

The complaint

Mr R has complained that Loans 2 Go Limited (L2G) was irresponsible in lending to him because the loans weren't affordable.

What happened

Mr R was advanced a total of three loans by L2G and a summary of his borrowing can be found in the table below.

loan number	loan amount	agreement date	repayment date	number of instalments	highest repayment
1	£600.00	23/08/2021	25/09/2021	18	£123.33
2	£1,000.00	16/12/2021	29/12/2021	18	£205.56
3	£1,000.00	24/04/2022	13/05/2022	78	£47.44

It's worth noting a couple of points.

1. Loan 2 was withdrawn because it was repaid in full within 14 days of the loan being advanced.
2. The number of instalments and highest repayment for loan 3 is based on weekly payments whereas loans 1 and 2 were repaid monthly.

Mr R complained that L2G hadn't properly checked he could afford the loans. L2G issued a final response letter explaining why the checks it had carried out were proportionate and that it showed these loans to be affordable. However, it did, as a gesture of goodwill offer Mr R £100 to bring the complaint to a close.

Mr R didn't accept this offer and asked for the Financial Ombudsman to investigate the complaint.

In the adjudicator's latest assessment, he partly upheld the complaint. He didn't think L2G had made an error when it approved loans 1 and 2. However, the adjudicator thought loan 3 shouldn't have been granted. Had L2G carried out further checks before advancing this loan – as he thought L2G ought to have done – it would've discovered the loan repayment wasn't affordable for him.

Mr R appears to have accepted the adjudicator's assessment.

L2G didn't agree and I've summarised its response below.

- For loan 3, following further checks, it reduced Mr R's monthly income to £1,775 per month.
- This loan looked affordable based on the information Mr R provided as well as the checks it carried out.
- L2G wasn't obliged to review Mr R's bank statements and the decision to lend was based on the information Mr R provided.

As no agreement could be reached, the case has been passed to me for a decision.

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 irresponsible lending - including all of the relevant rules, guidance and good industry practice - on our website.

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

- Did L2G complete reasonable and proportionate checks to satisfy itself that Mr R would be able to repay the loan in a sustainable way?
- If not, would those checks have shown that Mr R would have been able to do so?
- Did L2G act unfairly or unreasonably in some other way?

The rules and regulations in place required L2G to carry out a reasonable and proportionate assessment of Mr R's ability to make the repayments under the loan 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 be sustainable. In practice this meant the business had to ensure that making the repayments on the loan wouldn't cause Mr R undue difficulty or significant adverse consequences. He 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 he had a contractual or statutory obligation to make and without the repayments having a significant adverse impact on his financial situation.

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 R. 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.

Considering this, I think that a reasonable and proportionate 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 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).

I've carefully considered all the arguments, evidence and information provided in this context and what this all means for Mr R's complaint.

Mr R (and L2G) appear to have accepted the adjudicator's findings about loans 1 and 2. In my view, these loans are no longer in dispute and therefore I won't be making a finding about them in this decision. But I have kept these loans in mind when thinking about the final loan. Instead, this decision will focus on what happened when L2G approved loan 3.

Loan 3

L2G carried out the same sort of checks for this loan as it had done for the previous two. It started off by asking Mr R about his income. He declared a monthly income of £2,400. However, as part of L2G's checks it carried out "*income verification*" and having done so, it reduced Mr R's income to around £1,775.

It also asked Mr R for details of his expenditure, which Mr R explained came to around £1,330 per month – which included payments for home, utilities, food, transport, other credit commitments as well as other regular expenditure.

Therefore, using the verified income L2G received, along with the expenditure, Mr R had around £445 per month in disposable income. Solely based on the income and expenditure information the loan looked to be afford.

In addition, a credit search was carried out and a summary of the results has been provided, and these results didn't show L2G any concerning information such as late payments, defaults or other types of insolvency.

However, I'm concluding the checks at this point in the lending relationship weren't sufficient. Mr R was yet again returning to L2G for a loan to be repaid over a similar period of time – 18 months. I accept that the two previous loans had been repaid much sooner than L2G had anticipated but the fact he was returning yet again for another loan ought to have put L2G on notice that it may need to carry out further checks to ensure the information Mr R was providing was accurate.

Although I don't think the checks L2G did before agreeing the loan were sufficient, that isn't a good enough reason for me to uphold Mr R's complaint. In order for Mr R's complaint to succeed, I need to be able to say that proportionate checks would likely have shown L2G that there was a real risk Mr R wouldn't be able to afford the repayments sustainably.

Mr R has sent us bank statements for the month before he took out the loan and as I think further checks ought to have been carried out, I think it's entirely reasonable to consider these. But I accept there were other ways L2G could've carried out a proportionate check such as asking for wage slips, copy bills or any other documentation it may have wished to ask for.

From the bank statements, Mr R's income was significantly lower than even L2G adjusted. From what I can see, Mr R's income was around £1,200 in the month before this loan was advanced. Although the income, having reviewed the statements from the start of 2022 did fluctuate. Mr R says he worked for an agency, so this may explain the variable income. Which is concerning because it means that Mr R's income could go up as well as down and L2G need to consider that given the term of the loan

I've also looked at the direct debts that are paid from the account and these come to nearly £1,000 each month. But this doesn't account for other items such as food, transport or any other regular monthly living costs he had. So, his living costs were likely to be greater than this. Based on the figures, from the most recent month the loan repayment wasn't affordable for him.

I think if L2G had carried out proportionate checks it would have realised that Mr R couldn't afford the repayments he was due to make in a sustainable manner for a loan over 78 weeks (18 months). I say this because his income does appear to fluctuate but the living costs appear to remain fairly stable and there was a risk that Mr R wouldn't have sufficient income each month in order to meet his repayments.

So, for the reasons set out above, L2G shouldn't have provided Mr R with this loan and I've outlined below what it needs to do in order to put things right.

Putting things right

I think it is fair and reasonable for Mr R to repay the principal amount that he borrowed in respect of loan 3, because he's had the benefit of that lending. But as I have concluded L2G shouldn't have provided this loan, it should look to remove the interest and fees from the amounts paid back under the loan agreement.

L2G should:

- remove all interest, fees and charges applied to loan 3;
- treat any payments made by Mr R as payments towards the capital amount;
- If Mr R has paid more than the capital then any overpayments should be refunded to him with 8%* simple interest from the date they were paid to the date of settlement,
- remove any negative information about loan 3 from Mr R's credit file.

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

My final decision

For the reasons given above, I uphold Mr R's complaint in part and require Loans 2 Go Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 3 March 2023.

Robert Walker
Ombudsman