DRN-4947402

The complaint

Mr W has complained that Loans 2 Go Limited ("L2G") gave him a loan without properly considering his finances. Had it carried out further checks, L2G would've concluded he couldn't afford to repay it.

What happened

Mr W was advanced one loan of £1,500 on 10 July 2023, and he was due to make 24 monthly repayments of £92.65. If Mr W repaid the loan in line with the credit agreement, he would've repaid a total of £2,223.60. The loan had a fixed APR of 49.8%. Based on the statement of account an outstanding balance still remains due.

Following Mr W's complaint, L2G explained it wasn't going to be upholding the complaint because the checks it conducted showed Mr W could afford his repayments. Unhappy with this response, Mr W referred the complaint to the Financial Ombudsman.

An investigator upheld Mr W's complaint about the loan because she said the credit check results given to L2G suggested that Mr W was already over indebted and had recently missed contracted payments. He was over a credit card limit and close to the limit on another credit card. So, she didn't think Mr W could afford to take on new debt.

L2G responded and didn't agree with the proposed outcome. It said proportionate checks were conducted and there were no 'triggers' which meant there was no need to review Mr W's bank statements. While Mr W had other lines of credit there isn't anything to suggest that he was struggling to meet his existing payments. Mr W made his loan payments which show the loan was both affordable and sustainable for him.

As no agreement could be reached the complaint has been passed to me to decide.

What I've decided – and why

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

We've set out our general approach to complaints about unaffordable/irresponsible lending - including all of the relevant rules, guidance and good industry practice - on our website. And I've used this approach to help me decide Mr W's complaint. Having carefully considered everything I've decided to uphold Mr W's complaint. I'll explain why in a little more detail.

L2G needed to make sure it didn't lend irresponsibly. In practice, what this means is it needed to carry out proportionate checks to be able to understand whether Mr W could afford to repay any credit it provided.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for checks to be less thorough – in terms of how much information is gathered and what is done to verify it – in the early stages of a lending relationship.

But we might think more needed to do be done if, for example, a borrower's income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So, we'd expect a firm to be able to show that it didn't continue to facilitate loans to a customer irresponsibly.

I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Mr W's complaint.

Mr W declared he received an income of £5,500 per month from full time employment. L2G says Mr W's income figure was verified through a credit reference agency which suggested Mr W's declared income was accurate.

As part of the application data provided by L2G, Mr W said that he had outgoings totalling £1,700 per month. However, as part of the assessment L2G considered averages from the Office of National Statistics (ONS), and any values given by Mr W which fell below the ONS averages would be uplifted to the ONS value. It also considered the results of the credit search and having carried out these checks, it estimated Mr W's monthly outgoings came to £4,852 – which is significantly more than what Mr W declared.

Based on the figure Mr W declared, and when taking into account the amount of expenditure that L2G discovered from its own checks, it still appeared that Mr W had sufficient disposable income to afford the loan.

L2G also carried out a credit search and it has provided the results it received from the credit reference agency. Superficially, there wasn't adverse data such as insolvencies or County Court Judgements.

But L2G knew that the £900 per month Mr W had declared as part of his application for his credit commitments couldn't possibly be accurate. As the Investigator pointed out, there were 11 active credit cards, with total balances of £30,464. There were five existing loans which were costing Mr W more than £1,000 per month to service – with total outstanding balances of over £27,000. There was also a hire purchase agreement with a significant balance but that was costing Mr W £459 per month.

On top of this, L2G knew that in May 2023, Mr W had recently taken on another loan of £7,500 and another loan of £6,000 in November 2022. So, I do have to question why L2G thought, that a further £1,500 loan was affordable and sustainable, when in the months leading up to the loan being granted Mr W had already taken over £13,000 of new lending. I would also question whether L2G had really got to grips with Mr W's overall indebtedness, because at the time he had over £90,000 of unsecured lending.

Mr W was also showing signs of having problems managing a couple of his credit cards. He had a credit card that was in arrears of one month but had also been a month in arrears in February 2023 – he was also over this cards credit limit.

There was also another card, Mr W had had problems repaying that ended up being two months in arrears by March 2023. So, I disagree with L2G – there were clear indicators from the credit report that Mr W was, at times struggling to manage his existing credit accounts.

L2G was also aware the cost Mr W had given for his "*home cost*" wasn't accurate either – the credit file shows this to be £872 per month. There is no indication whether this was a joint mortgage (or not) but in any event, L2G was on notice that this figure wasn't accurate.

Finally, although this wouldn't be enough on its own, it knew that Mr W was fully utilising his overdraft of nearly £9,500 – and this was of course more than his monthly income so even after being paid he still would've been significantly overdrawn before any other costs are considered.

I have thought about whether all of this ought to have led L2G to carry out further checks before lending – perhaps by verifying the information it had discovered. However, having thought about the individual circumstances of the complaint, I do think the credit file ought to have led L2G to decline the application, given the amount of unsecured debt Mr W already had coupled with the repayment problems that he had experienced in the months leading up to this loan.

As this is the case, I think L2G had information which meant Mr W was unlikely to be able to afford the payments to this loan, without undue difficulty. It therefore follows that Mr W is currently expected to pay interest, fees and charges on a loan that he shouldn't have had. So, I'm satisfied that Mr W has lost out and L2G should put things right for him as set out below.

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

Putting things right

L2G shouldn't have provided the loan to Mr W, and the redress below puts him in the position, as far as possible, as if the loan hadn't been granted.

- remove all interest, fees and charges applied to Mr W's loan from the outset. The payments Mr W made, whether to L2G or any third-party, should be deducted from the new starting balance – the £1,500 originally lent. If Mr W has already paid L2G more than £1,500 then it should treat any extra as overpayments. And any overpayments should be refunded to Mr W;
- L2G so add interest at 8% per year simple on any overpayments, if any, from the date they were made by Mr W to the date of settlement*
- however, if an outstanding balance still remains due then L2G should try and work with Mr W to repay what is owed.
- if no outstanding balance remains after all adjustments have been made, any adverse information L2G may have recorded about this loan should be removed from Mr W's credit file.

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

My final decision

For the reasons I've outlined above, I am upholding Mr W's complaint.

Loans 2 Go Limited should put things right for Mr W as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 13 September 2024.

Robert Walker

Ombudsman