DRN-3624689

Complaint

Mr T has complained that Loans 2 Go Limited ("L2G") provided him with unaffordable loans. He says L2G failed to check his financial circumstances and if it had done it would have seen that he couldn't repay these loans.

Background

L2G provided Mr T with two loans for £500 and £972.11 in October 2017 and June 2018. The remaining balance on loan 1 was repaid with some of the proceeds from loan 2. Both loans had APRs of 1,2435 and were due to be repaid in 78 weekly instalments.

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. Mr T didn't disagree with our adjudicator but L2G did on loan 2. So the case was passed forward for an ombudsman to review the complaint.

As the parties are no longer in dispute about loan 1, this decision is only looking whether L2G acted fairly and reasonably when providing loan 2 to Mr T.

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 good industry practice - on our website. And I've referred to this when deciding Mr T'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 T's complaint. These two questions are:

1. Did L2G complete reasonable and proportionate checks to satisfy itself that Mr T would be able to repay loan 2 without experiencing significant adverse consequences?

    o If so, did it make a fair lending decision?
    o If not, would those checks have shown that Mr T 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 T would be able to repay loan 2 without experiencing significant adverse consequences?

L2G provided loan 2 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 T's 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 T*. In practice this meant that L2G had to ensure that making the payments to the loan wouldn't cause Mr T 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 T. 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 T prior to providing him with all of his loans. It also carried out credit checks. L2G's checks suggested Mr T had more than enough to cover the payments to these loans.

I've carefully considered what L2G has said. But for loan 2 Mr T was looking to borrow, on such disadvantageous terms, for the second time in matter of months. And it is also clear that L2G wasn't persuaded by the income and expenditure information it received from Mr T either. I also think that that the credit search carried out on Mr T showed that his position had worsened since loan 1 too.

So I think that L2G should have been concerned at why Mr T wanted or needed further funds on such disadvantageous terms so quickly and in circumstances where his indebtedness was increasing. And I think it's reasonable and proportionate to have expected L2G to have taken additional steps to verify the information it received. In these circumstances, I think that L2G needed to take additional steps to confirm Mr T'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 T with loan 2 were reasonable and proportionate.

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

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

L2G was required to establish whether Mr T 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 T 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.

Bearing all of this in mind, I'm satisfied that reasonable and proportionate checks would more likely than not have demonstrated that Mr T would not have been able to make the repayments to loan 2 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 T 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 T 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 T in some other way. So I don't think L2G acted unfairly or unreasonably towards Mr T in some other way.

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

As Mr T 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 T

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

- removing all interest, fees and charges applied to the loan 2 from the outset. The payments Mr T made, whether to L2G or any third-party debt purchaser, should be deducted from the new starting balance – the £972.11 originally lent. If Mr T has already repaid more than £972.11 then L2G should treat any extra as overpayments. And any overpayments should be refunded to Mr T;

- adding interest at 8% per year simple on any overpayments, if any, from the date they were made by Mr T to the date of settlement†

- if no outstanding balance remains after all adjustments have been made, all adverse information L2G recorded about this loan should be removed from Mr T's credit file.

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

L2G sold the outstanding balance on this account to a third-party debt purchaser. So it will need to either buy the account back from the third-party concerned and make the necessary adjustments, pay an amount to the third party in order for it to make the necessary adjustments, or pay Mr T an amount to ensure that it fully complies with this direction.

My final decision

For the reasons I've explained, I'm upholding Mr T'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 T to accept or reject my decision before 19 September 2022.

Jeshen Narayanan
Ombudsman