

The complaint

Mr C has complained that Everyday Loans Limited (ELL) irresponsibly lent him two loans.

What happened

In August 2019 ELL agreed a £1,500 loan to Mr C. This was due to be repaid over 18 months with a monthly repayment of £144.25. This loan was repaid in full in late September 2019 and Mr C was subsequently given another loan for £1,500 in late October 2019. This second loan was due to be repaid over 24 months with a monthly repayment of £122.81.

Mr C has said these loans were given irresponsibly. He's said he had a significant gambling problem which was clear from his bank statements and that he had an adverse credit history including payday lending, other high cost credit lending, missed payments and defaults. Mr C has said that had ELL completed proportionate checks it would've seen he couldn't have afforded to repay the lending.

In response to his complaint ELL disagreed it had lent irresponsibly, stating its checks were reasonable and proportionate. ELL said that after taking into consideration his income and ONS data on regular expenditure it calculated that Mr C had sufficient disposable income to repay both loans. It also said that this took into account how much Mr C had spent on gambling in the month prior to each loan.

One of our investigators has considered the complaint upheld it. He felt that based on the information ELL had available at the time of lending, it should've realised that Mr C couldn't have sustainably afforded to repay each loan and that it was irresponsible to lend to him.

ELL didn't agree with this and it again argued that the amounts Mr C was spending on gambling were within the disposable income it had calculated. It also argued that the defaults on Mr C's credit file were historic and that loan two was used to pay off his credit card and payday loan defaults.

As ELL didn't agree with our investigator's assessment the complaint has been passed to me for 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.

We've set out our approach to unaffordable/irresponsible lending complaints on our website and I've kept this in mind when deciding Mr C's complaint.

The rules and regulations in place at the time of this lending required EEL to carry out reasonable and proportionate checks to determine whether Mr C could afford to repay the lending in a sustainable manner. The checks needed to be "borrower" focused, so ELL needed to think about whether repaying the credit sustainably would've caused difficulties or adverse consequences for Mr C.

What constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the borrower (such as their financial history including with the lender in question, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit they are seeking.

At the time of agreeing Mr C's first loan I can see ELL had completed a credit search, had a copy of Mr C's recent current account statement for July 2019 and had his payslip for August 2019. Looking at Mr C's payslip I can see he was paid £1,944.11 in August and his bank statement showed he was paid £1,867.18 in July 2019. His bank statement also shows that upon being paid Mr C made payments totalling just under £1,500 in several transactions to a family member and a friend. He's said that at this time he had been borrowing from friends and family to repay credit or to fund gambling. And so after being paid it looks as though large parts of his wages were already committed to repaying money owed. Mr C's statements also show around 40 separate gambling transactions in July 2019 which ELL has calculated as totalling over £500.

Looking at the credit search results ELL has provided, I can see that at the time of agreeing loan one Mr C had two payday loans defaults totalling £509 and a communications supplier default for £339. Mr C also had £148 outstanding on a credit card and was making reduced payments towards all these accounts. I appreciate as ELL has said, that these were historic defaults. However, despite the length of time since the defaults, these were still outstanding credit commitments and it was clear he was only making reduced or minimum payments towards these accounts.

As part of completing a reasonable and proportionate check before agreeing to lend, ELL needed to respond appropriately to the information it gathered about Mr C's circumstances. Having considered the information ELL had available before agreeing loan one, I don't think it did this. I think ELL had sufficient information to demonstrate that Mr C couldn't have afforded to repay this lending in a sustainably way. His circumstances demonstrated a reliance on borrowing with sums owed to friends and family, outstanding balances on defaulted accounts and evidence of reduced payments being made. Mr C has also said his gambling had caused a great deal of his credit problems and ELL was on notice that he'd spent a significant amount on gambling, which was spread over a large volume of gambling transactions. I think it should've been clear from the information ELL had that Mr C couldn't have afforded to sustainably repay this loan and ELL shouldn't have agreed it.

Turning to Mr C's second loan, I also don't think ELL should've agreed this loan for largely similar reasons to loan one. I don't think ELL completed reasonable and proportionate checks (responding appropriately to the information provided) before agreeing to lend. And I think it should've been clear to ELL based on the information it had available, that Mr C couldn't have afforded to repay this loan in a sustainable way.

Looking at Mr C's contact notes I can see that just under a month after taking loan one he contacted ELL for further lending. Mr C was told his existing loan needed to be in place for six months before ELL would consider a further advance and so shortly after this Mr C repaid loan one in full. Mr C has said he was only able to do this with help from family. I can see from his contact notes that just over a week after loan one was repaid Mr C returned and applied for another loan in early October 2019. Mr C has said was declined due to the amount of gambling transactions on his statements. He said he was told to return a month later with a month of bank statements without gambling. Mr C has said this conversation took place in branch. I can't know what was discussed at this time. However, given Mr C came back so quickly, both for a further advance on his first loan and then a subsequent

loan after loan one had been repaid, this should've also indicated to ELL that these were signs that Mr C was relying heavily on credit.

At the end of October 2019, ELL agreed Mr C's second loan. At this time, ELL had a copy of Mr C's October bank statement (up until 29 October) and a copy of his wage slip for October showing he earned £1,617.75. I can see that immediately after being paid, Mr C transferred £910 to a family member showing he's still indebted to family. ELL has said the purpose of this loan was for Mr C to repay his defaulted payday loans and credit card balance. However, this still left an outstanding balance to his communications supplier where he was making reduced payments and his current account behaviour showed he was still repaying a family member.

ELL is right to point out that there is a significantly less gambling detailed Mr C's October statement and Mr C has said that, based on the previous conversation he said took place with ELL, he tried to disguise these transactions (using things like money wallets). However, it's clear from his August loan application that ELL was on notice that Mr C had been gambling heavily prior to taking out this loan. Mr C's October statement and credit check results also show Mr C had other current accounts which he was making transfers into. So, I think if ELL had thought holistically about Mr C's wider circumstances, it would've seen that Mr C's circumstances hadn't significantly changed and he didn't have capacity to take on further lending. So I don't think ELL should've agreed this loan.

I can see that before agreeing both loans ELL has said it used ONS data to calculate Mr C's average expenditure. However, ELL also had copies of Mr C's bank statements for the month prior to each loan. I therefore don't consider it was reasonable for ELL to rely on ONS averages when it had information about Mr C's actual expenditure.

Putting things right

As I don't think that ELL should have agreed to lend Mr C either of the two loans in question, ELL should:

- refund all the interest and charges Mr C paid on loan one
- remove any interest and charges still outstanding on loan two and treat all the payments Mr C made towards this loan as payments towards the capital. If reworking Mr C's account as I've directed results in Mr C effectively having made payments above the original capital borrowed for this loan, then ELL should refund these overpayments
- pay interest of 8% simple a year on any refunded interest and charges from the date they were paid to the date of settlement†
- remove any adverse information recorded on Mr C's credit file in relation to both loans

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

My final decision

My final decision is that I uphold Mr C's complaint and direct Everyday Loans Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 21 October 2021.

A handwritten signature in blue ink, appearing to be 'CL' followed by a stylized flourish.

Claire Lisle
Ombudsman