

Complaint

Mr R has complained that Loans 2 Go Limited ("L2G") acted unfairly to him when providing him with a loan.

He says that the payments were unaffordable and so the loan shouldn't have been provided to him.

Background

L2G provided Mr R with a loan of £2,000.00 in September 2023. This loan had an APR of 320% and a 24-month term. This all meant the total amount repayable of £6,463.92, which included interest, fees and charges of £4,463.92 was due to be repaid in 24 monthly instalments of £269.33.

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

L2G disagreed with our investigator 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 R'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 R's complaint. These two questions are:

1. Did L2G complete reasonable and proportionate checks to satisfy itself that Mr R 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 R 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 R 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 R'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 R*. In practice this meant that L2G had to ensure that making the payments to the loan wouldn’t cause Mr R 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 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.

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 R prior to providing him with this loan. It also carried out a credit check. L2G determined that Mr R was earning just under £1,900.00 a month. L2G also determined that Mr R had expenditure of around £1,400.00 a month. In its view, this left Mr R 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 R was significantly indebted. He was over close to the credit limit on more than one of his revolving credit accounts. Furthermore, the credit check showed that there had been some

relatively recent missed payments and Mr R had had taken some payday lending too. Finally, the monthly payments to this loan would be taking up a significant proportion of the monthly disposable income it was estimating for Mr R. All of this leads me to think that L2G needed to take steps to verify Mr R's actual monthly expenditure.

To be clear it's not the 24-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 R's credit file showed, L2G's checks showing that Mr R's income was lower than what he'd declared and the proportion of the estimated disposable income taken by the loan payments, 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 R's income and expenditure, I don't think that the checks it carried out before providing Mr R with his loan were reasonable and proportionate.

Would reasonable and proportionate checks have indicated to L2G that Mr R 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 R would have been unable to sustainably repay this loan.

L2G was required to establish whether Mr R 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.

I've carefully considered the information provided. Having done so, I think it's likely that further checks will have shown L2G that Mr R was already heavily overdrawn and was struggling to manage his existing commitments. So I think that proportionate checks would have shown L2G that Mr R 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 R 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 R was in no sort of position to make the payments on this loan without suffering significant adverse consequences.

In reaching my conclusion, I've considered that L2G has provided me with copies of two non-uphold decisions it has received on other cases.

I think that it's important for me to explain that we consider complaints on an individual basis and looking at the individual circumstances. It's not clear to me what relevance the decisions L2G has provided, have to facts and circumstances of Mr R's case, or what argument it is seeking to make – other than to show me that there are instances where an ombudsman decided not to uphold a complaint. That said, I also think it's fair for me to point out that L2G will also have received other final decisions from our service which upheld the complaint as it was determined that it did not act fairly and reasonably.

In any event, I'm not bound by the outcomes reached by other ombudsmen on different cases. Ultimately, I'm required to consider the facts of a case and reach my own conclusion. So the outcomes on any other final decisions which L2G has received cannot and do not

bind me into reaching the same conclusion on this case. That said, I do accept that consistency is important and with a view to providing some clarity and reassurance to L2G, it might help for me to explain that there are some key differences between this complaint and the ones it has provided the decisions from.

Having looked at the other decisions, it's clear that the respective customers were advanced a much lower amount. The reasoning of the decisions also appears to indicate at least one of the customers was well within their existing revolving credit limits at the time of the loan application and there's nothing to suggest that either customer had any recent missed payments, or payday lending either.

All of this affected what a proportionate check would have looked like and more likely than not have shown. I've already explained that there are a number of those factors present in this case and this explains the difference in outcomes between the cases L2G this one that Mr R has made. This is why I think that L2G did not carry out proportionate checks in this instance and in my view what would have happened had this been done.

So while I'm not required to replicate the outcomes reached by other ombudsmen, nonetheless I don't consider that my conclusion here is obviously incompatible or inconsistent with the ones L2G has highlighted receiving on other cases, notwithstanding the differing outcomes. And I'm satisfied that reasonable and proportionate checks will have shown L2G that it shouldn't have lent to Mr R.

Did L2G act unfairly or unreasonably towards Mr R 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 R in some other way. So I don't think L2G acted unfairly or unreasonably towards Mr R in some other way.

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

As Mr R 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 R

Having thought about everything, I think that L2G should put things right for Mr R by:

- removing all interest, fees and charges applied to the loan from the outset. The payments Mr R made, whether to L2G or any third-party debt purchaser, should be deducted from the new starting balance – the £2,000.00 originally lent. If Mr R has already repaid more than £2,000.00 then L2G should treat any extra as overpayments. And any overpayments should be refunded to Mr R;
- adding interest at 8% per year simple on any overpayments, if any, from the date they were made by Mr R 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 R's credit file.

† HM Revenue & Customs requires L2G to take off tax from this interest. L2G must give Mr R 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 R's complaint. Loans 2 Go Limited needs to put things right in the way I've directed it to do so above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 25 June 2024.

Jeshen Narayanan
Ombudsman