complaint

Miss D has complained about a series of loans she was provided with by Loans 2 Go Limited ("L2G"). She says there were several times where she missed payments and fell into default which nearly resulted in her car being taken. As a regular customer, the (loan application) forms were completed for her using previous details and all she had to do was sign them to get the cash. She's also said that the charges and interest were really high too.

background

I attach my provisional decision of 20 December 2018, which forms part of this final decision. In my provisional decision I set out why I intended to uphold Miss D's complaint. I invited both parties to make any further comments before I reached a final decision.

Following this, Miss D confirmed that she accepted my provisional decision and that she had nothing further to add. L2G also responded to my provisional decision saying that while it didn't agree with all of the points raised, it agreed with the proposed resolution. So it didn't provide anything further for me to think about either.

my findings

I have reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I set out in some detail why I intended to uphold Miss D's complaint in my provisional decision. And, in the absence of anything further from Miss D or L2G and L2G's agreement with the proposed resolution, I see no reason to change my conclusions.

my final decision

For the reasons set out above and in my provisional decision of 20 December 2018, I'm upholding Miss D's complaint. Loans 2 Go Limited should put things right in the way set out in my provisional decision.

Under the rules of the Financial Ombudsman Service, I am required to ask Miss D to accept or reject my decision before 8 February 2019.

Jeshen Narayanan
ombudsman

COPY OF PROVISIONAL DECISION

complaint

Miss D has complained about a series of loans she was provided with by Loans 2 Go Limited ("L2G"). She says there were several times where she missed payments and fell into default which nearly resulted in her car being taken. As a regular customer, the (loan application) forms were completed for her using previous details and all she had to do was sign them to get the cash. She's also said that the charges and interest were really high too.

L2G has provided what can only, at best, be described as a threadbare business file on this case. Its final response didn't set out the details of Miss D's lending history. And its business file didn't shed too much light on this either. So we've had to reconstruct Miss D's lending history based on the limited information L2G has provided.

As far as I can see, Miss D was provided with an initial log book loan, with 12 month term, of £500 in October 2013. There were a number of top-ups, which resulted in a new loan agreement being signed, with some of the funds from the new loan being used to settle the balance on the previous one. L2G provided Miss D with a total of nine log book loans – the last of which was in October 2016.

When Miss D approached for a further advance in December she was provided with a personal loan that had an 18 month term. Miss D was provided with a second 18 month personal loan, which included funds to repay the October 2016 loan, when she approached for further funds in January 2017. As I understand it, no payments have been made on the January 2017 loan.

So, as far as I can see, Miss D was provided with nine logbook loans and two personal loans between October 2013 and January 2017. As these loans were taken in sequence, I will refer to them as loans one to eleven in this provisional decision as set out below.

Loan	Type	Date taken	Settled	Consolidation	Term	Repayment
1	Logbook	October 2013	January 2014	None	12 months	£63.89
2	Logbook	January 2014	October 2014	Loan 1	12 months	£89.44
3	Logbook	October 2014	January 2015	Loan 2	12 months	£115.13
4	Logbook	January 2015	March 2015	Loan 3	12 months	£139.43
5	Logbook	March 2015	June 2015	Loan 4	12 months	£195.58
6	Logbook	November 2015	April 2016	None	12 months	£77.33
7	Logbook	April 2016	August 2016	Loan 6	12 months	£116.00
8	Logbook	August 2016	December 2016	Loan 7	12 months	£193.33
9	Logbook	October 2016	December 2016	None	12 months	£113.28
10	Personal	December 2016	January 2017	Loans 8 and 9	18 months	£220.44
11	Personal	January 2017	Outstanding	None	18 months	£226.56

In its response to this provisional decision, I ask L2G to confirm that there is no other lending to Miss D other than what I've set out above and that the loan consolidation is also accurate. I also ask Miss D to confirm that she agrees with this summary of the lending history – or to provide evidence of other lending.

background

In its response to Miss D’s complaint, while not providing much in the way of detail, L2G didn’t agree that its checks were inadequate. It says that, when Miss D applied for her loans, a thorough affordability assessment was conducted with consideration to her documented income and expenditure, her own testimonies and also a review of her credit file.

Our adjudicator looked at Miss D’s complaint and concluded that Miss D shouldn’t have been provided with any further loans from loan four onwards. L2G disagreed with our adjudicator. As a result, the complaint has been referred to me for a decision.

In reaching my decision, I have taken into account the relevant law and regulations; relevant regulators’ rules, guidance and standards; relevant codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

the legal and regulatory framework

regulation by the Office of Fair Trading (up to 31 March 2014)

L2G gave Miss D her first two loans in the period up to the end of March 2014. During this time it needed a standard licence from the Office of Fair Trading (“OFT”), in order to carry out consumer credit activities.

Section 25(2) of the Consumer Credit Act 1974 set out the factors the OFT had to consider when deciding whether to grant a consumer credit licence to a lender. It said:

> (1) *In determining whether an applicant for a licence is a fit person for the purposes of this section the OFT shall have regard to any matters appearing to it to be relevant including (amongst other things)—*
>
> > (a) *the applicant's skills, knowledge and experience in relation to consumer credit businesses, consumer hire businesses or ancillary credit businesses;*
> >
> > (b) *such skills, knowledge and experience of other persons who the applicant proposes will participate in any business that would be carried on by him under the licence;*
> >
> > (c) *practices and procedures that the applicant proposes to implement in connection with any such business;*
> >
> > (d) *evidence of the kind mentioned in subsection (2A)*
>
> (2A) *That evidence is evidence tending to show that the applicant, or any of the applicant's employees, agents or associates (whether past or present) or, where the applicant is a body corporate, any person appearing to the OFT to be a controller of the body corporate or an associate of any such person, has—*
>
> > (a) *committed any offence involving fraud or other dishonesty or violence;*
> >
> > (b) *contravened any provision made by or under—*

(i) this Act;

(ii) Part 16 of the Financial Services and Markets Act 2000 so far as it relates to the consumer credit jurisdiction under that Part;

(iii) any other enactment regulating the provision of credit to individuals or other transactions with individuals;

(c) contravened any provision in force in an EEA State which corresponds to a provision of the kind mentioned in paragraph (b);

(d) practised discrimination on grounds of sex, colour, race or ethnic or national origins in, or in connection with, the carrying on of any business; or

(e) engaged in business practices appearing to the OFT to be deceitful or oppressive or otherwise unfair or improper (whether unlawful or not) *[my emphasis]**.***

Section 25(2B) set out a direct example of the type of practice referred to in Section 25(2A(e)) and said:

For the purposes of subsection (2A)(e), the business practices which the OFT may consider to be deceitful or oppressive or otherwise unfair or improper include practices in the carrying on of a consumer credit business that appear to the ***OFT to involve irresponsible lending*** *[my emphasis].*

In March 2010, the OFT sought to produce clear guidance on the test for irresponsible lending for the purposes of section 25(2B) of the Consumer Credit Act 1974. And so it issued its guidance on irresponsible lending ("ILG").

So I consider the ILG to be of central importance in reaching a fair and reasonable outcome in Miss D's case.

The foreword to the guidance set out its purpose and it said:

The primary purpose in producing this guidance is to provide greater clarity for businesses and consumer representatives as to the business practices that the Office of Fair Trading (OFT) considers may constitute irresponsible lending practices for the purposes of section 25(2B) of the Consumer Credit Act 1974. It indicates types of deceitful or oppressive or otherwise unfair or improper business practices which, if engaged in by a consumer credit business, could call into consideration its fitness to hold a consumer credit licence.

Whilst this guidance represents the OFT's view on irresponsible lending, it is not meant to represent an exhaustive list of behaviours and practices which might constitute irresponsible lending.

Section two of the guidance sets out the general principles of fair business practice. Section 2.1 says:

In the OFT's view there are a number of overarching principles of consumer protection and fair business practice which apply to all consumer credit lending.

Section 2.2 of the guidance says:

In general terms, creditors should:

- *not use misleading or oppressive behaviour when advertising, selling, or seeking to enforce a credit agreement*
- *make a reasonable assessment of whether a borrower can afford to meet repayments in a sustainable manner*
- *explain the key features of the credit agreement to enable the borrower to make an informed choice*
- *monitor the borrower's repayment record during the course of the agreement, offering assistance where borrowers appear to be experiencing difficulty and treat borrowers fairly and with forbearance if they experience difficulties*

Section 2.3 lists other expectations of lenders. Amongst other things, it says:

In addition to the above there should be:

- *fair treatment of borrowers. Borrowers should not be targeted with credit products that are clearly unsuitable for them, subjected to high pressure selling, aggressive or oppressive behaviour or inappropriate coercion, or conduct which is deceitful, oppressive, unfair or improper, whether unlawful or not*

Borrowers who may be particularly vulnerable by virtue of their current indebtedness, poor credit history, or by reason of age or health, or disability, or for any other reason, should, in particular, not be targeted or exploited.

Section four of the guidance is concerned with the assessment of affordability that lenders were required to carry out before granting credit. Section 4.1 says:

In the OFT's view, all assessments of affordability should involve a consideration of the potential for the credit commitment to adversely impact on the borrower's financial situation, taking account of information that the creditor is aware of at the time the credit is granted. The extent and scope of any assessment of affordability, in any particular circumstance, should be dependent upon – and proportionate to – a number of factors (see paragraph 4.10 of this guidance document).

'Assessing affordability', in the context of this guidance, is a 'borrower-focussed test' which involves a creditor assessing a borrower's ability to undertake a specific credit commitment, or specific additional credit commitment, in a sustainable manner, without the borrower incurring (further) financial difficulties and/or experiencing adverse consequences.

Section 4.2 of the OFT guidance says:

Whatever means and sources of information creditors employ as part of an assessment of affordability should be sufficient to make an assessment of the risk of the credit sought being unsustainable for the borrower in question. In our view this is likely to involve more than solely assessing the likelihood of the borrower being able to repay the credit in question.

We consider that before granting credit, significantly increasing the amount of credit, or significantly increasing the credit limit under an agreement for running account credit, creditors should take reasonable steps to assess a borrower's likely ability to be able to meet repayments under the credit agreement in a sustainable manner.

"In a sustainable manner" is defined in Section 4.3 of the OFT guidance. And Section 4.3 says:

The OFT regards 'in a sustainable manner' in this context as meaning credit that can be repaid by the borrower:

- *without undue difficulty – in particular without incurring or increasing problem indebtedness*
- *over the life of the credit agreement or, in the case of open-end agreements, within a reasonable period of time*
- *out of income and/or available savings, without having to realise security or assets.*

Section 4.4 goes on to describe "undue difficulty" and says:

The OFT would regard 'without undue difficulty' in this context as meaning the borrower being able to make repayments (in the absence of changes in personal circumstances that were not reasonably foreseeable at the time the credit was granted):

- *while also meeting other debt repayments and other normal/reasonable outgoings and*
- *without having to borrow further to meet these repayments.*

Building on the proportionality principle set out in section 4.1, section 4.10 deals with the issues that might influence how detailed the affordability assessment should be. It includes factors such as:

- *the type of credit product;*
- *the amount of credit to be provided and the associated cost and risk to the borrower;*
    - *the borrower's financial situation at the time the credit is sought;*
    - *the borrower's credit history, including any indications of the borrower experiencing (or having experienced) financial difficulty*
    - *the vulnerability of the borrower*

Section 4.12 is a non-exhaustive list of the types and sources of information that a lender might use to assess affordability, including:

- *evidence of income*
- *evidence of expenditure*
- *records of previous dealings with the borrower*
- *a credit score*
- *a credit report from a credit reference agency*
- *information obtained from the borrower through a form or a meeting*

Sections 4.18 to 4.33 of the ILG set out some examples of “specific irresponsible lending practices” relating to how businesses assess affordability. Section 4.20 says this would include where a lender is:

Failing to undertake a reasonable assessment of affordability in an individual case or cases

Section 4.21 gives another example:

Failing to consider sufficient information to be able to reasonably assess affordability, prior to granting credit, significantly increasing the total amount of credit provided, or significantly increasing the credit limit (in the case of a running account credit agreement)

And Section 4.26 says a business would be acting irresponsibly if:

Granting an application for credit when, on the basis of an affordability assessment, it is known, or reasonably ought to be suspected, that the credit is likely to be unsustainable.

Sections 4.29 and 4.31 deal with a lender’s treatment of information disclosed by the customer. 4.29 says it would be an unsatisfactory business practice where a lender:

fail[s] to take adequate steps, so far as is reasonable and practicable, to ensure that information on a credit application relevant to an assessment of affordability is complete and correct.

And section 4.31 says it would be unsatisfactory for a lender to:

[Accept] an application for credit under circumstances in which it is known, or reasonably ought to be suspected, that the borrower has not been truthful in completing the application for credit with regards to the information supplied relevant to inform an assessment of affordability

Section 6 of the ILG sets out other “specific irresponsible lending practices” relating to lender behaviour once loan(s) have been agreed. Section 6.2 says it would be an unsatisfactory practice where a business is:

Failing to monitor a borrower’s repayment record

Section 6.2 goes on to say:

The OFT considers that creditors should take appropriate action…when/if there are signs of apparent / possible repayment difficulties.

Section 55B of the Consumer Credit Act 1974

On 1 February 2011 the majority of the legislation implementing the provisions of the Consumer Credit Directive 2008 came into force. At this point the ILG was amended to reflect any changes required by the Consumer Credit Directive and an additional requirement on a lender to carry out an "Assessment of creditworthiness" was set out in section 55B of the Consumer Credit Act.

It's important to note that both section 25 and section 55 remained in force until regulation of Consumer Credit providers passed to the FCA in April 2014.

Section 55B said:

Assessment of creditworthiness

55B *(1) Before making a regulated consumer credit agreement, other than an excluded agreement, the creditor must undertake an assessment of the creditworthiness of the debtor.*

(2) Before significantly increasing—

(a) the amount of credit to be provided under a regulated consumer credit agreement, other than an excluded agreement, or

(b) a credit limit for running-account credit under a regulated consumer credit agreement, other than an excluded agreement, the creditor must undertake an assessment of the debtor's creditworthiness.

(3) A creditworthiness assessment must be based on sufficient information obtained from—

(a) the debtor, where appropriate, and

(b) a credit reference agency, where necessary.

(4) For the purposes of this section an agreement is an excluded agreement if it is—

(a) an agreement secured on land, or

(b) an agreement under which a person takes an article in pawn.".

By the time of loan three and for all of Miss D's subsequent loans (1 April 2014 onwards) this requirement to assess creditworthiness moved from S55B of the Consumer Credit Act, to the rules of the new regulator the Financial Conduct Authority.

regulation by the Financial Conduct Authority (from 1 April 2014)

L2G gave Miss D loans three to eleven after regulation of Consumer Credit Licensees had transferred from the OFT to the Financial Conduct Authority ("FCA") on 1 April 2014. L2G initially obtained interim permission to provide consumer credit before it went on to successfully apply for authorisation as a consumer credit provider. L2G's interim permission to provide consumer credit and its eventual authorisation to do so meant that it was subject to the FCA rules and regulations from 1 April 2014.

- *the FCA Principles for Business ("PRIN")*

The FCA's Principles for Business set out the overarching requirements which all authorised firms are required to comply with.

PRIN 1.1.1G, says

The Principles apply in whole or in part to every firm.

The Principles themselves are set out in PRIN 2.1.1R. And the most relevant principle here is PRIN 2.1.1 R (6) which says:

A firm must pay due regard to the interests of its customers and treat them fairly.

- *the Consumer Credit sourcebook ("CONC")*

This sets out the rules which apply to providers of consumer credit like L2G. CONC also replaced the requirements set out in Section 55B CONC 5 sets out a firm's obligations in relation to responsible lending. And CONC 6 sets out a firm's obligations after a consumer has entered into a regulated agreement.

It's clear there is a high degree of alignment between the OFT's Irresponsible Lending Guidance and the rules set out in CONC 5 and CONC 6. As is evident from the following extracts, the FCA's CONC rules specifically note and refer back to sections of the OFT's *Irresponsible Lending Guidance* on many occasions.

Section 5.2.1R(2) of CONC sets out what a lender needs to do before agreeing to give a consumer a loan of this type. It says a firm must consider:

(a) *the potential for the commitments under the regulated credit agreement to adversely impact the customer's financial situation, taking into account the information of which the firm is aware at the time the regulated credit agreement is to be made; and*

*[**Note**: paragraph 4.1 of ILG]*

(b) *the ability of the customer to make repayments as they fall due over the life of the regulated credit agreement, or for such an agreement which is an open-end agreement, to make repayments within a reasonable period.*

*[**Note**: paragraph 4.3 of ILG]*

CONC also includes guidance about 'proportionality of assessments'.

CONC 5.2.4G(2) says:

A firm should consider what is appropriate in any particular circumstances dependent on, for example, the type and amount of credit being sought and the potential risks to the customer. The risk of credit not being sustainable directly relates to the amount of credit granted and the total charge for credit relative to the customer's financial situation.

*[**Note**: paragraph 4.11 and part of 4.16 of ILG]*

CONC 5.3 contains further guidance on what a lender should bear in mind when thinking about affordability.

CONC 5.3.1G(1) says:

In making the creditworthiness assessment or the assessment required by CONC 5.2.2R (1), a firm should take into account more than assessing the customer's ability to repay the credit.

*[**Note**: paragraph 4.2 of ILG]*

CONC 5.3.1G(2) then says:

The creditworthiness assessment and the assessment required by CONC 5.2.2R (1) should include the firm taking reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.

*[**Note**: paragraph 4.1 (box) and 4.2 of ILG]*

In respect of the need to double-check information disclosed by applicants, CONC 5.3.1G(4) has a reference to paragraphs 4.13, 4.14, and 4.15 of ILG and states:

> *(b) it is not generally sufficient for a firm to rely solely for its assessment of the customer's income and expenditure on a statement of those matters made by the customer.*

And CONC 5.3.7R says that:

A firm must not accept an application for credit under a regulated credit agreement where the firm knows or ought reasonably to suspect that the customer has not been truthful in completing the application in relation to information supplied by the customer relevant to the creditworthiness assessment or the assessment required by CONC 5.2.2R (1).

*[**Note**: paragraph 4.31 of ILG]*

<u>*Section 140 of the Consumer Credit Act 1974*</u>

All of Miss D's loans were given to her after Section 140 of the Consumer Credit Act came into force on 6 April 2007. Section 140A sets out circumstances where the court may determine that the relationship between a creditor and a debtor is unfair to the debtor.

Section 140A says:

140A Unfair relationships between creditors and debtors

(1) The court may make an order under section 140B in connection with a credit agreement if it determines that the relationship between the creditor and the debtor arising out of the agreement (or the agreement taken with any related agreement) is unfair to the debtor because of one or more of the following-

(a) any of the terms of the agreement or of any related agreement;

(b) the way in which the creditor has exercised or enforced any of his rights under the agreement or any related agreement;

(c) any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement).

(2) In deciding whether to make a determination under this section the court shall have regard to all matters it thinks relevant (including matters relating to the creditor and matters relating to the debtor).

(3) For the purposes of this section the court shall (except to the extent that it is not appropriate to do so) treat anything done (or not done) by, or on behalf of, or in relation to, an associate or a former associate of the creditor as if done (or not done) by, or on behalf of, or in relation to, the creditor.

(4) A determination may be made under this section in relation to a relationship notwithstanding that the relationship may have ended.

(5) An order under section 140B shall not be made in connection with a credit agreement which is an exempt agreement [for the purposes of Chapter 14A of Part 2 of the Regulated Activities Order by virtue of article 60C(2) of that Order (regulated mortgage contracts and regulated home purchase plans)]

Section 140B sets out the types of order the court could make should it determine that the relationship between the creditor and debtor is unfair to the debtor. Section 140B says:

140B Powers of court in relation to unfair relationships

(2) An order under this section in connection with a credit agreement may do one or more of the following—

(a) require the creditor, or any associate or former associate of his, to repay (in whole or in part) any sum paid by the debtor or by a surety by virtue of the agreement or any related agreement (whether paid to the creditor, the associate or the former associate or to any other person);]

(b) require the creditor, or any associate or former associate of his, to do or not to do (or to cease doing) anything specified in the order in connection with the agreement or any related agreement;

(c) *reduce or discharge any sum payable by the debtor or by a surety by virtue of the agreement or any related agreement;*

(d) *direct the return to a surety of any property provided by him for the purposes of a security;*

(e) *otherwise set aside (in whole or in part) any duty imposed on the debtor or on a surety by virtue of the agreement or any related agreement;*

(f) *alter the terms of the agreement or of any related agreement;*

(g) *direct accounts to be taken, or (in Scotland) an accounting to be made, between any persons.*

the law

I've also taken account of the Consumer Credit Act (including the provisions I haven't set out above), and other relevant legislation, including the law relating to negligence, misrepresentation and contract; as well as the law relating to causation and remoteness.

my findings

I have read and considered all the evidence and arguments available to me from the outset, in order to decide what is, in my opinion, fair and reasonable in all the circumstances of the case.

Taking into account the relevant rules, guidance, good industry practice and law, I think there are two overarching questions I need to consider in order to decide what's fair and reasonable in the circumstances of this complaint. These questions are:

- Did L2G, each time it lent, complete reasonable and proportionate checks to satisfy itself that Miss D would be able to repay in a sustainable way?
    - If not, would those checks have shown that Miss D would've been able to do so?
- Did L2G act unfairly or unreasonably in some other way?

If I determine that L2G didn't act fairly and reasonably in its dealings with Miss D and that she has lost out as a result, I will go on to consider what is fair compensation.

<u>*Did L2G, each time it lent, complete reasonable and proportionate checks to satisfy itself that Miss D would be able to repay in a sustainable way?*</u>

Regulations in place throughout the period when L2G was lending to Miss D required it to carry out a reasonable assessment of whether Miss D could afford to repay her loans in a sustainable manner. This is sometimes referred to as an "affordability assessment" or "affordability check".

The affordability checks should've been "borrower-focused" – so L2G had to think about whether repaying the loan sustainably would cause difficulties or adverse consequences *for Miss D*. In other words, it wasn't enough for L2G to think only about the likelihood that it would get its money back without considering the impact of repayment on Miss D herself.

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 borrower (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 loan 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 be for a given loan application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. I've thought about all the relevant factors in this case.

Before I look in more detail at whether the checks that L2G completed for each of Miss D's loans were proportionate, I want to start by making a couple of observations on the arguments L2G has made. It has said that it reviewed the affordability of all loans where the loan packs are to hand and can confirm they were all deemed affordable.

There's no explanation of which loan packs it had to hand. There's no explanation of whether L2G means the loans were deemed affordable at the time of application, or as part of a review into Miss D's complaint. And crucially there's no explanation on what exactly it was – other than reviewing the loan packs to hand – that led L2G to deem that *all* of the loans were affordable.

L2G has simply provided some loan packs without any narrative on what any of this information means. Considering that this is information that L2G says it used to inform its lending decisions, it's disappointing that L2G has been unable to tell me what it reveals about Miss D's circumstances when she applied for her loans.

This service cannot and will not search through dozens of pages of information (some of which is coded) looking for evidence to support L2G's defence of Miss D's complaint. If L2G can't describe what the information it has provided shows about Miss D and why this means it was reasonable for it to lend, then I can't and won't put any weight on it. Without any explanation from L2G on this matter, I can't take it as read that its lending decisions were fair. And I invite L2G to provide more detail on these points, its checks and what they showed, in its response to this provisional decision.

I've also seen that, in its response to our adjudicator's assessment, L2G has said:

> *"Due to us being considered a sub-prime lender it is the core of our business that our customers return, this is also why we do not require our customers to be employed, however are required to provide evidence to support that the loan is affordable".*

I think that it is important to make this point because this argument appears to suggest that L2G doesn't see a customer needing to repeatedly return for further finance as an issue. Indeed it instead suggests to me that its core business model relies on consumers refinancing previous loans. And, at first glance, it's difficult to see how this response tallies with L2G carrying out a borrower focussed assessment. Equally, for reasons I'll return to further on in this decision, I'm not persuaded that L2G interpreted the evidence that it did receive from Miss D fairly either.

Were L2G's checks reasonable and proportionate?

It's important to note that loan one was Miss D's first with L2G. And although Miss D was being expected to maintain payments for a year, the monthly payments were relatively low. So it could be argued that a relatively light touch income and expenditure assessment might've been proportionate in these circumstances.

That said, Miss D was given a logbook loan. So the loan was secured on her car and she might've lost it if she was unable to make her payments. And given the implications of this, I think that a proportionate check ought to have reflected this. In these circumstances, I would've expected L2G to have verified at least some of the income and expenditure information gathered.

L2G can't even show me the information it gathered for loan one, let alone what if anything it verified. And it hasn't provided anything on the information gathered prior to loan two. It's possible L2G thought that a light touch check was proportionate because Miss D's car provided security. But I don't think that this was enough to constitute a borrower focussed assessment. And I don't see how this considers the impact of the repayments on Miss D. As I've explained, L2G appear to have relied on similar checks for loan two.

Miss D does appear to have been asked some questions about her expenditure when she applied for loan three. And L2G has provided the results of a credit check which it carried out. This shows that Miss D had a recent (two months before this application) County Court Judgement ("CCJ"). L2G's notes and statement of account also show that Miss D had late payments on loan two in June, July and August 2014 (the months leading up to the CCJ).

Given what Miss D's borrowing history and the information L2G gathered had shown, I don't think it was fair, reasonable or proportionate for L2G to simply rely on what was completed on an income and expenditure questionnaire as being an accurate reflection of what Miss D was likely to be able to afford. Bearing in mind all of this, I think that it would've been fair reasonable and proportionate to have taken further steps to verify the information on the questionnaire.

I think that this is especially the case as Miss D's answers to L2G's questions also revealed that a significant proportion of her income was made up of in work benefits. I don't think that in work benefits making up a significant portion of Miss D's income, on its own, means that L2G shouldn't have lent to her. But I do think that L2G ought to have been mindful of the fact that a significant proportion of Miss D's income was fixed. And, in these circumstances, I think that L2G ought to have been particularly mindful that Miss D could ill afford to develop a dependency on high-cost credit.

I say this because I think that there was a greatly reduced prospect of a consumer, in Miss D's position, being able to come into increased funds and use them to free themselves from persistent borrowing. So I think L2G's checks for loan three should've raised a significant number concerns. And even if these didn't cause L2G to decline the application outright, it should've prompted it to ask further questions. But L2G appears simply to have approved loan three without doing anything further.

L2G carried out similar checks before providing loan four. And the credit search it carried out showed that Miss D had applied for advances against income 'payday loans' as such providers had been carrying out credit checks on Miss D – which indicated that she was making applications for payday loans. Yet rather than treating this as a flag and investigating the possible impact granting more credit would have on Miss D, the authorisation form for loan four shows that Miss D was lent 150% of the maximum amount permitted in L2G's lending matrix.

The reason given for this was that Miss D was an existing customer that had always paid on time. But this was clearly untrue. Miss D was late in making at least three payments in the preceding seven months. So even if I thought that L2G's reasons for lending 150% of the maximum amount its matrix permitted (for the avoidance of doubt, I don't see how this in itself could ever constitute a sound borrower focussed reason for advancing more than the maximum permitted), the available evidence (Miss D's repayment record) doesn't support the findings L2G's loan approver reached.

The loan pack for loan five shows that Miss D was asked for some additional information. It's unclear why Miss D was asked for further information. But one of the documents Miss D did provide was a Council Tax bill. This Council Tax bill showed that Miss D was in arrears and that she was in an arrangement to pay them.

I have a couple of observations about this.

Firstly the income and expenditure information questionnaire doesn't capture these arrears, even though L2G ought to have been aware of this as it was in possession of the Council Tax bill. Secondly I'm even more concerned that L2G still considered it had enough to progress this loan application even though Miss D hadn't paid her Council Tax.

Bearing in mind the potential for criminal proceedings, most consumers don't choose not to pay their Council Tax. They generally don't pay because they're unable to do so. But not only did L2G think it was reasonable to provide loan five, it also thought that it was reasonable to again lend 150% of the maximum amount permitted by its lending matrix. Again the reason given for this was that Miss D was an existing customer that always paid on time.

L2G's confidence that it would get its money back and what it has, on this case, said is its core business model of customers returning for more loans, might've meant that it was happy to lend. But the evidence it had by this stage didn't support the loans being affordable. In fact the Council Tax arrears actually suggested the opposite. L2G's failure to react to what it was seeing and do more to assess the issues as well as the potential impact of granting even more credit to Miss D leads me to conclude that its checks for all of the loans up to loan five weren't proportionate.

L2G appears to have conducted similar checks for loans six to eleven. As this this is the case and I've already explained why I'd expect a lender's checks to become more thorough the more loans a consumer is provided with and the longer the lending relationship lasts, I don't think I need to provide a detailed description of what L2G did and why I think it was inadequate.

It also follows that I think that L2G's failure to carry out a thorough and fully verified income and expenditure assessment before providing loans six to eleven means that its checks weren't fair, reasonable or proportionate.

Would proportionate checks on Miss D's loans have indicated to L2G that she would have been unable to repay her loans in a sustainable manner?

I've already explained that I think a proportionate check for the earlier loans would've involved finding out – for example – about Miss D's normal monthly outgoings and regular financial commitments. And as the lending continued I would've expected L2G to have found out more about the concerns, I've set out in the previous section of this decision, and to assess the potential impact of granting further credit.

As L2G didn't carry out proportionate checks for these loans, I can't say for sure what proportionate checks would most likely have shown. So I need to decide whether it is more likely than not that a reasonable and proportionate affordability check would've told L2G that it was unfair to offer these loans to Miss D.

To help us understand for ourselves what L2G would more likely than not have discovered if it had completed reasonable and proportionate checks on Miss D's loans, we asked Miss D to provide us with her bank statements.

Having carefully considered the information, I think that a detailed review of Miss D's financial circumstances, would have shown that she just about had enough disposable income to be able to make the payments to loan one. So at this stage I'm inclined to conclude that reasonable and proportionate checks won't have prevented L2G from lending loan one to Miss D.

That said as our adjudicator has explained I think that Miss D's clarification regarding her rent payments show that she had no disposable income at all when she was given loan two. Miss D's bank statements also show that, by this stage, Miss D was making payments to doorstep lenders and other unsustainable short-term financers. Equally she had a number of direct debits returned in the month proceeding the application for loan two, indicating that she was struggling and was borrowing from whomever would lend to her in order to repay others and make ends meet.

So I'm inclined to say that reasonable and proportionate checks for loan two would clearly have shown that this loan was unaffordable and that it was unfair for L2G to provide this loan.

The position regarding returned direct debits and other unsustainable borrowing continues throughout the period Miss D was borrowing from L2G. But I don't think it's necessary for me to recreate the results of individual, proportionate affordability checks in order to conclude that L2G did something wrong when providing loans three to eleven. And so while I've reviewed and considered Miss D's bank statements for the entire period L2G lent to her, I haven't attempted to recreate proportionate affordability checks for all of the loans from loan three onwards.

I've not recreated affordability checks because in addition to assessing the affordability of each *individual* loan provided to Miss D by L2G, I also think it's fair and reasonable to look at the *overall pattern* of lending. I'm mindful here relevant rules and guidance – as summarised in the earlier part of this decision makes it clear that a lender shouldn't continue lending where the loans are unsustainable or otherwise harmful and/or it's apparent that the customer may be experiencing financial difficulties.

And I think that by loan three, L2G ought fairly and reasonably to have realised that Miss D's loans had become unsustainable or otherwise harmful. I've set out most of the reasons for this in the section on why I don't think L2G's checks were proportionate. But the factors that lead me to conclude that L2G ought to have realised the loans from loan three were unsustainable or otherwise harmful are:

- Miss D's three late payments on loan two
- a CCJ being issued against Miss D around the time of the missed payments
- the number of returned direct debit payments on Miss D's account
- Miss D's applications for advances against income or 'payday loans'
- Miss D's arrangement to pay the arrears on her council tax.

All of the above were clear indicators of Miss D being in a difficult financial position. And bearing in mind L2G's obligation to monitor Miss D's repayment record and offer assistance should it appear that she might've been experiencing financial difficulties, I think that L2G should've offered assistance and/or a product that would allow her to sustainably repay what she owed.

But instead of doing this, L2G instead kept consolidating Miss D's borrowing into further loans. Increasing the amount she had to find each month as well as her overall indebtedness. And at the time it was apparent (or at the very least it ought to have been apparent) Miss D's financial position was worsening, L2G actually starting lending significantly more than the maximum permitted by its lending matrix. So L2G was increasing Miss D's indebtedness by more than the maximum amount its own criteria permitted even though it was clear her financial position was deteriorating.

Indeed Miss D started out with a loan requiring 12 monthly payments of around £64 in October 2013. And by the time of the final loan Miss D was required to make payments of around four times more for a period of 18 months. So I can't see how or why L2G can reasonably believe that these loans weren't unsustainable or otherwise harmful for Miss D and didn't unfairly and excessively increase her overall indebtedness.

This taken together with the fact that L2G knew a large proportion of Miss D's was made up of in work benefits – which means her prospects of increasing her income and breaking out of this cycle of persistent borrowing – means I think it acted unfairly and unreasonably in providing loans three to eleven to Miss D.

So given all of L2G's obligations and what I think is fair and reasonable taking into account the circumstances and everything I've covered, I think that L2G acted unfairly in providing Miss D with loans three to eleven (as well as loan two).

Did Miss D lose out as a result of L2G's shortcomings in relation to loans two to eleven?

I think that Miss D did suffer adverse consequences as a result of L2G unfairly giving her loans two to eleven. I think this is the case for two key reasons.

Firstly, these loans had the effect of unfairly prolonging Miss D's indebtedness to L2G by allowing her to take expensive credit over an extended period of time. These loans were very expensive. And Miss D ended up having to commit more and more of her limited income towards the monthly payments. I've already spoken about the impact this had on her ability to meet her other essential commitments. And I think that the overall cost of these loans unfairly prolonged what was an adverse and precarious financial position for Miss D.

Secondly, the sheer number of these high-cost loans is likely to have had implications for Miss D's ability to access mainstream credit. The greater the presence of these loans on Miss D's credit file the less likely Miss D was able to rehabilitate her finances and regain access to mainstream credit. This is especially the case when bearing in mind her other affordability issues.

In my view, L2G giving Miss D such a large number of loans (which it shouldn't have done) over such an extended period of time at a rate normally reserved for short- term borrowing, placed her in a position where she was unfairly trapped into taking further loans from L2G as no-one else would lend to her. I think that, in these circumstances, Miss D had little choice other than to keep turning to L2G for further loans, because it was the only one prepared to continue lending to her bearing in mind everything that had gone on previously. And, in my view, L2G took advantage of the situation.

So overall and having carefully thought about everything provided and what's fair and reasonable in the circumstances of this case, I'm intending to say that Miss D lost out because L2G unfairly gave her loans two to eleven, which it ought to have realised were unsustainable, harmful and likely to have been unaffordable for her. And this means I'm intending to tell L2G that it needs to put things right.

fair compensation – what I'm intending to say that L2G needs to do to put things right for Miss D

I've thought about what amounts to fair compensation in this case. Where I find that a business has done something wrong, I'd normally expect that business – in so far as is reasonably practicable – to put the consumer in the position they *would be in now* if that wrong hadn't taken place. In essence, in this case, this would mean L2G putting Miss D in the position she'd now be in if she hadn't been given the loans I'm upholding.

But when it comes to complaints about irresponsible lending this isn't straightforward. Miss D *was* given the loans in question and she used the funds – albeit in reality what she's effectively done is repaid previous loans with them. So, in these circumstances, I can't undo what's already been done. And it's simply not possible to put Miss D back in the position she would be in if she hadn't been given these loans in the first place.

As this is the case, I have to think about some other way of putting things right in a fair and reasonable way bearing in mind all the circumstances of the case. And I'd like to explain the reasons why I think that it would be fair and reasonable for L2G to put things right in the following way.

interest and charges on the loans Miss D shouldn't have been given

As I've explained throughout this decision, L2G continually lending to Miss D left her in a position where she wasn't able to properly settle her debt. This was because Miss D kept having to find additional funds to pay the (increasing) interest and charges on her L2G loans. And then she had to borrow again from L2G as making the payments was preventing her from meeting her other commitments, which meant she incurred more interest and charges when she did this. So to start with, I think that L2G should refund the interest and charges Miss D paid on loans two to eleven.

I'm also mindful that Miss D lost the use of the funds she used to pay the interest and charges, I now think that L2G needs to refund to her. As Miss D lost the use of these funds, I think that she should be compensated for this. We normally ask a business to pay 8% simple interest where a consumer hasn't had the use of funds because its actions resulted in something having gone wrong.

Bearing in mind my conclusions in the paragraph above, I see no reason to depart from our usual approach here and I think awarding 8% per year simple interest, on the interest and charges that were paid, is fair and reasonable in the circumstances of this case.

So L2G should pay Miss D 8% per year simple interest on the interest and charges she paid from the date those charges were paid to the date it settles Miss D's complaint.

Miss D's credit file

Generally speaking, I'd expect a lender to remove any adverse information recorded on a consumer's credit file as a result of the interest and charges on the loans they shouldn't have been given. After all it's the interest and charges that the consumer is being refunded and the expectation is they will have repaid, or they should repay what they owe.

But I'm upholding Miss D's complaint about loans three to eleven because I think the overall pattern of lending increased Miss D's indebtedness in a way that was unsustainable or harmful in some other way. I explained that there were two main adverse consequences of L2G having given Miss D so many loans. Firstly it caused her to pay an excessive amount of interest. And I've already explained how Miss D should be compensated for this.

I also explained that the sheer number of loans and refinances involved and the extended period of time is likely to have had implications for Miss D's ability to access mainstream credit. The greater the presence of these loans on Miss D's credit file the less likely Miss D was able to rehabilitate her finances and regain access to mainstream credit. And I think my direction in relation to Miss D's credit file needs to reflect this.

So while I recognise the importance of preserving an accurate picture of Miss D's credit history and creditworthiness so that a lender can make an informed decision on whether lend to her, I think that the mere presence of this many loans on Miss D's credit file, in itself, constitutes adverse information. And I think that this many high-cost loans appearing on Miss D's credit file is likely to continue unfairly adversely affecting Miss D going forwards.

In these circumstances, I think that it is fair and reasonable for L2G to remove all reference to loans three to ten from Miss D's credit file, as the number of loans in itself is adverse information. At this stage, I can't ask L2G to remove any reference to loan eleven as there is still an outstanding balance.

All of this means that I think it would be fair and reasonable in all the circumstances of Miss D's complaint for L2G to put things right in the following way:

- refund all the interest, fees and charges for loans two to ten. A number of the loans appear to have been refinanced. So where any loans were settled early as a result of refinancing – L2G will need to work out the extra Miss D had to pay (through further borrowing) as a result of the interest and charges on the settled loans. Any attempt to simply add up the total amount advanced on each occasion will not be in keeping with this, as it won't reflect the extra Miss D had to continually borrow and the cumulative effect of refinancing; and

- add interest at 8% per year simple on the above interest and charges from the date they were paid (or would've been paid) by Miss D to the date of settlement†;

- remove any interest and charges added to loan eleven from the outset from the remaining balance on loan eleven. As Miss D still has outstanding council tax arrears, at present, and, in part the payments to these loans have had an impact on that, I'm minded to say that L2G shouldn't deduct any remaining balance from what it now needs to pay Miss D. Instead it should pay Miss D any compensation and then work out a reasonable repayment plan for any remaining balance;

- remove any adverse information recorded on Miss D's credit file as a result of loan two;

- remove all reference to loans three to ten from Miss D's credit file.

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

my provisional decision

For the reasons given above, I am intending to uphold Miss D's complaint about Loans 2 Go Limited and say it should pay Miss D compensation as set out above.

So unless the comments and evidence I get by 3 January 2019 changes my mind, that's what I'll tell Loans 2 Go Limited to do in my final decision.

Jeshen Narayanan
ombudsman