

The complaint

Miss R has complained through a representative that Loans 2 Go Limited (“L2G”) didn’t conduct sufficient affordability checks before it lent to her.

What happened

L2G provided Miss R with an 18-month instalment loan of £680 on 2 December 2023. Miss R’s monthly contracted repayment amount was £139.78. Had Miss R repaid the loan in line with the credit agreement she would’ve repaid a total of £2,516.04. The statement of account provided by L2G showed Miss R making her first two contracted payments, but an outstanding balance still remains due.

Following Miss R’s complaint L2G wrote to her representative and explained it wasn’t going to be upholding the complaint. Unhappy with this response, Miss R’s representative referred the complaint to the Financial Ombudsman.

An investigator upheld Miss R’s complaint about the loan because she said L2G was given information in the credit check results which suggested she already had a significant amount of outstanding debt – was close to her overdraft limit and credit card limits. Given the amount of existing debt, she was concerned that the amount of disposable income L2G had calculated couldn’t be accurate. In the investigator’s view any further lending was unsustainable.

L2G didn’t agree saying the credit search results showed no defaults and her commitments were up to date. While Miss R’s circumstances may have changed since the loan was granted, the loan wasn’t irresponsibly lent at the time.

As no agreement could be reached the complaint was passed to me to decide and I issued a provisional decision explaining the reasons why I was intending to uphold Miss R’s complaint. Both parties were then given an opportunity to send me any further submissions.

Neither Miss R nor her representative provided anything further for consideration. L2G responded and said;

- L2G’s checks were proportionate at the time of the application
- bank statements would only have been requested if the initial checks gave L2G cause for concern and in this case additional checks weren’t warranted
- as part of Miss R’s application she was asked about whether she was gambling and she answered no
- L2G sign posted what an ombudsman had said in another case about whether L2G wouldn’t have known about the consumer’s gambling.

A copy of the provisional findings follows this section and forms part of this final decision.

What I said in my provisional decision:

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 Miss R's complaint. Having carefully considered everything I've decided to uphold Miss R'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 meant it needed to carry out proportionate checks to be able to understand whether Miss R could afford to repay any credit it provided.

Our website sets out what we typically think about when deciding whether a lender's (or operator of electronic system in relation to lending such as here) 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 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. So, we'd expect a firm to be able to show that it didn't continue to facilitate a customer's loans irresponsibly.

I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Miss R's complaint. Having looked at everything I have decided to uphold Miss R's complaint and I've explained why below.

Firstly, it seems that Miss R used a third party, such as a credit broker, to apply for this loan and from L2G application data Miss R did request a loan of £1,700. While I accept that only £650 was advanced – it does show that Miss R was in need of a larger sum because that is what she had applied for.

Miss R declared she received an income of £2,500 per month from full time employment. L2G says Miss R's income figure was verified through a credit reference agency and it was told that Miss R usually received around £2,492 per month – so around the figure Miss R had declared to L2G.

It doesn't appear that L2G asked Miss R for any details of her day to day living costs, - or if they did these haven't been provided. But in the final response letter it explained that following a review of her credit file it "...we calculated..." total monthly expenditure of £2,102.39. Therefore, L2G says the loan was affordable.

L2G, as part of its affordability assessment carried out a credit search and it has provided a summary of 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. This can and does mean information which is given to a lender may be different to what a consumer can see by reviewing their own report. But what L2G needed to do was consider the results it received.

L2G's checks showed that Miss R hadn't defaulted on any accounts within the last six months and didn't have any County Court Judgements and she owed other creditors almost £20,000.

Miss R had a number of current accounts all with overdrawn balances and one of those balances were at the overdraft limit. While, there isn't a formal repayment schedule for these accounts the fact that the total overdrawn balance was around twice her monthly income ought to have led to L2G considering whether she was already over extended.

It also knew that Miss R had closed three what were likely high-cost credit loans in as many months and had recently taken on a new loan costing her £290 per month – she had borrowed £5,000 only four months before. This ought to have again led further questions to

have been asked as to why Miss R was returning for further borrowing having already taken a number of loans.

However, while I understand why the investigator thought there was enough to uphold the complaint in the credit file data, I don't agree with this. But given what L2G saw as well as thinking about the cost of the facility and the term over it was repaid, I do think further checks ought to have been carried out, I've therefore considered what further checks are likely to have shown.

Miss R has provided us with evidence of her financial circumstances at the time she applied for this loan on another complaint. Of course, I accept different checks might show different things, and just because something shows up in the information Miss R has provided, it doesn't mean it would've shown up in any checks L2G might've carried out.

But in the absence of anything else from L2G showing what this information would have shown, I think it's perfectly fair, reasonable and proportionate to place considerable weight on what this information says about what Miss R's financial circumstances were more likely than not to have been at the time.

I also think it's important for me to set out that L2G was required to establish whether Miss R 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 shows that Miss R was spending well in excess of her income on gambling and that her ability to make the repayments to this loan would in large part be dependent on her success as a gambler – which of course isn't guaranteed. In addition to this, her bank statements show that she recently been advanced a payday loan in the weeks before this loan and was already servicing another payday loan as well.

As this is the case, I think that proportionate checks are likely to have shown L2G that Miss R was unlikely to be able to afford the payments to this loan, without undue difficulty or borrowing further. So, I'm satisfied that reasonable and proportionate checks would more like than not have shown L2G that it shouldn't have lent this loan to Miss R.

It therefore follows that Miss R is currently expected to pay interest, fees and charges on a loan that he shouldn't have had. So, I'm satisfied that Miss R has lost out and L2G should put things right for her as set out below.

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.

I have carefully considered L2G's comments but in the circumstances of this complaint I am not persuaded to change my mind. The following paragraphs should be read in conjunction with the above provisional decision.

I agree that L2G needed to conduct a proportionate check at the point Miss R made her application. But for the reasons I've outlined in the provisional decision I don't think it's checks went far enough given the results it received in the credit reference agency in relation to her overdraft balances and her other lending. So I do think further checks were warranted.

I accept that Miss R may have declared that she wasn't gambling as part of her application, but the onus was and is on L2G to conduct a proportionate check – as it accepts. In my view a proportionate check would've led it to discover Miss R's gambling and as such it would've then concluded that the loan was neither affordable nor sustainable for her.

I thank L2G for providing the other ombudsman's decision as an example of what it may have been expected (or not) to have known about a consumer's gambling. As L2G is aware,

each case is considered on its own merits, and I am required to come to what I consider to be a fair and reasonable outcome.

In the individual circumstances of this complaint, I do think the gambling would've been discovered had it done further checks before lending, which for the reasons I've explained above I do believe it needed to do.

I am therefore upholding Miss R's complaint about the lending decision, and I've outlined below what L2G needs to do in order to put things right for Miss R.

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 following steps. 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 applied to Miss R's loan from the outset. The payments Miss R made, whether to L2G or any third-party debt purchaser, should be deducted from the new starting balance – the £680 originally lent. If Miss R has already paid L2G more than £680 then it should treat any extra as overpayments. And any overpayments should be refunded to Miss R adding interest at 8% per year simple on any overpayments, if any, from the date they were made by Miss R to the date of settlement*
- If an outstanding balance still remains due after L2G carries out the above then it should try and come to a mutually agreeable repayment plan for the remaining balance
- if no outstanding balance remains after all adjustments have been made, all adverse information L2G has recorded about this loan should be removed from Miss R's credit file.

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

My final decision

For the reasons I've explained above and in the provisional decision, I'm upholding Miss R's complaint.

Loans 2 Go Limited should put things right for Miss R as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 21 June 2024.

Robert Walker
Ombudsman