DRN-2902208

The complaint

Mrs G complains that a personal loan provided to her by Everyday Lending Limited, trading as Everyday Loans, ("ELL"), was unaffordable. The complaint has been brought to this service by a claims' management company on Mrs G's behalf. But for ease, I shall refer below to all actions being taken by Mrs G.

What happened

Mrs G was given a loan by ELL in September 2017. The loan was for £3,000 and was repayable by 24 monthly payments of £201.82. The interest rate was 50.9%, (64.6% APR). If Mrs G made each payment when it was due, she'd pay £4,843.68 in total. Mrs G repaid the loan in April 2018.

Mrs G said, in summary, that she didn't believe that ELL had suitably assessed her application. As a result of this loan, she'd had to take out a loan to consolidate her debts.

Our investigator recommended that Mrs G's complaint should be upheld. The investigator noted that the loan would be used for consolidating outstanding consumer credit. But looking at Mrs G's pattern of borrowing, and that the bank statements ELL had seen showed Mrs G had no disposable income, the investigator thought it was highly unlikely that Mrs G would be able to repay the loan in a sustainable way, or without having to borrow further.

ELL disagreed. It said, in summary, that it had included Mrs G's new mortgage repayment amount in its calculations. It calculated a customer's personal expenditure by using 35% of a customer's net income and 35% of net income was widely regarded as the national average. This amounted to £552.35 for this loan. Mrs G had remortgaged in August 2017 to settle two loans and she was using its loan to consolidate other loans. So, Mrs G would have been in a better financial position and its calculation shows Mrs G had a disposable income of £183.17 after her loans were consolidated.

As this complaint hasn't been resolved informally, it has come to me, as an ombudsman, to review and resolve.

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.

When ELL lent to Mrs G, the regulator was the Financial Conduct Authority ("FCA") and relevant regulations and guidance included its Consumer Credit Sourcebook ("CONC"). Its rules and guidance obliged ELL to lend responsibly. As set out in CONC, this meant that ELL needed to take reasonable and proportionate steps to assess whether or not a borrower could afford to meet its loan repayments in a sustainable manner over the lifetime of the agreement.

Repaying debt in a sustainable manner meant being able to meet repayments out of normal income while meeting normal outgoings and not having to borrow further to meet these repayments.

The lender was required to carry out a borrower focussed assessment each time - sometimes referred to as an “affordability assessment” or “affordability check”. Neither the law nor the FCA specified what level of detail was needed to carry out an appropriate assessment or how such an assessment was to be carried out in practice. The FCA said that the level of detail would depend on the type of product, the amount of credit being considered, the associated cost and risk to the borrower relative to the borrower’s financial situation, amongst other factors.

The checks had to be “borrower” focussed – so ELL had to think about whether Mrs G could sustainably repay her loan. In practice, this meant that the lender had to ensure that making the payments to the loan wouldn’t cause Mrs G undue difficulty or adverse consequences. 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 loan repayments on Mrs G.

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

- the lower a person’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 borrower is required to make payments for an extended period);

ELL said in its final response letter that the loan was to be used for consolidating loans and for a holiday. ELL had seen Mrs G’s most recent payslip and had seen two months’ bank statements. It had also done a credit search. ELL calculated Mrs G’s disposable income to be £183.17 after taking account of the credit to be consolidated (two payday loans) and its monthly loan repayment. Its Go Live Audit form shows its calculations had taken into account Mrs G’s new mortgage repayment amount of £534.81 and Mrs G’s existing credit commitments of £106.

Mrs G was entering into a significant commitment with ELL. She would need to make monthly repayments of £201.82 for 24 months. So, I think it was right that ELL wanted to gather, and independently check, some detailed information about Mrs G’s financial circumstances before it agreed to lend to her. I think that the checks I’ve described above allowed ELL to form a detailed view of Mrs G’s finances, and I think that the checks ELL did were proportionate.

But simply performing proportionate checks isn’t always enough. A lender also needs to react appropriately to the information shown by those checks. Those results might sometimes lead a lender to undertake further enquiries into a consumer’s financial situation. Or, in some cases, the results might lead a lender to decline a loan application outright. So, I’ve looked at the results of ELL’s checks to see whether it made a fair lending decision.

I’ve reviewed ELL’s credit checks before the loan. I can see that Mrs G had a mortgage which I understand was increased shortly before the loan. The proceeds of the remortgage

(£11,229.20) were used to repay two loans Mrs G had taken out in January 2017. These totalled over £10,000. I can see that Mrs G had missed two months' repayments on one of those loans in the two months before her application to ELL. Mrs G had taken out another loan in March 2017. She paid £106 each month on this loan, and it had a balance of £958. I can see that Mrs G missed her monthly repayment on that loan in the month prior to her application to ELL. I think ELL might have been concerned that its credit checks and the other information it had seen showed that Mrs G had taken out four loans and borrowed over £22,000 in the eight months prior to the loan application, and she'd recently missed payments on two loans. I think these checks suggest that Mrs G's finances were seriously under pressure. And I think they might also have reasonably caused doubt on the accuracy of the disposable income it had calculated.

ELL had provided a list of Mrs G's credit commitments. The list included two payday loans which weren't shown in ELL's credit checks and are additional to the credit mentioned above. These totalled £550. I think they also ought to have caused concern to ELL as they also suggest that Mrs G was having difficulty managing her finances.

Mrs G had said that the two payday loans were to be repaid from its loan. But I can't see from the information received from ELL that it had made this a condition of the loan. So, it couldn't be sure that the loans would be paid off.

I can also see that even if Mrs G used part of the loan proceeds for debt consolidation, her total indebtedness was still increasing. She said she was using a loan of £3,000 to repay debt of around £550, but she would need around £4,850 to repay the loan. But the term of ELL's loan was likely much longer than the loan terms for the loans Mrs G said she intended to clear. So, any short-term improvement in the amount of Mrs G's credit commitments was significantly off-set by Mrs G having to pay ELL's high cost loan for 24 months.

I also don't think it was reasonable for ELL to rely on using a percentage of Mrs G's income to calculate her living costs without verifying these. This was unlikely to reflect the existing commitments of someone in Mrs G's circumstances. But I can see that it asked Mrs G for her bank statements and it could have used these to check Mrs G's living costs.

I've reviewed the two months' bank statements ELL received from Mrs G which it has sent to this Service. I can see that ELL made some notes on the statements about some of the transactions. But it doesn't seem to have made a thorough check on Mrs G's regular living costs.

I've reviewed Mrs G's regular living costs on both statements. Taking into account Mrs G's net monthly income of £1,578.15 used by ELL and her expenditure on her mortgage and outstanding loan, and all Mrs G's reasonably identifiable spend on regular living costs such as council tax, food and household, medical, phone, TV/internet package, insurance, utilities, TV licence, water, and petrol doesn't leave her with sufficient disposable income to repay ELL's loan and for her to have enough money to meet any unexpected costs. Overall, I think the bank statements ELL had seen suggest that Mrs G's regular living costs were significantly higher than the amount ELL had calculated. And I don't think ELL had properly scrutinised the information it did see to ensure that Mrs G would have enough money to be able to sustainably make the payments over 24 months.

So overall, I think ELL was irresponsible to have agreed to lend to Mrs G based on the information it already had. I don't think it could be certain that Mrs G would be able to meet her repayments sustainably over two years. And I think that ELL made an unfair lending decision here and that ELL should put things right as follows :

Putting things right – what ELL needs to do

I understand that the loan has been repaid. To settle Mrs G's complaint, ELL should do the following:

1. Add up the total amount of money Mrs G received as a result of having been given the loan. The repayments Mrs G made should be deducted from this amount. As the loan has been repaid, this results in Mrs G having paid more than she received, and any overpayments should be refunded along with 8% simple interest (calculated from the date the overpayments were made until the date of settlement).*

2. Remove any negative information recorded on Mrs G's credit file regarding the loan.

* HM Revenue & Customs requires ELL to take off tax from this interest. ELL must give Mrs G a certificate showing how much tax it has taken off if she asks for one.

My final decision

My decision is that I uphold this complaint. In full and final settlement of this complaint, I order Everyday Lending Limited, trading as Everyday Loans, to put things right as I've set out above under the heading "Putting things right – what ELL needs to do."

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 1 April 2022.
Roslyn Rawson
Ombudsman