DRN-4489563

Complaint

Miss O has complained that Loans 2 Go Limited ("L2G") provided her with unaffordable loans.

Background

L2G initially provided Miss O with a loan for £250 in February 2021. This loan had an APR of 1,013.2% and an 18-month term. This all meant the total amount repayable of £1,028.08, was due to be repaid in 18 instalments of £57.14. Miss O repaid this loan in full within a few days.

In February 2022, L2G then provided Miss O with a second loan for £450. This loan had an APR of 770.0% and an 18-month term. This all meant the total amount repayable of £1,665.00, was due to be repaid in 18 instalments of £92.50.

One of our investigators looked at this complaint and thought that L2G unfairly provided these loans as proportionate checks would have shown they were unaffordable.

L2G disagreed with our investigator's assessment and consequently asked for an ombudsman to review the complaint.

My findings

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 the key rules, guidance and good industry practice - on our website. And I've referred to this when deciding Miss O's complaint.

Having carefully thought about everything, I think that there are two overarching questions that I need to answer in order to fairly and reasonably decide Miss O's complaint. These two questions are:

1. Did L2G complete reasonable and proportionate checks to satisfy itself that Miss O would be able to repay her loans in a sustainable way?

    - o If so, did it make a fair lending decision?
    - o If not, would those checks have shown that Miss O would've been able to do so?

2. Did L2G act unfairly or unreasonably in some other way?

Did L2G complete reasonable and proportionate checks to satisfy itself that Miss O would be able to repay her loans in a sustainable way?

L2G provided these loans while it was authorised and regulated by the Financial Conduct Authority ("FCA"). The rules and regulations in place required L2G to carry out a reasonable and proportionate assessment of Miss O's ability to make the repayments under these agreements. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower" focused – so L2G had to think about whether repaying the loan would cause significant adverse consequences *for Miss O*. In practice this meant that L2G had to ensure that making the payments to the loan wouldn't cause Miss O 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 the loan repayments on Miss O. 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 consumer (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 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 been for a given loan application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances.

I've carefully thought about all of the relevant factors in this case.

Were L2G's checks reasonable and proportionate?

L2G says that it carried out an income and expenditure assessment with Miss O prior to providing her with these loans. It also carried out credit checks. Miss O declared that she was earning around £3,500.00 a month at the time of her loans.

L2G checks suggested Miss O's income was closer to £3,200.00 and it calculated her expenditure to be close to £2,800.00 based what it saw on her credit file. In its view this left her with enough to cover the payments to these loans.

I've carefully considered what L2G has said. But L2G's credit checks clearly show Miss O was significantly indebted had a history of arrangements to pay, was now over the limit on one of her revolving credit accounts, towards the limit on her overdraft and also had been regularly applying for further credit. This was in circumstances where Miss O had also taken out a short-term loan between loans 1 and 2 either.

So while Miss O may not have had any accounts in default or had any County Court Judgments taken out against her, I think it would be incorrect to conclude this meant that she was in a great financial position, or that credit searches in themselves meant that Miss O could repay these loans without difficulty or borrowing further.

Furthermore, as Miss O was over the limit on one of her accounts, I'd dispute that she was up-to-date with her commitments. I'd also point out that even if Miss O applied for a short-term loan between loan 1 and 2 because she was refinancing, as L2G argues, I think that this in itself ought to have been concerning. At best this ought to have suggested that Miss O might have been borrowing to repay and L2G ought to have taken further steps to ensure this wasn't the case.

Bearing all of this in mind, I think that L2G needed to take steps to verify Miss O's actual monthly expenditure. As I can't see that this L2G did do this, I don't think that the checks it carried out before providing Miss O with her loans were reasonable and proportionate.

Would reasonable and proportionate checks have indicated to L2G that Miss O would have been unable to repay these loans?

As reasonable and proportionate checks weren't carried out before these loans were provided, I can't say for sure what they would've shown. So I need to decide whether it is more likely than not that a proportionate check would have told L2G that Miss O would have been unable to sustainably repay this loan.

L2G was required to establish whether Miss O could make her loan repayments without experiencing significant adverse consequences – not just whether the loan payments were technically affordable on a strict pounds and pence calculation.

I've carefully considered the information provided. Having done so, I'm satisfied that it is more likely that not that Miss O was borrowing further to repay previous loans, or at the very least borrowing to fill the hole that repaying previous loans was leaving in her finances.

In my view, proportionate checks would have shown L2G that Miss O was struggling and most importantly the reasons for this would have been clear. I think it's likely that Miss O was borrowing this loan to use in the same way as previous lending, which meant she was unlikely to be able to repay it without borrowing further or suffering significant adverse consequences.

Bearing all of this in mind, I'm satisfied that reasonable and proportionate checks would more likely than not have demonstrated that Miss O would not have been able to make the repayments to these loans without borrowing further and/or suffering undue difficulty. And, in these circumstances, I find that reasonable and proportionate checks would more likely than not have alerted L2G to the fact that Miss O was in no sort of position to make the payments on these loans without suffering significant adverse consequences.

Did L2G act unfairly or unreasonably towards Miss O in some other way?

I've carefully thought about everything provided. And having done so, I've not seen anything to suggest that L2G acted unfairly or unreasonably towards Miss O in some other way. So I don't think L2G acted unfairly or unreasonably towards Miss O in some other way.

Did Miss O lose out as a result of L2G unfairly providing her with these loans?

As Miss O paid and is being expected to pay a high amount of interest and charges on loans that she shouldn't have been provided with, I'm satisfied that she has lost out as a result of what L2G did wrong.

So I think that L2G needs to put things right.

Fair compensation – what L2G needs to do to put things right for Miss O

Having thought about everything, I think it would be fair and reasonable in all the circumstances of Miss O's complaint for L2G to put things right by:

- refunding all interest, fees and charges Miss O paid on loan 1;

- adding interest at 8% per year simple on any refunded payments from the date they were made by Miss O to the date of settlement†;

- removing all interest, fees and charges applied to loan 2 from the outset. The payments Miss O made, whether to L2G or any third-party debt purchaser, should be deducted from the new starting balance – the £450 originally lent. If Miss O has already paid more than £450 on this loan, whether to L2G or any third-party debt collector, then L2G should treat any extra as overpayments. And any overpayments should be refunded to Miss O. If an outstanding balance remains after all adjustments have been made, L2G can use any compensation due from loan 1 to reduce and/or clear the balance on loan 2.

- removing all adverse information it recorded on Miss O's credit file as a result of loan 1. L2G only needs to remove adverse information, it is responsible for recording, as a result of loan 2 should no outstanding balance remains after all adjustments have been made.

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

I understand that L2G sold an outstanding balance on loan 2 to a third-party debt purchaser. So it will need to either buy the debt back from the third-party and make the necessary adjustments, pay an amount to the third party (equivalent to that needs to be made on Miss O's account) in order for it to make the necessary adjustments, or pay Miss O an amount (equivalent to the interest, fees and charges which need to be refunded) to ensure that it fully complies with this direction.

My final decision

For the reasons I've explained, I'm upholding Miss O's complaint. Loans 2 Go Limited needs to put things right in the way set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss O to accept or reject my decision before 3 January 2024.

Jeshen Narayanan
Ombudsman