

## **Complaint**

Mr D has complained about a loan Loans 2 Go Limited (“L2G”) provided to him. He says the loan was unaffordable and this would have been determined had proportionate checks been carried out.

## **Background**

L2G provided Mr D with a loan for £1,750.00 in October 2022. The loan had an APR of 320% and a 24-month term. This meant that the total amount to be repaid of £5,656.08, which included interest, fees and charges of £3,906.08, was due to be repaid in 24 monthly instalments of £235.67.

One of our investigators looked at this complaint and thought that L2G didn’t act unfairly when providing this loan. Mr D disagreed with our investigator and so the case was passed forward for an ombudsman to review the complaint.

## **My provisional decision of 29 January 2024**

I issued a provisional decision – on 29 January 2024 - setting out why I intended to uphold Mr D’s complaint. I won’t copy that decision in full, but I will instead provide a summary of my findings.

I started by explaining that we’ve explained how we handle complaints about unaffordable and irresponsible lending on our website. And that I had used this approach to help me provisionally decide Mr D’s complaint.

L2G needed to make sure it didn’t lend irresponsibly. In practice, what this means is L2G needed to carry out proportionate checks to be able to understand whether Mr D could afford to repay any credit it provided.

Our website sets out what we typically think about when deciding whether a lender’s checks were proportionate. Generally, we think it’s reasonable for a lender’s checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower’s income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So we’d expect a lender to be able to show that it didn’t continue to lend to a customer irresponsibly.

I considered what L2G had done and its actions in light of this.

I thought that L2G might argue that a light touch assessment was proportionate for Mr D’s loan given he had declared that he had a high monthly income. But I was mindful that the credit checks it carried out showed Mr D was towards the limit on a number of his revolving credit accounts. And he also appeared to have had an extended history of taking out payday

type borrowing. So I thought that L2G had to do more to ensure that Mr D could afford to make the payments to this loan.

Mr D had provided us with evidence of his financial circumstances at the time he applied for his loan. I accepted that different checks might show different things. And just because something showed up in the information Mr D had provided, it didn't mean that it would have shown up in any checks L2G might have carried out.

But in the absence of anything else from L2G showing what this information would have shown, I thought it was perfectly fair, reasonable and proportionate to place considerable weight on what this information showed as an indication of what Mr D's financial circumstances were more likely than not to have been at the time.

I thought that it was also important to note that L2G was required to establish whether Mr D could sustainably make his loan repayments – not just whether the loan payments were technically affordable on a strict pounds and pence calculation. The loan payments being affordable on a strict pounds and pence basis might have been an indication that a consumer could sustainably make the repayments.

But it didn't automatically follow that this was the case. And as a borrower shouldn't have to borrow further in order to make their payments, it followed that a lender should realise, or it ought fairly and reasonably to realise, that a borrower wouldn't be able to sustainably make their repayments if it was on notice that they are unlikely to be able to make their repayments without borrowing further.

I carefully considered the information available in light of all of this.

The information provided showed that the reason for Mr D's indebtedness and apparent inability to manage his money was because he was spending significant amounts of money gambling. Indeed Mr D was earning substantially less than what L2G concluded and it was likely that it included some of the gambling funds as income in its assessment.

In any event, the most important thing was that Mr D's ability to make the repayments to his loan would in large part be dependent on his success as a gambler. Given this, it was apparent to me that Mr D was unlikely to have been able to repay his loan without borrowing further or experiencing financial difficulty.

As this was the case, I thought that Mr D's existing financial position meant that he was unlikely to be able to afford the repayments to this loan, without undue difficulty or borrowing further. And I was satisfied that reasonable and proportionate checks would more likely than not have shown L2G that it shouldn't have provided this loan to Mr D.

As L2G provided Mr D with this loan, notwithstanding this, I was minded to conclude that it failed to act fairly and reasonably towards him. And this left me intending to uphold Mr D's complaint.

Mr D ended up paying, and was being expected to pay, interest, fees and charges on a loan he shouldn't have been provided with. And I concluded by setting out a method of putting things right which I thought addressed L2G's shortcomings and Mr D's resulting loss.

## **Responses to my provisional decision**

Mr D didn't provide anything further for me to consider.

L2G disagreed with my provisional decision. It said that it Mr D was specifically asked:

*"Are you currently suffering from a gambling, drug or alcohol addiction?"*

Mr D answered that he was not. And if he had answered that he was then L2G would not have proceeded with his application. So it doesn't consider that it lent irresponsibly.

### **My findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having carefully considered everything (including the responses to my provisional decision), I'm still upholding Mr D's complaint. I'll explain why in a bit more detail.

I set out in some detail why I intended to uphold Mr D's complaint in my provisional decision of 29 January 2024. L2G has disputed my findings saying that it asked Mr D whether he was suffering from a gambling addiction and he did not say that he was.

I've thought about what L2G has said. However, I don't think that this means its checks, in this case, were proportionate. My finding that L2G's checks weren't reasonable and proportionate wasn't based on L2G having failed to ask Mr D whether he had a gambling addiction (in any event, I'm sceptical of the usefulness of asking such a question in circumstances where someone who is looking to borrow funds to use for an addiction). My finding regarding the proportionality of checks in Mr D's case was based on what L2G saw as a result of the credit checks that it carried out.

I explained that the credit checks L2G carried out showed Mr D was towards the limit on a number of his revolving credit accounts. And he also appeared to have had an extended history of taking out payday type borrowing. This was inconsistent with someone who had an income and the level of disposable income that L2G concluded. And it is for this reason that I thought that further checks should be carried out.

I've already set out that L2G doing more is likely to have led to it discovering Mr D's gambling. And, in these circumstances, I don't think it would have proceeded with approving Mr D's application simply because he might have answered no to the question of whether he had an addiction, in circumstances where proportionate checks would have shown clear evidence to the contrary.

As this is the case, Mr D answering no to L2G's question does not persuade me that this means that L2G's checks in this instance were reasonable and proportionate, or that it acted fairly and reasonably in its dealing with Mr D.

So while I've considered the further comments that L2G has made in response to my provisional decision of 29 January 2024, I've not been persuaded to alter my conclusions. I'm therefore still upholding Mr D's complaint. And I remain satisfied that L2G needs to put things right in the way that I had set out.

### **Fair compensation – what L2G needs to do to put things right for Mr D**

Having thought about everything, I'm satisfied that L2G should put things right for Mr D by:

- removing all interest, fees and charges applied to the loan from the outset. The payments Mr D made, whether to L2G or any third-party debt purchaser, should be deducted from the new starting balance – the £1,750.00 originally lent. If Mr D has already repaid more than £1,750.00 then L2G should treat any extra as overpayments. And any overpayments should be refunded to Mr D;
- adding interest at 8% per year simple on any overpayments, if any, from the date they were made by Mr D 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 D's credit file.

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

### **My final decision**

For the reasons I've explained above and in my provisional decision of 29 January 2024, I'm upholding Mr D's complaint. Loans 2 Go Limited should put things right in the way I've directed it to above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 14 March 2024.

Jeshen Narayanan  
**Ombudsman**