DRN-3051534

The complaint

Mr W has complained about a loan granted to him by Everyday Lending Limited, trading as Everyday Loans, ("ELL"), which he said was unaffordable.

What happened

ELL agreed a loan for Mr W on 26 May 2018. The loan was for £5,000 and was repayable by 24 monthly payments of £368.82. The interest rate on the loan was 60.9%, (81% APR). If Mr W made each repayment when it was due, he would pay £8,851.68 in total.

Mr W said that when he applied for the loan, he was suffering from a gambling addiction and had an extremely bad credit rating which ELL was aware of. This loan was totally unaffordable for him at the time and ELL should not have even considered him due to his circumstances and the problems he had that were all too clear to see.

ELL said in its final response letter that during the loan sale its checks included:

- Obtaining and reviewing up to two months bank statements from a customer's primary bank account
- Obtaining and reviewing one month's payslip
- Conducting a credit search with a credit reference agency
- Carrying out a job check

As part of its underwriting, ELL said it had used statistical data from the Office for National Statistics ("ONS") to calculate Mr W's living costs. Mr W's monthly financial commitments together with his general living expenses were calculated as £1,869.26. ELL's affordability calculation at the time showed Mr W had a monthly disposable income of £646.12 after taking into account his consolidated loans and its monthly repayments. It believed the checks completed were reasonable and proportionate and that the loan was sustainable over the term as Mr W had a disposable income. ELL believed Mr W would have been able to make the repayments to his loan without undue difficulty over the life of the credit agreement.

The adjudicator recommended that the complaint should be upheld. She said that ELL had made proportionate checks but the information it had seen was concerning. Looking at ELL's credit report, she could see that Mr W had a number of credit cards that were being utilised to the maximum limit. He had also taken out numerous payday loans before applying for this loan. These were signs that Mr W wasn't able to manage his money well. The adjudicator also noted that Mr W's overall debt would have increased quite significantly after taking out this loan, so consolidating wouldn't have improved his financial position. She could see that ELL had reviewed Mr W's bank statements from around the time of the loan approval and it would have seen that he was spending over £400 towards gambling transactions. Even after consolidating Mr W would still be paying a substantial amount of his monthly income towards other credit repayments, and because of this he wouldn't have been able to repay the loan in a sustainable manner.

ELL disagreed and responded to say that the loan had reduced Mr W's monthly creditor repayments and he would still have £200 disposable income left after his gambling was taken into account.

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'm sorry to hear that Mr W has suffered health and financial difficulties.

When ELL lent to Mr W the regulator was the Financial Conduct Authority 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 Mr W could sustainably repay his loan. In practice this meant that the lender had to ensure that making the payments to the loan wouldn't cause Mr W 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 Mr W.

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 did a number of checks before it lent to Mr W. It also spoke to Mr W and discussed his application. I can see that it had asked Mr W for details of his employment, monthly income and rent and it had also used ONS data to estimate the rest of Mr W's expenditure. ELL asked Mr W to provide a payslip and two calendar months' bank statements to verify what he'd said about his finances. Mr W was only able to provide bank statements for one month (6 April 2018 to 5 May 2018). ELL accepted bank statements for one month here. ELL also checked Mr W's credit file to assess how much he was paying other creditors and how he'd managed his credit in the past. It used the results of those checks to calculate Mr W's credit commitments.

Mr W was entering into a significant commitment with ELL. He would need to make monthly repayments of £368.82 for 24 months. So, I think it was right that ELL wanted to gather, and independently check, some detailed information about Mr W's financial circumstances before it agreed to lend to him. I think that the checks I've described above allowed ELL to form a detailed view of Mr W'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.

Mr W's monthly income was £2,297.44. ELL was also aware that Mr W lived with his parents. He had told ELL the loan was to be used for debt consolidation, and I can see from ELL's notes that Mr W intended to repay his four largest payday loans, and that he would have around £1,000 left after repayment of these loans.

I've reviewed ELL's credit checks before the loan. I can see that Mr W was paying around £424 each month on a hire purchase agreement with around two years left to run. I can also see that Mr W had four active payday loans taken out in the six months before his loan application, with the most recent loan in April 2018. I can see that the checks also showed that Mr W had taken out payday loans from July 2017 to September 2017 which had since been settled. When I include these settled loans, I can see that Mr W had taken out a payday loan in seven of the ten months prior to the loan application. I think this suggests a reliance on payday loans to supplement his income and that Mr W was having problems managing his money.

I also note from ELL's credit checks that Mr W had four active credit cards, the most recent of which had been taken out less than four months before his loan application. The balances on all four credit cards were at or very near their respective credit limits. There was also a defaulted credit card balance from 2014. This had a default balance of £514 but the credit record hadn't been updated since April 2014, so it's not clear whether this had been repaid. There wasn't an overdraft balance on Mr W's current account. I can see that he didn't have an overdraft arrangement.

I think ELL was likely to be aware that its credit checks might not have revealed the full extent of Mr W's credit commitments (and the bank statements it saw suggested that this was the case). A lender might only see a small portion of a borrower's credit file, or some data might be missing or anonymised. Its checks might not necessarily be up to date. Also, not all lenders reported to the same credit reference agencies.

Overall, I think the results of its credit checks ought to have caused ELL concerns as I think they suggested that Mr W was struggling to manage his money as shown especially by his frequent use of and reliance on payday loans and his four credit cards around their credit limits. And I think they might also have reasonably caused doubt on the accuracy of the disposable income it had calculated.

I can also see that ELL had listed and calculated Mr W's monthly credit commitments. This included three recent payday loans totalling £600 taken out in April 2018 which weren't in its credit checks but were shown on the bank statements Mr W supplied to ELL.

I can see from ELL's contact notes that it was concerned about Mr W's use of payday loans, although he was consolidating his four largest payday loans, and was left with three small loans to pay. It also noted from the bank statements that Mr W was spending around £420 on gambling. ELL said in its contact notes:

"Customer does have several betting transactions and payday loans however loan is to consolidate all loans and customer is aware of the effect of payday loan usage and betting."

"This on initial look was/is a risky loan purely due to the payday loan usage and then small betting added to which the customer states is just fun now and again to which I explained some payday loans have been used to play…..we tried to get additional stats to see how repetitive this is but to no avail"

I note from the bank statements ELL received that Mr W was gambling on 21 of the 30 days of the statement period, and on two of the days he didn't gamble, he had less than £5 in his account. I also note that Mr W told this Service that he was suffering from a gambling addiction at the time of taking out the loan, although it doesn't appear that he had told ELL this. But I think ELL could have seen from the statements it had, that Mr W's gambling was more than "*just fun now and again*" especially as it had noted that Mr W was borrowing payday loans just for the purpose of gambling when he had no money left in his current account. I can see that Mr W was spending a significant proportion of his income on gambling. The gambling transactions were frequent enough that I think it was more likely than not that the gambling would continue in the same pattern. And it points to a pattern of spending that posed a risk to Mr W being able to repay the loan sustainably.

I can also see on the bank statements ELL had seen that Mr W made relatively high cash withdrawals totalling around £570. I asked the adjudicator to ask Mr W for more information about these. He said these would have been used for gambling and fuel for travel to and from work. I can also see on the statements that there were several transfers to other accounts. Mr W said that he was making transfers into a savings account, but all of that money was used for gambling and the account balance was always zero within a day or so. He was also repaying money he had borrowed from family members. Mr W told this Service that he was gambling everything he had.

ELL calculated a disposable income of around £646. I'm concerned that ELL seems to have accepted at face value that Mr W had a monthly disposable income of some £646 a month when the pattern of spending on his bank statement and the need to take out four payday loans during the period of that statement shows that he was having difficulty managing his money. In the three days before Mr W received his April salary, he had less than £5 in his account.

I asked the adjudicator to ask Mr W for his other current account statements from the period before his loan application and Mr W has provided these. I've reviewed these and can see that Mr W was still struggling to manage his money. There was the same pattern of frequent gambling and relatively high cash withdrawals in those statements that I could see in the statements ELL had seen. I also note that Mr W had borrowed a large payday loan for £820 in late March 2018 to supplement his income. And at the time Mr W applied for ELL's loan, he'd had less than £5 in his current account for three days.

I can also see that Mr W was increasing his total indebtedness by taking out ELL's loan. Whilst the loan proceeds were being used to repay four loans totalling around £4,000, Mr W needed £8,851.68 to repay ELL's loan. So, it appears that his total indebtedness was being increased as well as the time he'd be indebted for. The term of ELL's loan was much longer than the loan terms for the loans Mr W said he intended to clear. So, any short-term improvement in the amount of Mr W's credit commitments was significantly off-set by Mr W having to pay ELL's high cost loan for 24 months.

I note that ELL said that the loan was sustainable over the term as Mr W had a disposable income. But this assumed Mr W's need for credit wasn't an ongoing one. I note that Mr W had taken out at least one payday loan in eight of the previous ten months (including the payday loan I'd seen in his March 2018 bank statement) and I think his reliance on expensive short term loans to meet his existing spending showed that this wasn't a reasonable assumption. It seems to me there was a risk here that Mr W would need to borrow to meet his repayments on this loan, as he was currently doing so for his existing spending.

And I can see from later bank statements Mr W provided to this Service that he continued to borrow from short term lenders in the months following ELL's loan, and I think this was foreseeable. I note that within three months of taking out ELL's loan Mr W had taken out another four payday loans totalling £1,350.

Overall, I don't think it was reasonable for ELL to conclude that Mr W would be able to repay the loan in a sustainable manner from the information it had received from its checks. And I don't think ELL made a fair lending decision when it agreed to give this loan to Mr W. So, I think Mr W's complaint should be upheld and that ELL needs to put things right as shown below.

Putting things right – what ELL needs to do

I understand that the loan hasn't been fully repaid, but I can see that Mr W has repaid more than the principal amount. In order to put Mr W back into the position he would have been had the loan not been agreed for him, ELL needs to ensure that Mr W only repays the principal borrowed on the loan. In other words, Mr W shouldn't repay more than the capital amount of £5,000 he borrowed. So, ELL needs to:

a) treat all payments that Mr W has made towards the loan as payments towards the principal amount borrowed;
b) as Mr W has made payments above the capital amount of £5,000, these should be refunded to him, along with simple interest at the rate of 8% per year on these amounts from the date they were paid to the date of settlement*; and
c) remove any adverse information about the loan from Mr W's credit file.

If ELL has sold the outstanding debt on the loan, it should buy it back if it is able to do so or chooses to do so and then take the steps listed above. If ELL isn't able to buy the debt back or chooses not to, then it should liaise with the new debt owner to bring about steps a) to c) above.

*HM Revenue & Customs requires ELL to take off tax from this interest. ELL must give Mr W a certificate showing how much tax it has taken off if he 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 pay compensation to Mr W and take the steps 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 Mr W to accept or reject my decision before 15 December 2021.
Roslyn Rawson
Ombudsman