The complaint

Mr D has complained that Loans 2 Go Limited ("L2G") gave him a loan he couldn't afford to repay.

What happened

Mr D was advanced one loan of £450 on 19 September 2023, and he was due to make 18 monthly repayments of £92.50. If Mr D repaid the loan in line with the credit agreement, he would've repaid a total of £1,665. The statement of account provided by L2G shows that he made the first two contracted payments only.

Following Mr D's complaint, L2G explained it wasn't going to be upholding the complaint because the checks it conducted showed Mr D could afford his repayments. However, as a gesture of goodwill it agreed to reduce the interest by 20% - meaning a reduction of around £333 on the total he was due to pay. Unhappy with this response and offer, Mr D referred the complaint to the Financial Ombudsman.

An investigator upheld Mr D's complaint about the loan because he said the credit check results given to L2G suggested Mr D was already struggling to pay his existing credit commitments and so L2G ought to have carried out further checks. Had further checks been carried out, then L2G would've likely discovered Mr D was spending more than his income each month on gambling and so the loan wasn't affordable.

L2G responded and didn't agree with the proposed outcome. L2G said the checks it did were proportionate, and it wasn't aware of Mr D's gambling. L2G said that it asked Mr D about whether he was having any problems with gambling as part of his application and he said he was not. L2G said Mr D had provided mis-leading information.

As no agreement could be reached the complaint has been passed to me to decide.

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 unaffordable/irresponsible lending - including all of the relevant rules, guidance and good industry practice - on our website. And I've used this approach to help me decide Mr D's complaint. Having carefully considered everything I've decided to uphold Mr D's complaint. I'll explain why in a little more detail.

L2G needed to make sure it didn't lend irresponsibly. In practice, what this means is it 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 checks to be less thorough – in terms of how much information is gathered and what is done to verify it – in the early stages of a lending relationship.

But we might think more needed to do be done 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.

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

Mr D declared he received an income of £1,730 per month from full time employment. L2G says Mr D's income figure was verified through a credit reference agency and it was told that Mr D usually received around £1,373 per month.

As part of the application data provided by L2G, Mr D said that he had outgoings totalling £800 per month. L2G then used Office of National Statistics data (ONS) averages to determine the accuracy of what Mr D had declared. Where the declared amounts were below the ONS averages, L2G erred on the side of caution and used the ONS figure. It therefore calculated Mr D's monthly outgoings came to around £1,108 per month.

Based on the figure Mr D declared, and when taking into account the amount of expenditure that L2G discovered from its own checks, as well as the ONS adjusted expenditure figure, it still appeared that Mr D had sufficient disposable income to afford the loan.

As well as assessing Mr D's income and expenditure, L2G, also carried out a credit search and it has provided the results it received from the credit reference agency. I want to add that although L2G carried out a credit search, there isn't a regulatory requirement to do one, let alone one to a specific standard. But what L2G needed to do was consider the results it received.

The checks received by L2G suggested that Mr D had ongoing financial difficulties. L2G would've seen that he had a loan account which had only been opened four months by the time this loan was approved. Yet the creditor for that loan was reporting that Mr D was already two months in arrears with his repayments.

Mr D also had a communication account – likely a mobile phone contract, that as recently as July 2023 was 2 months in arrears – again further indication that Mr D had recent difficulties maintaining his existing credit commitments. Knowing this, L2G needed to take further steps to ensure that Mr D's difficulties weren't continuing.

L2G was also told that at the start of 2023, Mr D had encountered further difficulties managing his commitments. A bank account and a hire purchase agreement were shown as being 3 and 6 months in arrears, respectively. Although these accounts were now closed, it is further information that L2G had to hand that suggested Mr D's financial difficulties may have been ongoing for some time.

Overall, given what L2G could see in the credit report about the missed payments on Mr D's two active accounts, as well as the data suggested at the start of 2023, it was clear he was also having significant payment problems. This means it ought to have conducted further checks into Mr D's finances, before agreeing to lend to him, in order to be satisfied that Mr D wasn't having any immediate financial difficulties. In the circumstances, L2G couldn't just approve this loan without any further checks.

L2G could've gone about verifying Mr D's financial position a number of ways. It could've asked to see copies of bills, bank statements or any other documentation it felt may have been necessary to review.

I've therefore considered what further checks are likely to have shown. Mr D has provided us with copies of his bank statements as evidence of his financial circumstances at the time he applied for this loan. Of course, I accept different checks might show different things. And just because something shows up in the information Mr D has provided, it doesn't mean it would've shown up in any additional checks L2G might've carried out.

I also think it's important for me to set out 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 information provided in the bank statements show that Mr D was spending significant amounts of his income each month on gambling transactions. In the month before the loan was approved, Mr D spent almost his entire income on such transactions.

So, had L2G discovered this, I think it would've likely concluded that the loan repayments weren't affordable. This is because it would've had to rely on Mr D's success as a gambler for him to afford the repayments - which of course isn't sustainable.

I accept that L2G asked Mr D about whether he gambled as part of its affordability assessment. But the onus is also on L2G to carry out a proportionate check. And for the reasons outlined above, I don't think it did that here. As such, further checks – which I consider would've been proportionate - would've likely shown L2G that Mr D was gambling and so it wouldn't have lent to him.

As this is the case, I think that proportionate checks are likely to have shown L2G that Mr D was unlikely to be able to afford the payments to this loan, without undue difficulty or borrowing further. It therefore follows that Mr D is currently expected to pay interest, fees and charges on a loan that he shouldn't have had. So, I'm satisfied that Mr D has lost out and L2G should put things right for him as set out below.

Putting things right

If L2G has sold the outstanding debt, it should buy it back if it is able to do so and then take the steps outlined below. If L2G can't buy the debt back, then it should liaise with the new debt owner to achieve the results outlined below.

- Remove all interest fees and charges from the loan and treat all payments made by Mr D as if they went towards the capital of the loan.
- If after this re-work Mr D has paid enough to repay the capital he borrowed, then any overpayments should be refunded to him along with 8% simple interest*. This should be calculated from the date the overpayment was made, to the date of settlement.
- If after reworking Mr D's loan account an outstanding balance remains, L2G should try and agree an affordable repayment plan with Mr D to repay the outstanding capital balance. But I would remind it of its obligation to treat Mr D fairly and with forbearance.
- L2G needs to remove any adverse payment information from Mr D's credit file, once the loan has been repaid.

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

My final decision

For the reasons I've outlined above, I am upholding Mr D's complaint.

Loans 2 Go Limited should put things right for Mr D as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 20 June 2024.

Robert Walker
Ombudsman