

## **complaint**

Mr P firstly complains about a personal loan provided to him by Loans 2 Go Limited, trading as Loans 2 Go, ("L2G"), which he says was unaffordable. He is also unhappy with L2G's customer service.

## **background**

L2G provided Mr P with a loan of £400 on 1 September 2018. The interest rate was 205.2% (989.9% APR). The loan was to be repaid over 18 months with monthly repayments of £90.62. If Mr P made each payment when it was due, he'd pay £1,631.16 in total. The loan hasn't been repaid.

Mr P said that if adequate checks had been carried out, L2G would have seen that the loan was unaffordable. He had suffered with a gambling addiction for several years and his addiction was the reason for applying for the loan. When he applied for the loan, Mr P was already behind in repaying several payday loans and other credit commitments and he was already in a repayment plan for a £400 loan with a payday loan provider as he could not afford his repayments. That loan should have been visible to L2G if it had looked through his credit report closely. As he could not afford the £400 payday loan (with interest/charges capped at the amount of the loan), Mr P queried how L2G could have believed that he could afford a £400 loan with it that came with well over £1,000 in interest. Mr P also said that he'd exceeded the credit limit on his credit card for over 20 months. He'd also taken out nine payday loans in the two months prior to taking out the loan.

Mr P is also unhappy about the rude way L2G spoke to him in a call in which he was seeking to delay a repayment as he was struggling. Mr P had told L2G that he could make a payment later in the month. Mr P said that a very rude person had said they would not help him. Mr P had told L2G that he could not pay anything that day, and had asked whether L2G would keep harassing him in the meantime? Mr P said that he used the word harassing very clearly and that L2G's staff member had replied "yes". Mr P thought that it was disgusting to be treated like that. Mr P stopped him thereafter and asked him to reconfirm what he'd said. Mr P said that L2G's staff member made up some nonsense saying that he didn't really hear him, but did say sorry for it. Mr P said that apology wasn't enough and made him worry about the company that he was dealing with if this was the attitude of their staff.

In its final response letter for Mr P's first complaint issue, L2G said that it had carried out a thorough affordability assessment. It had asked Mr P for his monthly income and expenditure and reviewed his payslip and credit file. L2G noted that Mr P's payslip showed his income as £2,293.18, although he'd declared a monthly income of £2,500 in his application form. And whilst Mr P declared his expenditure as £1,060, L2G calculated it to be £1,720.11 after reviewing Mr P's credit report and after applying a 5% buffer to allow for fluctuations in Mr P's monthly outgoings. This left a disposable income of £573.07. After deducting the monthly loan payments of £90.62 this left Mr P with a disposable income of £482.45. L2G said that Mr P had enough disposable income to repay the loan. So, it didn't uphold this aspect of Mr P's complaint.

In its response to Mr P's second complaint issue, L2G said that it had listened to the call in question. Having listened to the call L2G said that it could confirm that Mr P's statement was "are you going to continue" to which L2G's staff member responded "yes" prior to the end of the statement. Mr P had then asked its staff member to confirm whether he was stating that it would continue harassing Mr P even though Mr P was unable to pay. In response to this,

L2G's staff member advised that was not what Mr P had previously said and if it was, he'd misheard. The staff member also confirmed that what he meant was that L2G would continue with his account as normal but apologised if he'd misheard Mr P's original statement. So L2G didn't uphold this aspect of Mr P's complaint.

#### *our adjudicator's view*

Our adjudicator assessed the first aspect of Mr P's complaint and recommended that it be upheld. He said that based on the credit checks L2G had completed, he thought L2G should've done more. He said that the checks showed multiple loans that were under arrangements to pay that predated the loan by around a year but also continued up until Mr P requested this loan. This likely suggested that he had been having difficulty repaying many of his loans for a long period of time. He couldn't see that L2G had carried out further checks. The adjudicator had reviewed Mr P's bank statements and found that Mr P was gambling with large portions of his salary. He thought this should've been enough to determine that it may not have been right to agree to lend based on this type of spending on the account.

L2G disagreed. As well as adjusting Mr P's declared income and expenditure as set out above, L2G also said that it had checked Mr P's credit report. This didn't show any adverse information such as accounts that had entered a defaulting or delinquent status within the three years prior to the application or evidence of any county court judgements, individual voluntary arrangements or bankruptcy. L2G said that Mr P was up to date with most of his active accounts and had settled quite a few loans prior to taking out the loan which was a clear indication that he was managing his finances well. L2G also noted that Mr P had honoured the repayment arrangement the adjudicator had referred to and never missed any payments. The lender also said that considering Mr P's credit history, the loan amount and the monthly repayments, L2G believed the checks were proportionate. And based on that information, it concluded that Mr P would be able to afford the repayments relatively comfortably.

L2G also said that Mr P was given the opportunity to tell L2G about his other regular expenses (such as gambling) but he chose not to inform it about this. It also referred to another decision of this Service to support its view. It believed it wasn't unreasonable to rely on the information it had and approved the loan.

As this complaint hadn't been resolved informally, it came to me, as an ombudsman, to review and resolve.

#### *my provisional decision*

After considering all the evidence, I issued a provisional decision on this complaint to Mr P and to L2G on 7 January 2021. I summarise my findings:

I noted that Mr P had asked us to consider both aspects of his complaint and I'd dealt with these under separate headings.

I'd said that L2G had referred to other decisions made by this service that had been published on our website. But I said that we decide each case on its own merits and it wasn't always appropriate to compare the outcomes of complaints without a detailed understanding of the specific facts of each complaint.

#### *Irresponsible lending complaint*

When L2G lent to Mr P the regulator was the Financial Conduct Authority and relevant regulations and guidance included its Consumer Credit Sourcebook (CONC). Its rules and guidance obliged L2G to lend responsibly. As set out in CONC, this meant that L2G needed to take reasonable and proportionate steps to assess whether or not a borrower could afford to meet its loan repayments in a sustainable manner over the lifetime of the agreement.

Repaying debt in a sustainable manner meant being able to meet repayments out of normal income while meeting normal outgoings and not having to borrow further to meet these repayments.

The lender was required to carry out a borrower focussed assessment each time - sometimes referred to as an “affordability assessment” or “affordability check”. Neither the law nor the FCA specified what level of detail was needed to carry out an appropriate assessment or how such an assessment was to be carried out in practice. The FCA said that the level of detail would depend on the type of product, the amount of credit being considered, the associated cost and risk to the borrower relative to the borrower’s financial situation, amongst other factors.

The checks had to be “borrower” focussed – so L2G had to think about whether Mr P could sustainably repay his loan. In practice this meant that the lender had to ensure that making the payments to the loan wouldn’t cause Mr P 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 loan repayments on Mr P.

In general, I thought that a reasonable and proportionate check ought generally to have been more thorough:

- the *lower* a consumer’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 period of time a borrower would be indebted for (reflecting the fact that the total cost of credit was likely to be greater and the borrower was required to make repayments for an extended period).

Bearing all of this in mind, in coming to a decision on the first aspect of Mr P’s complaint, I’d considered the following questions:

- Did L2G complete reasonable and proportionate checks when assessing Mr P’s loan application to satisfy itself that he would be able to repay the loan in a sustainable way? If not, what would reasonable and proportionate checks have shown?
- Did L2G make a fair lending decision?

*Did L2G carry out reasonable and proportionate checks when it provided the loan?*

As set out above, L2G gathered some information from Mr P about his income and expenses before it agreed the loan. It also carried out a credit check.

Mr P had declared that his monthly income was £2,500 and that his expenses were £1,036 including £100 credit commitments.

But I'd thought L2G should have been concerned from its credit checks about Mr P's financial situation. L2G's credit check showed that Mr P had two live short term loans, both taken out in July 2018 and both subject to a payment arrangement at the time. It also showed that Mr P had two other loans subject to a payment arrangement – one taken out in early July 2018 and the other taken out a week earlier. Altogether the total amount borrowed under these four loans was £1,900. Mr P had also taken on another loan for £400 in July 2018 but no repayments for this loan were shown in the checks. The checks also showed that Mr P had three credit card balances at or over their respective credit limits and a current account which was over its overdraft limit. I also thought L2G ought reasonably to have been concerned that Mr P had taken out five loans in the ten weeks leading up to his loan application but that only £100 had been declared for his credit commitments in his loan application.

I'd noted that L2G amended the amount of Mr P's expenses following its credit check to around £1,720. It also amended the amount of his income following sight of his payslip to £2,293.18. I thought L2G should have been concerned about the accuracy of the other information provided in Mr P's application form. For instance, I'd noted that Mr P had said in his application form that he had no dependants, but his payslip showed that he received paternity allowance.

I'd also thought L2G ought to have been concerned about Mr P's ability to repay its loan out of his usual means, without borrowing, as he wasn't managing to do so with his existing debt. It was clear that his finances were already pressured, and he'd also taken on substantially more debt within the previous ten weeks. I didn't think it was likely Mr P would have been able to meet further debt sustainably if he was just servicing his existing debt.

I didn't think L2G treated Mr P fairly when it agreed to lend to him based on the information it would have seen on its credit checks because this showed it was likely that agreeing more credit for him would simply have added to his debt levels. At the least, I thought it would have been reasonable and proportionate for L2G to have looked into Mr P's spending in more detail before doing so. In addition, in view of the amount being lent, the repayment amounts, the length of the loan term and that Mr P's finances in its credit checks were showing signs of strain, I'd thought L2G should reasonably have taken steps to gain a more thorough understanding of Mr P's financial position in order to satisfy itself that he could sustainably repay the loan. L2G didn't say it took steps to do this. So overall, I didn't think that the checks that L2G carried out before agreeing to the loan were reasonable and proportionate.

But that in itself didn't mean that Mr P's complaint should succeed. I also needed to be persuaded that what I considered to be proportionate checks would have shown L2G that Mr P couldn't sustainably afford the loan. So, I'd looked at Mr P's bank statement information to see what better checks would have shown L2G.

*What would reasonable and proportionate checks have shown at the time?*

Mr P had provided his bank statements from around the time he'd applied for the loan. I wasn't suggesting that these were the checks that L2G should have done. But I thought looking at his bank statements gave me the best picture of what the lender should have seen. Had it sought some verification of Mr P's spending, I thought L2G would've been in a better position to have understood Mr P's financial situation before it decided to lend to him.

Had L2G looked into Mr P's finances in more depth, I thought it would have likely found out that he was reliant on short term lending. He had at least nine outstanding short term loans which would have been repayable at the same time as L2G's loan. So, further checks would likely have shown that Mr P had other debts it didn't know about and that Mr P was having significant difficulties managing his money.

It was also clear to me from the bank statement information that Mr P was gambling heavily. I didn't think this was conducive to him being able to sustainably repay this loan. He was spending the rest of his income on his mortgage payments, council tax, living costs and his other regular financial commitments. He told this Service that he was in mortgage debt at the time and had to pay a large part of his wage to try and begin paying back the arrears. I could see that Mr P's expenses were substantially higher than he'd disclosed to L2G.

So, it was clear that further checks wouldn't likely have provided the assurance L2G needed.

As Mr P was borrowing a significant amount of short term loans just to fund his existing expenditure and credit commitments, I thought there was a very real prospect that he would need to borrow again in order to repay his new loan and that would likely have a significant adverse effect on his financial situation.

I'd noted that L2G had said that Mr P's disposable income of £763.20 would be sufficient to make the loan repayments. But it seemed to me that L2G was focussing on its calculation of whether the loan was affordable for Mr P on a pounds and pence basis. But the lender was required to establish whether Mr P could sustainably make his loan repayments – not just whether the loan payments were technically affordable on a strict pounds and pence calculation. The loan payments being affordable on this basis might be an indication that a consumer could sustainably make the repayments. But it didn't automatically follow that this was the case. And as a borrower shouldn't have to borrow further in order to make his payments, it followed that a lender should realise, or it ought fairly and reasonably to realise, that a borrower wouldn't be able to sustainably make his repayments if it was on notice that he was unlikely to be able to make his repayments without borrowing further.

I'd also noted that L2G had referred to Mr P honouring the payment arrangement the adjudicator had referred to and that he'd never missed any payments. But L2G would have been aware from its credit check that Mr P also had four recent payment arrangements which would only have been entered into relatively recently as the loans had only been taken on in the previous ten weeks. I would have thought that L2G would have been concerned by Mr P's need to enter into these.

L2G also said that Mr P was given the opportunity to tell it about his other regular expenses (such as gambling) but he chose not to inform it about this. But I thought L2G would likely have found out about these if it had carried out proportionate checks.

So, if L2G had carried out the independent view of Mr P's circumstances that I thought was needed for this loan, I thought L2G ought reasonably to have realised that it was unlikely that Mr P would have been able to sustainably repay his loan. So, it should reasonably have concluded that it wasn't appropriate to lend to him and so I considered it was irresponsible to have done so. I thought L2G treated Mr P unfairly when it agreed to lend to him, and I intended to say that I was satisfied that this aspect of Mr P's complaint should be upheld.

*Customer service complaint*

I could see that Mr P was unhappy at the way L2G's staff member had spoken to him on the phone. I had set out above in some detail Mr P's concerns and L2G's response. I'd also asked the adjudicator to ask L2G to provide a recording of the call in November 2018 which had led to Mr P's complaint.

L2G had provided a recording of the call and I'd listened to the call several times. I could hear that after Mr P had said he wouldn't be able to make a payment that day, L2G's staff member had said that L2G needed to see some sort of payment on the account and that no payment had been received. L2G's staff member then said that L2G would proceed with the account as normal until it saw some sort of payment and the process would continue. Mr P said that he'd tried to email and then said what sounded like *"so even if a person can't...you'll just continue"*. L2G's staff member then appeared to interrupt Mr P's statement and said that that was exactly what would be happening and that there was nothing it could do from its end. Mr P had then said that he had just asked L2G's staff member if L2G was going to continue harassing him and that L2G's staff member had said "yes – it was going to continue harassing him". But L2G's staff member then said in response that he didn't hear Mr P say "harass" and that he had said that L2G would continue with the process. The staff member then said that if he had misheard Mr P, then he apologised.

I'd said that Mr P would see from my understanding of the call above that I hadn't heard him say *"continue to harass"* and I also hadn't heard L2G's staff member say that L2G was going to continue to harass him. I didn't think that L2G's staff member's response was rude and I thought it was reasonable that the staff member apologised if he had misheard.

So, I didn't think that L2G had acted unfairly with regard to this aspect of Mr P's complaint and subject to any further information or evidence I may receive from the parties, I said I didn't intend to uphold this aspect of Mr P's complaint.

Subject to any further representations by Mr P or L2G my provisional decision was that I intended to uphold Mr P's irresponsible lending complaint and say that L2G should put things right as shown below. I understood that the loan hadn't been repaid.

### **Putting things right – what L2G needs to do**

In line with this Service's approach, Mr P shouldn't repay more than the capital amount of £400 he borrowed for his loan.

If L2G has sold the outstanding debt it should buy it back if it is able to do so or chooses to do so and then take the steps listed below. If L2G isn't able to buy the debt back or chooses not to, then it should liaise with the new debt owner to achieve the results outlined below.

1. Remove any interest and charges applied to Mr P's account from when it was opened;
2. Treat all payments made by Mr P as payments towards the capital amount.
3. If Mr P has made payments above the capital amount, then these should be refunded to him, along with simple interest at the rate of 8% per year on these amounts from the date they were paid to the date of settlement\*;
4. If there is a shortfall in repayments which leaves a capital amount outstanding, then L2G needs to treat Mr P sympathetically and fairly, which may include coming to a new arrangement about how best to repay this; and

5. L2G should remove any adverse information recorded on Mr P's credit file up to this point in relation to the loan.

\*HM Revenue & Customs requires L2G to take off tax from this interest. L2G must give Mr P a certificate showing how much tax it's taken off if he asks for one.

Mr P responded to my provisional decision to say that he accepted it and didn't have any more information to pass to this Service.

L2G hasn't provided a response to my provisional decision.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Given that Mr P and L2G have given me nothing further to consider, I see no reason to depart from the conclusions I reached in my provisional decision. It follows that I uphold part of the complaint and require L2G to pay Mr P some compensation and take the steps set out above under the heading "Putting things right – what L2G needs to do".

### **my final decision**

My decision is that I uphold this complaint in part. In full and final settlement of this complaint I order Loans 2 Go Limited, trading as Loans 2 Go, to put things right as I've set out above under the heading "Putting things right – what L2G needs to do".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 17 March 2021.

Roslyn Rawson  
**ombudsman**