

The complaint

Mr F complains about a loan provided to him by Everyday Lending Limited, trading as Everyday Loans, ("ELL"), which he said was unaffordable. He is also unhappy about the amount of his outstanding loan balance.

What happened

ELL agreed a loan for Mr F for £4,100 which was taken out on 7 December 2018. The loan was to be used in part to consolidate three payday loans. It was to be repaid by 48 monthly repayments of £256.12. If each payment was made when it was due, the total amount repayable would be £12,293.76. The interest rate was 70.9% (99.1% APR). From the information I've seen, the loan hasn't yet been repaid.

Mr F said that he approached ELL for a loan as he'd been struggling financially for some time due to payday loans. When he met with ELL's agent, Mr F said that they could see that he was in a vulnerable position with around six or seven outstanding payday loans. Mr F also had other debts and credit card bills which needed to be paid. He used the loan to pay off some of the payday loans, reduce credit card bills and pay other debts. But not all his debts could be cleared and before long Mr F was using other payday lenders again to try and keep up with all his other repayments which started the cycle again. He had entered into a debt management plan in September 2019.

ELL provided a final response letter for each aspect of Mr F's complaint. With regard to the amount of the outstanding loan balance, it said that that Mr F's account was rescheduled in October 2019. Under the terms of the reschedule, he wouldn't repay more than the original total amount repayable. So, it couldn't agree that the outstanding balance was excessive or unfair.

With regard to Mr F's complaint about irresponsible lending, ELL said it used the lowest salary amount on the two bank statements it had seen to work out his monthly income of £2,899.08. It also noted Mr F's rent amount of £300. ELL obtained and reviewed two months' bank statements from Mr F's primary bank account, conducted a credit search and carried out a job check. It used statistical data to calculate Mr F's living expenses and applied a buffer to the living expenses amount to accommodate any unexpected minor changes in Mr F's circumstances or one-off additional expenses. Mr F's monthly financial commitments together with his general living expenses (based on statistics) were calculated as £1,524.25. So, it said that Mr F had a monthly disposable income of £1,118.71 after taking into account ELL's loan repayment. ELL believed that the checks it completed were reasonable and proportionate and that the loan was sustainable over the loan term as Mr F had disposable income. It believed that Mr F would have been able to make the repayments to his loan without undue difficulty over the life of the credit agreement assuming there was no significant unforeseen change in circumstances and no drastic increase in borrowing.

The investigator didn't recommend that the complaint should be upheld. She said that ELL had carried out proportionate checks before the loan. She could see that ELL had asked Mr F about his monthly income and asked him to provide his bank statements to verify his income. She noted that Mr F had another current account, but ELL hadn't asked for

statements for that account. She couldn't say that any of the information ELL had prior to lending should have prompted it to complete further checks or deter it from lending to Mr F.

The investigator also noted that Mr F was unhappy with the amount of his outstanding loan balance. Having reviewed the information provided she said that it appeared that any rescheduling made on his account hadn't impacted the total amount that he would repay.

Mr F responded to say that he'd seen other cases against ELL where the APR had been challenged despite being agreed by both parties. He also said that ELL could have done more when lending to someone in a vulnerable position, especially when encouraging that person to take the maximum available. Mr F disagreed that ELL had reviewed his credit report thoroughly to understand the outstanding balances. He disagreed that the appropriate checks had been carried out.

As the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, 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.

I have also taken into account the law, any relevant regulatory rules and good industry practice at the time.

I note that Mr F has referred to other cases. But we assess each case on its own merits and it isn't appropriate to compare the outcomes of complaints as the circumstances may be very different.

I have dealt with each aspect of Mr F's complaint separately below.

Irresponsible lending complaint

When ELL lent to Mr F the regulator was the Financial Conduct Authority and relevant regulations and guidance included its Consumer Credit Sourcebook (CONC).

ELL was entering into a regulated credit agreement. So, it had to carry out a reasonable assessment of Mr F's creditworthiness before it entered the agreement. This means that ELL had to consider both the risk to it that Mr F wouldn't make the repayments under the agreement when due, and the risk to Mr F of not being able to make these repayments.

In particular, ELL had to consider Mr F's ability to make repayments under the agreement as they fell due over the life of the agreement, without him having to borrow to meet the repayments, without him failing to make any other repayment he had a contractual or statutory duty to make, and without the repayments having a significant adverse effect on his financial situation.

The rules don't set out any specific checks which must be completed to assess creditworthiness. But the lender should take into account the borrower's income (over the full term of the loan) and their ongoing expenditure for living expenses and other debts. Whilst it is down to the lender to decide what specific checks it wishes to carry out these should be reasonable and proportionate to the type and amount of credit being provided, the length of the term, the frequency and amount of the repayments and the total cost of the credit. So, a lender's assessment of creditworthiness would need to be flexible and what is appropriate

for one person might not be for another. And what might be sufficient for a borrower in one circumstance might not be so for the same borrower in other circumstances.

In general, I'd expect a lender to require more assurance the greater the potential risk to the consumer of not being able to repay the credit in a sustainable way. So, for example, I'd expect a lender to seek more assurance by carrying out more detailed checks

- 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 will be indebted for (reflecting the fact that the total cost of credit is likely to be greater and the borrower is required to make repayments for an extended period).

Bearing all of this in mind, in coming to a decision on Mr F's case, I have considered the following questions:

- Did ELL complete reasonable and proportionate checks when assessing Mr F'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 ELL make a fair lending decision?

Did ELL complete reasonable and proportionate checks when assessing Mr F's loan application to satisfy itself that he would be able to repay the loan in a sustainable way?

I note that ELL made a number of checks before it lent to Mr F. ELL asked for his rent amount and calculated his living expenses according to statistical data. It said these were £803. It also carried out credit checks. I can also see that ELL had obtained Mr F's main bank account statements for October 2018 and November 2018. From its notes on the statements, I can see that it checked Mr F's monthly income and certain other transactions on the statements. ELL calculated that Mr F would have a disposable income of around £1,118.73 after his monthly repayment was made. This was on the basis that he repaid his three payday loans totalling £1,665.85 from the loan proceeds, so that he would have monthly credit repayments of £421.23 remaining to be paid. I can see that ELL's Go Live Audit form refers to this.

I've reviewed the results of ELL's credit checks. I can see that there was one payday loan for £600 taken out in October 2018 and a large loan with a balance of around £8,200 taken out in August 2018. It appears that this second loan had been used to buy a car.

Mr F also had a current account balance of £2,499 which was around his overdraft limit. There were also six credit cards, each with balances very near their respective credit limits. Whilst Mr F's bank overdraft and credit card accounts were approaching their limits, they were within them.

I can also see that Mr F had taken out a £700 loan (which Mr F's credit report showed was a payday loan) four months before his loan application which had been repaid in October 2018. Mr F had also repaid what appeared to be four other payday loans that year. I also note that ELL had seen two other recent payday loans on Mr F's bank statement for November 2018 which it required Mr F to pay from the loan proceeds. I can see that Mr F's heavy payday loan use in the past might have suggested that he had problems managing his money. But ELL's loan was being taken to consolidate Mr F's existing payday loans so

that might have broken the cycle for Mr C. It's not uncommon that the sole reason for repeated payday loan use stems from the need to repay earlier loans.

I can see that ELL obtained bank statements from Mr F for October 2018 and November 2018 for the current account into which his salary was paid. ELL has provided this Service with copies of these.

I've reviewed the bank statements Mr F provided to ELL. I can see that it made notes on the statements regarding certain transactions. It appears that it would have asked Mr F about these when they met.

The bank statements ELL saw show no apparent issues such as gambling, returned payments or an unauthorised overdraft. The bank account was managed well, and Mr F generally maintained the account in credit. It is clear that Mr F was spending much more than his income although much of the spending doesn't appear to be on essential living costs. I can see that in October 2018 the transactions made significantly exceeded the amounts received by about £800. This excess had reduced to around £230 in November 2018. But I think in Mr F's circumstances it might not have been unreasonable for ELL to think that some of Mr F's discretionary expenditure might cease when his finances had been stabilised by taking the consolidation loan.

I can see that Mr F would still have had credit commitments to repay after his payday loans were repaid. ELL said that these were around £421 on its Go-Live Audit document and I note that ELL had accounted for these in its assessment. It seems from the bank statements that Mr F was actually paying a total of between £445 and 495 for his monthly credit commitments (excluding the three payday loans and a loan he repaid at the end of November 2018). I can also see that the statements only showed payments for four of his six credit cards in October 2018 and three of his six credit cards in November 2018. So, it seems likely that he had missed repayments on these accounts in those months and likely he needed to pay more than £495 for his monthly credit commitments. But it doesn't appear likely that an increased amount for credit commitments to cover repayments on all his credit cards would have made ELL's loan unsustainable.

The statements also appeared to show that Mr F had at least two other current accounts. It made a note of this but didn't ask to see statements for those accounts. But I think it also needed to see these to obtain a true and complete picture of Mr F's financial circumstances. I asked the investigator to ask Mr F to send us his statements from these other accounts. I refer to these below.

What would further checks have shown?

Mr F has provided this Service with some bank statements for his two other current accounts from around the time of his loan application. I'm not suggesting here that these were the checks that ELL should have done. But I think looking at these gives me the best picture of what the lender would have likely seen if it had carried out further checks.

I've reviewed the statements for Mr F's other current accounts. One had been around its overdraft limit for some time and was being used for account transfers. The other account had recently been opened. Mr F was paying for some food and drink from that account as well as making account transfers. But, there were again no apparent issues such as gambling, returned payments or an unauthorised overdraft.

So, if ELL had made these further checks, I'm not persuaded they were likely to have given ELL additional concerns.

So, looking at everything in the round, I haven't seen enough to find that ELL ought to have declined to lend to Mr F. I appreciate how disappointing my decision will be for Mr F. It does seem from his December 2018 bank statement that his finances worsened just before he applied for the loan. But that wasn't something Mr F declared to ELL. And, I wouldn't have reasonably expected ELL to have asked for Mr F's up to date bank statement for his main account covering the first week of December 2018. It had already seen recent statements for this account and there was no indication on the supplied bank statements that there were any serious problems such as gambling or returned payments. So overall, I'm not persuaded that ELL made an unfair lending decision on this occasion.

Loan balance amount complaint

I note that Mr F has also complained about the amount of his outstanding loan balance. As I hadn't seen current information about Mr F's loan balance, I asked the investigator to obtain a current loan statement from ELL.

ELL provided a current loan statement. There were three figures given at the end of the statement as follows:-

Total interest balance £5,434.39
Closing balance main loan ££3,020.50
Total future payments £5,778.91

It wasn't clear to me from the information in the statement as to how much the outstanding balance was. I'd noted that the total amount due from Mr F under the loan agreement was £12,293.76 and that ELL had previously said that he would not be paying any more than this amount if he made reduced payments. I could also see from the loan statement that Mr F had paid £6,513.89. So, I'd calculated that around £5,780 was due from Mr F.

I asked the investigator to ask ELL to confirm the total outstanding balance due and it responded to say that the contractual required balance was £5,780. So, I can't say that the loan balance is incorrect. It follows that I don't uphold this aspect of Mr F's complaint.

So, I'm sorry to disappoint Mr F, but for the reasons set out above, it follows that I don't uphold his complaint.

Although I'm not upholding Mr F's complaint, I'd like to remind ELL of its ongoing obligation to continue to exercise forbearance, should it choose to collect payments from Mr F and if it's the case that he's in financial difficulty.

My final decision

My decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 18 August 2021.

Roslyn Rawson
Ombudsman