DRN-5031533

Complaint

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

Background

L2G provided Mr H with a loan of £1,400.00 in May 2021. This loan had an APR of 277.8% and a 104-week term. This all meant the total amount repayable of £4,053.92, which included interest, fees and charges of £2,653.92 was due to be repaid in 104 weekly instalments of £38.98.

One of our investigators looked at this complaint and thought that L2G unfairly provided this loan to Mr H 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.

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

1. Did L2G complete reasonable and proportionate checks to satisfy itself that Mr H 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 H 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 H 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 H'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 H. In practice this meant that L2G had to ensure that making the payments to the loan wouldn’t cause Mr H 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 H. 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 H prior to providing him with this loan. It also carried out a credit check. L2G determined that Mr H was earning around £1,500.00. L2G also determined that Mr H had expenditure of approaching £1,200.00 a month. In its view, this left Mr H 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 H was close to the credit limit on at least two of his existing revolving credit accounts and he also had accounts with relatively recent payment difficulties on his credit file too. L2G’s checks also suggested that the monthly payments to this loan would take up a significant proportion of the disposable income that it had estimated for Mr H.

All of this leads me to think that L2G needed to take steps to verify Mr H's actual monthly expenditure, rather than rely on statistical data. To be clear, it's not my finding here that L2G needed to automatically refuse Mr H's application on the basis on what I've set out above.

However, Mr H's use of credit together with the fact that the monthly payments for this loan were taking up a significant proportion of the estimated disposable income amount L2G arrived at, persuades me it would have been reasonable and proportionate for it to have taken more care with Mr H's application. So what I'm saying is that I think that L2G should have taken more care with Mr H's application by verifying his expenditure.

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

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

L2G was required to establish whether Mr H 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, it's clear that Mr H was struggling to manage the commitments that he already had and that he was regularly using payday and other high cost lenders to manage.

The information I've seen indicates that Mr H struggling to manage his existing commitments because he was gambling significant sums and that his ability to repay this loan was in large part going to be determined by his success as a gambler. I don't think that this was sustainable particularly bearing in mind Mr H was already struggling to meet his commitments.

In reaching my conclusions, I've seen what L2G has said about it being the case that Mr H was asked whether he was suffering from a gambling, drug or alcohol addiction and he answered no. However, I don't think that this means L2G's checks were proportionate. And I think that proportionate checks would have shown what I've described above. Therefore, I think that L2G ought to have realised that Mr H would find it difficult to make his payments.

Bearing all of this in mind, I'm satisfied that reasonable and proportionate checks would more likely than not have demonstrated that Mr H 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 H 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 H in some other way?

Having carefully thought about everything provided, I've not seen anything to suggest that L2G acted unfairly or unreasonably towards Mr H in some other way.

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

As Mr H paid 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.

I've also considered whether the lending relationship between L2G and Mr H might have been unfair to Mr H under section 140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed in the section below results in fair compensation for Mr H in the circumstances of his complaint. And I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

Fair compensation – what L2G needs to do to put things right for Mr H

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

- refunding all interest, fees and charges Mr H paid on his loan;
- adding interest at 8% per year simple on any refunded payments from the date they were made by Mr H to the date of settlement†
- removing any and all adverse information it recorded about this loan from Mr H's credit file.

† HM Revenue & Customs requires L2G to take off tax from this interest. L2G must give Mr H 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 H'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 H to accept or reject my decision before 29 October 2024.

Jeshen Narayanan
Ombudsman