DRN-2832228

The complaint

Ms S says Everyday Lending Limited (ELL) lent to her irresponsibly.

What happened

Ms S took out a 36-month instalment loan from ELL on 8 October 2015 for £2,700. The monthly repayment was £160.93 and the total repayable was £5,793.48.

Ms S says ELL didn't complete adequate checks, had it done it would have seen the loan was not affordable for her.

Our investigator recommended Ms S's complaint should be upheld. He said as ELL's checks showed Ms S would have very little disposable income it should have carried out a fuller review of Ms S's financial position before agreeing to lend.

ELL did not respond to this assessment, despite committing to and being chased more than once. So the complaint has been passed to me to make a final decision.

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.

Our approach to unaffordable/irresponsible lending complaints is set out on our website and I've followed it here.

The Financial Conduct Authority (FCA) was the regulator when ELL lent to Ms S. Its rules and guidance, set out in its Consumer Credit Sourcebook (CONC), obliged ELL to lend responsibly. Amongst other things, ELL was required to carry out a reasonable and proportionate assessment of whether Ms S could afford to repay what she owed in a sustainable manner. This is sometimes referred to as an affordability assessment or an affordability check.

The checks also had to be borrower-focused. So ELL had to think about whether repaying the credit sustainably would cause any difficulties or adverse consequences for Ms S. In other words, it wasn't enough for ELL to simply think about the likelihood of it getting its money back, it had to consider the impact of the loan repayments on Ms S.

Checks also had to be proportionate to the specific circumstances of each loan application. In general, what makes up 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 and cost of credit they have applied for.

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 repayments to credit from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet higher repayments 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 the credit is likely to be greater and the customer is required to make repayments for an extended period).

There may also be other factors which could influence how detailed a proportionate check should've been for a given application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. I've kept all of this in mind when thinking about whether ELL did what it needed to before agreeing to lend to Ms S, and have considered the following questions:

- did ELL complete reasonable and proportionate checks when assessing Ms S's loan application to satisfy itself that she 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 act unfairly or unreasonably in some other way?

ELL asked for some information from Ms S before it approved the loan. It asked for details of her income and estimated her monthly costs using national statistics. It checked her income against bank statements. It reviewed her credit file to understand her credit history and existing commitments. It also asked about the purpose of the loan which was in part debt consolidation. From these checks combined ELL concluded that Ms S had enough monthly disposable income to afford the loan.

I am not persuaded ELL made a fair lending decision based on the information it gathered. From its affordability assessment it concluded Ms S would have £22.65 monthly disposable income after taking on this loan and settling her mail order account. I don't think that was enough for her to maintain financial stability given she had two dependents and the loan was for a three-year period. I don't think ELL's checks were sufficiently borrower-focused and considered Ms S's personal circumstances. Had they done so I think ELL would have realised the loan left Ms S without enough money to cover any unplanned or seasonal expenses. This put her at risk of being unable to make her repayments without borrowing to repay or suffering other adverse financial consequences.

Our investigator thought that given the results of its checks ELL ought to have carried out a fuller review before agreeing to lend. He said it had copies of Ms S's recent bank statements so could have checked her actual expenses rather than using national statistics. I am minded to say that after its initial checks ELL should have decided it would not be responsible to progress. But even adopting the approach that it should have done further checks, I reach the same conclusion that it was wrong to lend.

I can see from the bank statements Ms S provided to ELL at the point of application that the income figure ELL used was slightly understated as there was a child maintenance payment of £100 it had not included. But her regular outgoings (including rent, food, council tax, utilities, TV/broadband, clothing) were higher than the estimate it had made using national statistics. In the round this meant she would be left with around £60 each month after taking on this loan repayment. Given Ms S had two children I am still of the view that this was not enough to cover unplanned or seasonal expenses over three years, or indeed to absorb increases in her living costs, without causing Ms S financial stress.

It follows I think ELL was wrong to give the loan to Ms S.

I haven't seen any evidence ELL acted unfairly towards Ms S in any other way.

Putting things right

It's reasonable for Ms S to have repaid the capital amount that she borrowed as she had the benefit of that money. But she has paid interest and charges on a loan that shouldn't have been given to her. So she has lost out and ELL needs to put things right.

It should:

- Refund all the interest and charges – so add up the total Ms S repaid and deduct the sum from the capital amount of the loan.
- As reworking Ms S's loan account will result in her having effectively made payments above the original capital borrowed, then ELL should refund these overpayments with 8% simple interest calculated on the overpayments, from the date the overpayments would have arisen, to the date of settlement*.
- Remove any adverse information recorded on Ms S's credit file in relation to the loan.

*HM Revenue & Customs requires ELL to deduct tax from this interest. ELL should give Ms S a certificate showing how much tax it's deducted, if she asks for one.

My final decision

I am upholding Ms S's complaint. Everyday Lending Limited must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 22 March 2022.

Rebecca Connelley
Ombudsman