

Complaint

Mr M has complained about a loan Loans 2 Go Limited (“L2G”) provided to him. He says the loan was unaffordable and this would have been determined had proportionate checks been carried out.

Background

L2G provided Mr M with a loan for £1,000.00 in May 2023. The loan had an APR of 772.1% and a 18-month term. This meant that the total amount to be repaid of £3,700.08, which included interest, fees and charges of £2,700.08, was due to be repaid in 18 monthly instalments of £205.56.

One of our adjudicators looked at this complaint and thought that L2G didn’t act unfairly when providing this loan. Mr M disagreed with our adjudicator and so the case was passed forward for an ombudsman to review the complaint.

Mr M disagreed so the case was passed to an ombudsman.

My provisional decision of 11 September 2023

I issued a provisional decision – on 11 September 2023 - setting out why I intended to uphold Mr M’s complaint. I won’t copy that decision in full, but I will instead provide a summary of my findings.

I started by explaining that we’ve explained how we handle complaints about unaffordable and irresponsible lending on our website. And that I had used this approach to help me provisionally decide Mr M’s complaint.

L2G needed to make sure it didn’t lend irresponsibly. In practice, what this means is L2G needed to carry out proportionate checks to be able to understand whether Mr M 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 a lender’s checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship.

But we might think it needed to do more 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 lender to be able to show that it didn’t continue to lend to a customer irresponsibly.

I considered what L2G had done and its actions in light of this.

I accepted that L2G might have argued that a light touch assessment was proportionate for Mr M’s loan. But I was mindful that it didn’t agree with the declaration of income that Mr M

provided. Furthermore, the credit checks it carried out showed Mr M had a history of defaulted accounts and he was at the limit on a number of his revolving credit accounts.

So I was persuaded by what Mr M had said about already being in a difficult financial position at the time. And I thought that while it was possible his credit file reflected his choices rather than because he was struggling, particularly given the large number of agreements with communications providers, I added that my experience of these types of cases suggest that this was unlikely, I was satisfied that further checks would have been proportionate here.

I thought that if L2G had carried out further checks before providing these loans, it would have seen that Mr M was on a fixed income due to being on benefits and struggling to manage his finances. Indeed, most of his income was being taken up by his existing living costs and repayments to his existing commitments. I could even see that he was even only making token payments to some of his existing creditors.

Bearing all of this in mind, I was satisfied that reasonable and proportionate checks would more likely than not have demonstrated that Mr M would not have been able to make the repayments to this loan without borrowing further and/or suffering undue difficulty.

And as that was the case, I thought that reasonable and proportionate checks would more likely than not have alerted L2G to the fact that Mr M was in no sort of position to make the payments to this loan without suffering significant adverse consequences.

As L2G provided Mr M with this loan, notwithstanding this, I was minded to conclude that it failed to act fairly and reasonably towards him. Mr M had ended up paying and was still being expected to pay interest, fees and charges on a loan he shouldn't have been provided with. So this left me intending to find that Mr M had lost out because of what L2G did wrong and that it needed to put things right.

I then turned to what Mr M had said about his loan breaching the high-cost short-term credit cost cap. Nonetheless, while I considered what he had said and accepted that there was absolutely no argument that the 771.2% APR meant that his loan was high-cost, I was satisfied that the 18-month term and the corresponding amortisation schedule meant that the loan was not due to be substantially repaid within 12 months.

So I didn't think that Mr M had been provided with high-cost short-term credit and this meant that the interest to be paid wasn't in breach of the cost cap in CONC 5A.2. For the sake of completeness I thought that what I was proposing L2G needed to do to put things right for Mr M for irresponsibly lending to him, meant that I wouldn't have awarded anything further even if the interest on the loan had breached the cost cap. And this meant that I didn't uphold this part of Mr M's complaint.

Responses to my provisional decision

Mr M confirmed asked for confirmation of how his loan would work moving forward in terms of payments and credit file reporting.

L2G disagreed with my provisional decision. It said that while Mr M had defaulted on a few agreements these were from 2017. In its view, Mr M was up to date with all of his active commitments and this indicated that he could repay this loan.

Finally, it said as a subprime lender it lent to people who had negative information on their credit file and may not have had a good credit score, as long as they can demonstrate that they can repay their loan instalments sustainably.

My findings

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

I set out in some detail why I intended to uphold Mr M's complaint in my provisional decision of 11 September 2023. L2G has disputed my findings saying that Mr M's previous difficulties with credit were historic.

I've considered what L2G has said. I accept that Mr M's defaults were historic. Nonetheless, the copy of the credit search provided does indicate that he was at the limit on a number of his revolving credit accounts

In any event, I'm not suggesting that Mr M's previous difficulty with credit in itself meant that L2G shouldn't have lent to him. But I do think that this coupled with Mr M's income being significantly lower than he'd declared mean that further checks were necessary to demonstrate that Mr M could repay any further borrowing sustainably.

I simply don't agree that Mr M being close to the limit on his revolving credit accounts was an indication that he was managing his finances well. And I certainly don't see how this meant that he would be able to repay a further £205 a month sustainably.

Mr M has queried what will happen with the payments to this loan going forwards. If, as I suspect is the case, an outstanding balance remains on the loan once all interest, fees and charges have been removed, L2G should contact Mr M to arrange a suitable repayment plan. I would encourage Mr M to get in contact with and cooperate with L2G to reach a suitable agreement for this.

Finally, in terms of Mr M's credit file, L2G only needs to remove any adverse information if there is no balance remaining to be paid, once all interest, fees and charges have been removed from the outset. If an outstanding balance remains then L2G should reflect whatever arrangement it reaches with Mr M for this to be repaid on his credit file going forward.

Overall and while I've considered the further comments that the parties have made in response to my provisional decision of 11 September 2023, I've not been persuaded to alter my conclusions. I'm therefore still upholding Mr M's complaint. And I remain satisfied that L2G needs to put things right in the way that I had set out.

Fair compensation – what I think L2G needs to do to put things right for Mr M

Having thought about everything, I'm satisfied that L2G should put things right for Mr M by:

- removing all interest, fees and charges applied to the loan from the outset. The payments Mr M made, whether to L2G or any third-party debt purchaser, should be deducted from the new starting balance – the £1,000.00 originally lent. If Mr M has already repaid more than £1,000.00 then L2G should treat any extra as overpayments. And any overpayments should be refunded to Mr M;

- adding interest at 8% per year simple on any overpayments, if any, from the date they were made by Mr M to the date of settlement†;
- if no outstanding balance remains after all adjustments have been made, all adverse information L2G recorded about this loan should be removed from Mr M's credit file. Should an outstanding balance remain, L2G should reflect whatever arrangement it reaches with Mr M for this to be repaid on his credit file.

† HM Revenue & Customs requires L2G to take off tax from this interest. L2G must give Mr M a certificate showing how much tax it has taken off if he asks for one.

My final decision

For the reasons I've explained above and in my provisional decision of 11 September 2023, I'm upholding Mr M's complaint. Loans 2 Go Limited should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 23 October 2023.

Jeshen Narayanan
Ombudsman