DRN-3575915

Financial Ombudsman Service

The complaint

Mrs A complains through her representative that Loans 2 Go lent money to her irresponsibly on a high cost loan, that she has been unable to afford to repay.

What happened

Loans 2 Go provided Mrs A with a loan for £1,000 on 27 September 2021, repayable over 78 weeks at the *weekly* rate of around £48. She complained that the loan put her in financial difficulty.

Loans 2 Go said that it had carried out the normal verification checks, including verifying her income, assessing her outgoings using ONS (Office for National Statistics) data and carrying out a credit check. It assessed that Mrs A was able to afford the loan.

On referral to the Financial Ombudsman Service our adjudicator said there were indications that Mrs A was having financial difficulties particularly as she had a high level of credit commitments compared to her income. She didn't think the checks Loans 2 Go carried out were proportionate and that if it had carried out proportionate checks it would have found that the loan repayments were unsustainable. She referred in particular to the bank statements Mrs A supplied.

Loans 2 Go disagreed, it said it carried out a thorough check to satisfy itself, beyond reasonable doubt, that Mrs A could afford the loan. It pointed out that it isn't required to obtain bank statements, and didn't think that was necessary in this case.

The matter has been passed to me for further consideration.

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 general approach to complaints about unaffordable/irresponsible lending - including all the relevant rules, guidance, and good industry practice - on our website.

Considering the relevant rules, guidance, and good industry practice, I think the questions I need to consider in deciding what's fair and reasonable in the circumstances of this complaint are:

- Did Loans 2 Go complete reasonable and proportionate checks to satisfy itself that Mrs A would be able to repay the loan in a sustainable way?

- If not, would those checks have shown that Mrs A would have been able to do so?

The rules and regulations in place required Loans 2 Go to carry out a reasonable and proportionate assessment of Mrs A's ability to make the repayments under the agreement. 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 loan would be sustainable. In practice this meant that Loans 2 Go had to ensure that making the repayments on the loan wouldn't cause Mrs A undue difficulty or significant adverse consequences. That means she should have been able to meet repayments out of normal income without having to borrow to meet the repayments, without failing to make any other payment she had a contractual or statutory obligation to make and without the repayments having a significant adverse impact on her financial situation.

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 the loan repayments on Mrs A. 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. I think that such a 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 *greater* the number and frequency of loans, and the longer the period 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).

In this case, although the amount loaned wasn't very high, Mrs A would have had a considerable commitment, for 18 months, paying the loan on a weekly basis. She also had a relatively low income. So Loans 2 Go should have carried out a thorough assessment of Mrs A' s finances.

According to the credit check report, Mrs A had a County Court Judgment for £3,196, outstanding since December 2016. She also had a Hire Purchase (HP) account for which she was paying £172 a month, a mail order account and two small loans. She didn't appear to be making any payments towards the CCJ, but it was still active. Allowing a payment of 5% of the balance on the mail order account, and the same for the CCJ, she had credit commitments of around £368 a month. Calculating the loan on a monthly basis a further £206 would be added. On an assessed monthly income of around £1,357 a month Mrs A would have had credit commitments of around 43%. Even with allowing minimal payments of £15 a month payment on the CCJ, this figure would be still be around 32%. Either way, this is a high figure and a strong indication that the loan might not be affordable.

Loans 2 Go says it assessed Mrs A's monthly expenditure, including credit commitments at £1,001. This would have meant, on the face of it, that with the new loan instalment Mrs A would have been left with a disposable income of around £160 a month. But I don't think this paints a realistic picture. In light of her substantial credit commitments and the active CCJ, I think Loans 2 Go should have carried out further financial checks, or rejected the application as being unaffordable.

Although I accept that the regulations don't require this, Loans 2 Go could have requested bank statements. Mrs A has provided such statements for the two months leading up to the loan application. From these statements it's clear she was borrowing from private individuals (I assume members of her family). She was making payments of around £35 a month to debt collectors, and several payments a month on an existing home credit loan.

It appears that, although Mrs A didn't go overdrawn, her income (including any borrowings) was fully committed. I think it likely that she didn't have sufficient disposable income to afford the new loan. I don't think the checks Loans 2 Go carried out showed the loan to be affordable and any further checks could have confirmed this. So, I think it didn't make a fair lending decision.

Putting things right

Mrs A has had the capital payment in respect of the loan, so it's fair that she should repay this. So far as the loan is concerned, I think Loans 2 Go should refund all interest and charges as follows:

- Remove all interest, fees and charges applied to the loan.
- Treat any payments made by Mrs A as payments towards the capital amount.
- If Mrs A has paid more than the capital, refund any overpayments to her with 8% simple interest* from the date they were paid to the date of settlement.
- But if there's still an outstanding balance, Loans 2 Go should come to a reasonable repayment plan with Mrs A
- Remove any adverse information where appropriate about the loan from Mrs A's credit file.

*HM Revenue & Customs requires Loans 2 Go to deduct tax from this interest. It should give Mrs A a certificate showing how much tax it's deducted if she asks for one..

My final decision

I uphold the complaint and require Loans 2 Go Limited to provide the remedy set out under "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 18 August 2022.
Ray Lawley
Ombudsman