DRN-3771117

Financial Ombudsman Service

## The complaint

Mr H complains about loans granted to him by Loans 2 Go Limited ("L2G"). He says that L2G shouldn't have agreed to the loans because they were unaffordable for him.

Mr H has brought his complaint to us via a claims management company but for simplicity I will refer to him throughout.

## What happened

L2G agreed two loans for Mr H in 2017, both in September. The first loan was cancelled within days, and the second was taken out a week later.

I understand Mr H had taken out earlier loans with L2G: one in July 2012, a second in March 2013 and a third in May. My decision deals with the two loans taken out in 2017 and some of the information L2G provided about them is shown in the table below (all figures rounded to the nearest pound).

| Loan | Start date | End date | Principal | Monthly repayments | Term (months) | Total repayable |
|---|---|---|---|---|---|---|
| 1 | 01/09/2017 | 01/09/2017 | £1,950 | £269 | 36 | £9,672 |
| 2 | 07/09/2017 | - | £3,150 | £434 | 36 | £15,624 |

These two were 'log book' loans, in other words they were secured on Mr H's car. This meant that if Mr H didn't make his loan repayments L2G could potentially recoup any losses through the sale of his vehicle.

L2G says it conducted an affordability check before lending to Mr H. It says that it took into account his credit commitments and his monthly expenditure and determined that Mr H had sufficient disposable income to afford the instalments. L2G says it would have declined to lend to Mr H if it had found there was any cause for concern in order to avoid any detriment to him.

Mr H says that he couldn't afford the loans and taking them out led him into financial difficulty. It seems from the statement of account that Mr H didn't meet his payments for the second loan when they were due. He made two payments in each of October, November and December 2017. He met his payment on time and in full in January 2018 but made no payments after that. By June 2018 L2G had recovered his car, sold it and credited the proceeds of the sale (£3,586) to the loan account leaving an outstanding balance of over £10,000.

One of our investigators looked into what happened when Mr H's loans were agreed. They found that the first loan had been cancelled shortly after it was taken out and as Mr H had made no payments towards it he hadn't lost out financially or had his credit file impacted. They found that L2G carried out a proportionate check when Mr H applied for the second loan and that there wasn't anything in the information it had gathered which would have prompted it to decline to lend to him. They didn't recommend that his complaint be upheld.

Mr H didn't agree with this recommendation and asked for the complaint to be reviewed by an ombudsman and it came to me. Having reviewed the complaint, I thought it should be upheld. I sent out a provisional decision to both parties on 22 September 2022 explaining my reasons. I've had no further comment or information from either party.

**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.

Having reviewed the matter again, and having no new comments or information to consider, I remain of the view that Mr H's complaint should be upheld. I'll set out my reasons again in this final decision.

As I'd said in my provisional decision, L2G will be familiar with the regulations in place at the time so I will summarise its main obligations. L2G needed to check that Mr H could afford to meet his repayments without difficulty or sustainably before agreeing each loan. In other words, it needed to check that he could meet his repayments out of his usual means without having to borrow further and without experiencing financial difficulty. The necessary checks needed to take into account both the nature of the credit (the amount and the term, for example) and Mr H's particular circumstances.

The overarching requirement was that L2G needed to pay due regard to Mr H's interests and treat him fairly. The Consumer Credit (CONC) handbook paragraph 2.2.2G gave an example of contravening this requirement as 'targeting customers with regulated credit agreements which are unsuitable for them by virtue of their indebtedness, poor credit history, age, health, disability or any other reason.'

With this in mind, my main considerations are did L2G complete reasonable and proportionate checks when assessing Mr H's applications to satisfy itself that he would be able to make his repayments without experiencing financial difficulty, or any other adverse consequences? If not, what would reasonable and proportionate checks have shown and, ultimately, did L2G make fair lending decisions with the information it had gathered?

Having considered everything carefully, I'm upholding Mr H's complaint. I appreciate that this will be very disappointing for L2G and I've explained below how I've reached this conclusion. I've also set out what needs to happen to put things right for Mr H.

As our investigator noted, the loan agreed on the 1 September 2017 was withdrawn the same day and Mr H wasn't charged any interest. I haven't looked into this loan further as I can't see that this would have caused a problem for Mr H from the information I have. I've focussed on the loan taken out on 7 September 2017.

L2G carried out an income and expenditure assessment when Mr H applied for this second loan. It checked his bank statements and credit file. This seems to me to be a proportionate check, given the size of the loan and the potential that Mr H could lose his car if he didn't manage to meet his repayments over the three year term.

I've reviewed the information L2G gathered to consider whether it made a fair lending decision. L2G recorded that Mr H's monthly income was £8,969, which it estimated equated to a net income of £5,350 taking into account Mr H's business costs including income tax. The copy of the income and expenditure record is annotated and it notes that L2G checked Mr H's income and business costs against his bank statements. L2G accepted what Mr H said about his other expenses, which it recorded as about £1,600 and it also checked his credit file.

I haven't seen a copy of the credit file L2G relied on, but L2G provided a recent copy of Mr H's credit file which still shows some of the debts he had at the time. L2G recorded that Mr H was paying £895 each month on debt across three mortgages and four credit cards or loans. The repayment for this loan was £434, potentially bringing Mr H's monthly spending on all debt to over £1,300, almost a quarter of his estimated net monthly income.

The above figures suggest that Mr H had about £2,850 a month spare. It seems inconsistent to me that Mr H was applying for a loan of £3,150 if he actually had this amount available each month. Mr H said in both 2017 loan applications that his income varied and he was paid as and when, and that he wanted money to help his cash flow. This also seems at odds with having such a relatively large surplus (after business costs, debt and other expenses were considered) as this might help to smooth any variations in income.

I've reviewed the bank statements L2G relied on for this application. They cover the period 16 June to 31 August 2017 and are for Mr H's business bank account. Mr H was self- employed and ran his own business. The bank statements show deposits, purchases, bill payments, transfers to people and cash withdrawals. The copies I've seen are marked up with deposits annotated as 'A' and purchases as 'B' and a few as 'C' and 'D'.

I don't think L2G took all of the expenditure shown on the bank statement into account in its assessment to have concluded that Mr H had almost £3,000 a month spare. Alongside the annotated transactions there were frequent large amounts transferred to Mr H's partner and large cash withdrawals, both amounting to thousands of pounds each month. I don't know whether these transactions were accounted for in the declared living expenses (of £1,600) L2G recorded in its assessment or whether these were in addition to those expenses. In either case, it seems to me that Mr H was spending what he earned. I've noted that Mr H's account became overdrawn or reduced to a balance of less than £10 about a dozen times altogether (over the statement period), despite the deposits. Altogether, with the information I have it doesn't seem likely to me that Mr H would have been able to afford the repayments for this loan.

I've also noted that this was Mr H's sixth loan application in five years, and the fourth loan that he had taken out with L2G. I don't know the details of these earlier loans and they are not considered in my decision, however I'm mindful that he had been in debt to L2G for some time when this loan was agreed. As mentioned above, it seems to me that Mr H struggled to meet his loan repayments from the outset. Based on the information I have, I think it's more likely than not that the payments were unsustainable for him and L2G should have seen this from the information it had. I've concluded that L2G made an irresponsible lending decision on this occasion.

L2G recovered and sold Mr H's vehicle and credited the sales proceeds to the loan account. I don't have enough information to make any finding on whether or not L2G treated Mr H fairly when it carried out the recovery and sale. However, I've found that L2G shouldn't have agreed to lend to Mr H and I think he lost his car as a consequence of this unfair lending decision. I think that Mr H suffered distress and inconvenience when he couldn't meet his repayments and his car was recovered and sold. Mr H has told us that he struggled to meet his repayments on this loan and it led him into a financial mess, including the loss of his car. He also said that the matter had a serious impact on his relationships and his mental health and I can see from L2G's customer contact notes that he'd told it about these circumstances in early 2018.

Let me say at this point that I am sorry to hear things have been so difficult for Mr H. He will appreciate that I cannot consider L2G to be the sole cause of his difficulties, but I can accept that its error exacerbated the impact his personal circumstances were having on him. I think it would be appropriate for L2G to pay him some compensation in recognition of this impact. As set out on our website, an award of over £300 and up to £750 might be fair where the impact of a mistake has caused considerable upset and worry and significant inconvenience that needed extra effort to sort out, typically over weeks or months. Having considered this point carefully, I've concluded that an award in this range would be appropriate here.

**Putting things right**

I think it's fair that Mr H repays the principal he borrowed on this loan as he's had the use of this money. However, I don't think Mr H should be liable for any interest or charges on this amount or have his credit record adversely impacted. As L2G recovered and sold Mr H's car, it should consider the sale proceeds as money Mr H paid towards the loan. I understand that Mr H has repaid more than he borrowed.

In order to put things right for Mr H, L2G needs to:

a) Waive any outstanding balance on the loan and consider it settled; and
b) Refund to Mr H any payments he made above the principal amount he borrowed, along with 8% simple interest per annum* to these overpayments from the date they were paid to the date of refund; and
c) Pay Mr H an amount of £300 to reflect the distress and inconvenience this matter has caused him; and
d) Remove any adverse information about this loan from Mr H's credit file.

If L2G has sold on a loan balance to a third party, it should arrange to either buy back the debt from the third party or liaise with them to ensure the above steps are taken.

*HM Revenue & Customs requires L2G to deduct tax from this interest. It should give Mr H a certificate showing how much tax it has deducted if he asks for one.

**My final decision**

I am upholding Mr H's complaint for the reasons I've explained above and require Loans 2 Go Limited to put things right as I've set out.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 21 November 2022.

Michelle Boundy
**Ombudsman**