DRN-4322324

Complaint

Mr M has complained that Loans 2 Go Limited ("L2G") provided him with an unaffordable loan.

Background

L2G provided Mr M with a loan of £1,000.00 in May 2023. This loan had an APR of 770% and an 18-month term. This all meant the total amount repayable of £3.700.08, which included interest, fees and charges of £2,700.08 was due to be repaid in 18 monthly instalments of £205.56.

One of our adjudicators looked at this complaint and thought that L2G unfairly provided this loan to Mr M as proportionate checks would have shown it was unaffordable.

L2G disagreed with our adjudicator and asked for an ombudsman to review the complaint.

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 M'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 M's complaint. These two questions are:

1. Did L2G complete reasonable and proportionate checks to satisfy itself that Mr M would be able to repay his loan in a sustainable way?

    o If so, did it make a fair lending decision?
    o If not, would those checks have shown that Mr M 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 M would be able to repay his loan in a sustainable way?

L2G provided this loan 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 M'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 M*. In practice this meant that L2G had to ensure that making the payments to the loan wouldn't cause Mr M 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 M. 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 M prior to providing him with this loan. It also carried out a credit check. L2G determined that Mr M was earning around £2,120.00 a month. L2G also determined that Mr M had expenditure of approaching £1,700.00 a month. In its view, this left Mr M with enough to be able to make the payments to this loan.

I've carefully considered what L2G has said. But the credit check it carried out showed Mr M was already significantly indebted. He was also close the credit limits on revolving credit accounts and significant proportion of Mr M's monthly income was going towards repaying credit. This leads me to think that L2G needed to take steps to verify Mr M's actual monthly expenditure.

To be clear it's not the 18-month term on its own that leads me to think L2G needed to do more, it's the combination of this together with what Mr M's credit file showed which persuades me it would have been reasonable and proportionate to have taken this course of action here.

As I can't see that this L2G did take further steps to verify Mr M's actual expenditure, I don't think that the checks it carried out before providing Mr M with his loan were reasonable and proportionate.

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

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

L2G's business file contained copies of Mr M's bank statements. It's unclear whether these were obtained before Mr M's loan was provided, or whether they were obtained as part of the investigation into Mr M's complaint. I say this because L2G has provided them but not referred to them in its submissions. But as some of the transactions are after this loan was provided, I think it's likely to be the case that they were provided as a result of Mr M's complaint. In any event, given the circumstances here, I consider it fair and reasonable to take these into account in my assessment of Mr M's circumstances in May 2023.

I've carefully considered the information provided.

I think it's worth me explaining that L2G was required to establish whether Mr M 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.

Having considered the information provided, I'm satisfied that Mr M was struggling to manage his existing commitments he was even having direct debits for his payments to existing creditors returned due to a lack of funds. So I think that proportionate checks would have shown L2G that Mr M was likely to use this loan to repay other credit, or to at least cover the hole this left in his finances, which meant he was unlikely to be able to repay it without borrowing further or suffering significant adverse consequences.

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

Did Mr M lose out as a result of L2G unfairly providing him with this loan?

As Mr M has paid and is being expected to pay 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 M

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

- removing all interest, fees and charges applied to the loan from the outset. The payments Mr M made, whether to L2G or any third-party debt purchaser, should be deducted from the new starting balance – the £1,000.00 originally lent. If Mr M has already repaid more than £1,000.00 then L2G should treat any extra as overpayments. And any overpayments should be refunded to Mr M;

- adding interest at 8% per year simple on any overpayments, if any, from the date they were made by Mr M 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 M's credit file.

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

My final decision

For the reasons I've explained, I'm upholding Mr M'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 M to accept or reject my decision before 9 October 2023.

Jeshen Narayanan
Ombudsman