Financial Ombudsman Service

complaint

Mr D complains about a log book loan he took out with Loans 2 Go Limited (L2G). He says L2G has acted irresponsibly in allowing him to take out the loan as he could not afford the repayments.

An organisation that I shall refer to as "E" represents Mr D in this complaint.

our initial conclusions

Our adjudicator recommended that the complaint be upheld. He considered that L2G had not made a reasonable lending decision in granting the loan. He explained that Mr D's statements showed that he had used a number of payday loans in the last three months, his income consisted solely of benefits and he did not on balance have sufficient disposable income to say that the loan was affordable. He concluded that L2G should have made further enquiries about Mr D's ability to repay the loan based on this information and had it done so, it is highly likely the application would reasonably have been declined. On this basis he was satisfied that the loan should be written off and that L2G should write off any adverse information it had registered on Mr D's credit file in relation to the loan.

Mr D accepted this recommendation.L2G did not. In summary, it said:

- Mr D's regular use of his overdraft should not be negatively viewed as it was agreed borrowing with his bank.
- Further enquiries were made of the payday loans but these did not raise any concerns about affordability.
- L2G completed income and expenditure forms which clearly showed that Mr D had sufficient disposable income.
- Mr D was able to service the loan prior to his complaint being made which shows that the loan was affordable.

my findings

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

the decision to lend to Mr D was not reasonable

L2G has provided evidence of the affordability assessment it completed in branch. It says that this demonstrates that the loan was affordable as it shows Mr D had sufficient income to support the monthly payments. I disagree. The expenditure assessment does not appear to consider all of Mr D's other borrowing. It only lists two other loans with relatively low monthly payments. However, the list of creditors compiled by Mr D's debt management company only a few days later showed a total of nine different creditors. The credit check that L2G have supplied does not show that it checked what other outstanding credit commitments Mr D had at the time. Instead it appears to have only checked the number of recent credit searches and whether or not Mr D had any CCJ's. This would not provide an accurate picture of what Mr D's actual outgoings were at the time.

When assessing affordability, L2G should conduct sufficient checks to ensure that the credit is not unsustainable for the borrower. The monthly repayments on the L2G loan on its own were already in excess of 35% of Mr D's monthly income. With the two other loans that L2G had listed on Mr D's income and expenditure document his monthly loan repayments were almost 50% of his total monthly income. Whilst I consider this in itself should have alerted L2G to a potential affordability concern, Mr D's bank statements further suggested potential financial difficulty.

These statements showed that Mr D was overdrawn on his current account and had been for a significant period of time. L2G says that it would not be fair to take any negative inferences from this. I disagree. An overdraft can be recalled by a bank at any time and it is also further lending that Mr D would have to repay.

It appears that Mr D regularly exceeded his agreed overdraft limit and had a number of direct debits return unpaid. It is clear from these bank statements that Mr D was supplementing his income regularly using various payday loans and despite this was still going over his overdraft. Mr D had also recently opened a new account with another bank and transferred his income to that account. This meant that in all likelihood he would have to soon repay the overdraft on his old account which stood at around £2,000. All of this information was available to L2G at the time of the application. Given that Mr D was clearly struggling to manage his finances appropriately at the time, I do not consider it was reasonable for L2G to approve a loan which required monthly repayments of over a third of Mr D's monthly income without at least carrying out further and more detailed affordability checks.

Had L2G carried out these checks it would have become apparent that Mr D was already borrowing more than he could afford to repay. L2G considers that because Mr D was able to meet some of the initial monthly payments this shows the loan was affordable. However, E has shown that Mr D was only able to do this by using his relative's credit card accounts to repay his debts.

what L2G must do to put things right

In the circumstances I do not consider that L2G has made a reasonable lending decision in approving the loan. As the loan should not have been approved, L2G should write off the remainder of the debt. It should also ensure that the loan is removed from Mr D's credit file.

Further, I am told that since this case was referred to us the car has now been written off. Mr D's insurer has agreed to pay the claim settlement amount to L2G as the registered owner of the car. I do not consider that in the circumstances it is entitled to the benefit of these funds. I also understand that the insurer will not release the funds until the outstanding insurance premium of £85 is paid. I consider that in the circumstances L2G should pay Mr D the claim settlement amount minus £85. It will then be for L2G to recover this sum from Mr D's insurer should it wish to do so.

my final decision

My final decision is that Loans 2 Go Limited should:

- Write-off the remainder of the loan.
- Remove all record of the loan from Mr D's credit file.
- Pay the amount of the claim settlement sum to Mr D minus the £85 he owed his insurer for his premium.

Loans 2 Go Limited must pay the total compensation within 28 days of the date on which Mr D accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of the final decision until the date of payment at the rate 8% per year simple.

If it considers it is legally required to deduct income tax from that interest, it must send a tax deduction certificate with the payment so that Mr D can reclaim the tax if he is able to.

Joyce Gordon
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