned about £1,003.30 monthly and this was the figure that it used.
- With regard to Mr L's credit file, there were no major concerns about his ability to keep up with his credit commitments. All the settled accounts on his file painted a picture of a customer who was managing his finances properly. He had many settled accounts on his credit file which showed that he was committed to repaying his borrowings. There were also no defaults or adverse information that might have caused concern. Mr L had three open active accounts and was up to date with the payments on all three accounts. There was no glaring sign of an inability to maintain the payments on his credit commitments. Had it been given any indication of problems keeping on top of his finances, it would have been prompted to conduct further checks which would have included a review of Mr L's bank statements.

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 L and to L2G on 25 May 2022. I summarise my findings:

I'd noted that Mr L had raised complaints about irresponsible lending and being overcharged interest. I'd noted that the investigator had upheld Mr L's complaint about irresponsible lending but she made no comment about his complaint regarding being overcharged interest. I said I would deal with Mr L's complaint about being overcharged interest under a separate heading.

Irresponsible lending

When L2G lent to Mr L the regulator was the Financial Conduct Authority and relevant regulations and guidance included its Consumer Credit Sourcebook.

L2G was entering a regulated credit agreement. So, it had to carry out a reasonable assessment of Mr L's creditworthiness before it entered the agreement. This meant that L2G had to consider both the risk to it that Mr L wouldn't make the repayments under the agreement when due, and the risk to Mr L of not being able to make those repayments.

In particular, L2G had to consider Mr L'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 his financial situation.

I'd noted that the rules didn'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 was down to the lender to decide what specific checks it wished to carry out, I'd said that 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 was 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 would 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 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 L's case, I'd considered the following questions:

- Did L2G complete reasonable and proportionate checks when assessing Mr L'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 complete reasonable and proportionate checks when assessing Mr L's loan application to satisfy itself that he would be able to repay the loan in a sustainable way?

I'd noted that Mr L had asked for a loan of £1,000, but L2G provided him with the lesser amount of £750. I thought this might have suggested that L2G had concerns about Mr L's finances.

L2G had gathered some information from Mr L about his income and expenditure before it agreed the loan. It had also carried out a credit check.

Mr L said his net monthly income was £2,000, but L2G verified his net monthly income as just over £1,000 using an income verification tool through a credit reference agency which drew on bank account data. I hadn't seen the results of L2G's income checks. But I thought they ought to have given L2G concerns about the information provided by Mr L.

Mr L had declared his total living costs to be £150 with no credit commitments. But L2G was aware from its credit checks that Mr L did have credit commitments. So, again I thought it ought to have been concerned about the information provided by Mr L.

I'd noted that L2G used statistical data from the ONS and Mr L's credit file to estimate his living costs and credit commitments to total £631.78.

The lender provided this Service with its credit checks which I'd reviewed. The credit checks showed that Mr L's total credit balance was £1,139. I could see that Mr L had a credit card with a credit limit of £1,050, but his credit balance of £1,079 exceeded the credit limit, and his account had been in arrears in three of the previous four months. I thought this should have caused L2G concerns. The checks also showed that Mr L had a £60 balance on a communications account. I'd also noted that the checks showed a number of settled payday loan accounts from 2017. So, whilst Mr L might have been managing his accounts satisfactorily in 2017, I thought the overlimit credit card and recent arrears on that account suggested Mr L was having recent problems managing his finances at the time of the loan application. And as L2G had explained in its final response letter, it was also aware that its credit checks might not have revealed the full extent of Mr L's credit commitments at the time of his loan application.

I'd said that simply performing credit checks wasn't enough. A lender needed to react appropriately to the information that any checks showed. The checks suggested that Mr L was having difficulties managing his credit card. And I thought they should have led L2G to conclude it should gather some more information about Mr L's finances. L2G had told this Service that had it been given any indication of Mr L having problems keeping on top of his finances, it would have been prompted to conduct further checks which would have included a review of Mr L's bank statements. I thought that would have been appropriate here.

I also didn't think it was reasonable for L2G to rely on statistical information about Mr L's living costs without verifying it. L2G used ONS data, which was based on the finances and expenditure of the average consumer, to estimate Mr L's living expenses. But I didn't think it was reasonable for L2G to think that Mr L's circumstances fell within this average portfolio. L2G's affordability assessment wasn't tailored to Mr L and I thought it should have been in his circumstances. Mr L was entering into a significant commitment with L2G. He would need to make monthly repayments of around £171 for around 18 months. Given the length of time Mr L was committing to repay the credit and what L2G would have likely seen on its credit checks, I didn't think its checks were sufficient for L2G to get a clear picture of Mr L's finances at the time. I thought it would have been proportionate for L2G to independently check the true state of Mr L's finances before agreeing the loan.

L2G needed to establish whether Mr L could make his loan repayments 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 his financial situation. L2G needed to do more than just ascertain whether the loan repayments were technically affordable on a strict pounds and pence calculation. It could have done this by, for example, requesting bank statements from Mr L, asking for copies of bills and/or receipts for his expenses and by asking him for more information about his existing credit commitments. I couldn't see that L2G took steps to do this.

But although I thought L2G should have asked for some additional information before agreeing the loan, that in itself doesn't mean that Mr L's complaint should succeed. I also needed to be persuaded that any further information would have shown L2G that Mr L couldn't sustainably afford the repayments. So, I'd looked at Mr L's bank statements from around the time of the loan, to see what additional checks would have shown the lender.

What would further checks have shown?

Mr L had provided us with his bank statements from around the time he applied for this loan. I wasn't suggesting that this was the check that L2G should have done. But I thought looking at his bank statements gave me the best picture of what the lender should have seen. Had it sought some verification of Mr L's spending, I thought L2G would've been in a better position to understand Mr L's financial situation before it decided to lend to him.

I'd reviewed the statements for January 2019 and February 2019. I could see that Mr L was spending around £530 each month on online gambling during that period. Mr L's spending on gambling was frequent enough throughout those months that it was more likely than not that it would continue in the same pattern and posed a risk to Mr L being able to repay the loan sustainably. In those circumstances, I didn't think that L2G would have lent if it knew this, as I thought it ought to have if it had made better checks.

I could also see that Mr L received what appeared to be gambling related winnings or refunds. But as these were by their nature unpredictable, I'd discounted them.

The statements also showed that Mr L's financial circumstances were strained. He'd borrowed short term credit each month (around £300 on 31 December 2019 and a further £150 in January 2019 and £500 in February 2019) to supplement his income. I could see Mr L was repaying four different short term lenders in February 2019. As Mr L was borrowing a significant amount of short term credit, I also thought there was a very real prospect that Mr L would need to borrow again in order to repay his new loan and that would likely have a significant adverse effect on his financial situation.

I'd also noted that Mr L appeared to be receiving small amounts from friends and family throughout the period around the time when his current account was about to go overdrawn. I'd noted that Mr L's current account had no overdraft arrangement. But he did go overdrawn in both months and had a returned payment.

So, I thought if L2G had carried out what I considered to be proportionate checks, it was likely it would have discovered his relatively substantial expenditure on gambling and the full extent of Mr L's financial commitments. I thought L2G ought reasonably to have realised that Mr L was having significant difficulties managing his finances. Mr L's finances weren't stable and I didn't think that further checks would have provided the assurance L2G needed. And if L2G had made better checks, I thought L2G ought reasonably to have realised that it was unlikely that Mr L would've been able to repay his loan 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 his financial situation.

I'd also noted that L2G had said that Mr L had enough disposable income to afford his instalments. But it seems to me that L2G was focussing on its calculation of whether the loan was affordable for Mr L on a pounds and pence basis. But the lender was required to establish whether Mr L could make his loan repayments without them having a significant adverse effect on his financial situation – not just whether the loan payments were technically affordable on a strict pounds and pence calculation. The loan payments being affordable on this basis might be an indication that a consumer could make the repayments. But it doesn't automatically follow that this would be the case.

So, subject to any further representations by Mr L or L2G, I intended to say that L2G made an unfair lending decision when it provided the loan to Mr L and that L2G should put things right for him as follows:-

Putting things right – what L2G needs to do

L2G should:

- refund all the interest and charges Mr L paid on the loan
- pay interest of 8% simple a year on any refunded interest and charges from the date they were paid (if they were) to the date of settlement*
- remove any adverse information recorded on Mr L's credit file in relation to the loan.

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

Being overcharged interest

I'd firstly said that where the evidence was incomplete, inconclusive, or contradictory (as some of it was here), I'd reached my decision on the balance of probabilities – in other words, what I considered was most likely to have happened in light of the available evidence and the wider circumstances.

Mr L had complained that he was overcharged interest. He said in his complaint to L2G:-

" I am also complaining that the interest rate was grossly excessive. It is unfair to charge someone more per month over 18 months than they would have paid to a payday lender for a loan the same size over 12 months."

In its final response letter, L2G said that interest had been charged in line with the contractual terms and conditions. This had been accepted and agreed legitimately with Mr L in line with his loan agreement. It explained that all the interest which would become payable over the term of a loan was added at the beginning of the loan term. L2G also said that it wasn't a payday lender and its minimum loan term was 18 months.

I'd seen a copy of the Loan Agreement. On the front page of the Agreement, I could see that the key terms were clearly set out including the APR and the interest rate and the total amount payable as well as the weekly repayment amounts. The term of 78 weeks was also shown. The Agreement also said

"As you are entering this Agreement in the form of an electronic communication, instead of signing in your handwriting, please type in your name below and then click the "I accept" button, this would have the same effect as if you had signed the Agreement in your handwriting.

I'd noted that Mr L's surname was typed on the Agreement. I didn't have any evidence that Mr L didn't sign the Agreement by typing in his name. The Agreement also said that it should be signed only if the signatory wanted to be bound by its terms. It appeared that Mr L agreed to the Agreement's terms, including the interest rate, by signing the Agreement. So, on balance, I wasn't persuaded that L2G had acted inappropriately in charging the interest rate shown on the Agreement. And I'd said that I didn't intend to uphold this aspect of Mr L's complaint.

Mr L responded to my provisional decision to say that he was happy with it.

L2G responded to my provisional decision to say that it had no additional points to add.

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.

Given that Mr L is happy with my provisional decision and L2G has 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 this complaint in part and require L2G to take the steps set out above under the heading "Putting things right - what L2G needs to do".

My final decision

My decision is that I uphold this complaint in part. In full and final settlement of this complaint, I order Loans 2 Go Limited to put things right as I've set out above under the heading "Putting things right – what L2G needs to do".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 15 July 2022.
Roslyn Rawson
Ombudsman