DRN-3126261

The complaint

Mr W says Everyday Lending Limited (ELL), trading as Everyday Loans, lent to him irresponsibly.

What happened

Mr W took out a 48-month instalment loan from ELL on 6 October 2020 for £5,100. The monthly repayments were £272.85 and the total repayable was £13,096.80. He is now in arrears on the loan.

Mr W says he shouldn't have been given the loan. He was struggling financially and owed, and still owes, a lot of money.

Our adjudicator upheld Mr W's complaint saying the lender's checks weren't proportionate and better checks would have showed the loan to be unaffordable. She said he seemed to have a number of informal debts and taking those repayments into account as well left him with only £52 disposable income each month. She noted Mr W was already paying a significant proportion of his income to manage his existing debt, often an indicator that a longer-term loan will not be sustainably affordable.

ELL disagreed saying, in summary, there is no evidence that Mr W's average monthly payments of £600 to family and friends were regular commitments. So the loan was affordable.

As an agreement wasn't reached, the case was 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 rules and regulations when ELL lent to Mr W required it to carry out a reasonable and proportionate assessment of whether he could afford to repay what he 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 Mr W. 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 Mr W.

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 Mr W. So to reach my conclusion I have considered the following questions:

- did ELL complete reasonable and proportionate checks when assessing Mr W'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 act unfairly or unreasonably in some other way?

I can see ELL asked for some information from Mr W before it approved the loan. It asked for details of his income and rent. It estimated his living costs using national statistics, adding a buffer to cover unexpected costs. It also checked Mr W's credit file to understand his existing monthly credit commitments and credit history. And finally it asked about the purpose of the loan which was to purchase a car and for debt consolidation. From these checks combined ELL concluded Mr W had monthly disposable income of £243.65 and so could afford to take on the loan.

I don't think these checks were proportionate given ELL needed to be sure Mr W would be able to repay his loan sustainably over a four-year period. I think it needed to complete a fuller financial review, verifying Mr W's income and reviewing his actual monthly costs rather than relying on his declarations and national averages. ELL sent us copies of bank statements that its case notes refer to as having been used to verify his salary and outgoings. But the statements are for a savings account and do not show either Mr W's salary or regular outgoings so I cannot see how it used them to inform its assessment.

I have looked at Mr W's bank statements from the three months prior to application for his main current account to understand what better checks might have shown ELL. As the adjudicator highlighted they show a high value of monthly payments that seem to be as a result of informal borrowing. ELL argues that there is no evidence these are regular commitments. But excepting one payment for £1,000 which I understand was payment towards a car, and I agree could therefore be excluded, such transactions appear in each of the months we have statements for. So I think had ELL carried out better checks it would have seen Mr W appeared to need to borrow from friends regularly, and so it could have investigated this.

I don’t think we need to reach a conclusion on what was the exact amount Mr W owed to friends, suffice to say better checks would have most likely shown Mr W had ongoing informal debts that would have reduced the amount of disposable income in ELL’s assessment. And ELL concluded from its credit checks that Mr W would have ongoing credit commitments of £387.46 after the consolidation he planned to do. Giving this loan with its repayment of £272.85 meant he would be spending around 40% of his monthly income to service his formal debt.

I think this, combined with the uncertainty around Mr W’s informal debt, ought to have indicated to ELL that there was a risk Mr W would not be able to make his repayments for four years without suffering some kind of adverse financial consequence, such as needing to borrow to repay. ELL needed to consider this to meet its regulatory obligations, not just the pounds and pence affordability. Plus, there were other indicators that Mr W was most likely having problems managing his money such as using a buy-now-pay later product, unpaid direct debits and a recent payday loan.

It follows I think ELL was wrong to give the loan to Mr W. I haven’t seen any evidence ELL acted unfairly or unreasonably in some other way towards Mr W.

Putting things right

I think it’s fair and reasonable for Mr W to repay the capital that he borrowed, because he had the benefit of that money. But he has paid interest and charges on a loan that shouldn’t have been provided to him.

So ELL should:

- Remove all interest, fees and charges from the loan and treat all the payments Mr W made as payments towards the capital.
- If reworking Mr W’s loan account results in him 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*.
- If reworking Mr W’s account results in there still be a capital balance outstanding ELL must try to agree an affordable repayment plan.
- Remove any adverse information recorded on Mr W’s credit file in relation to the loan.

*HM Revenue & Customs requires ELL to deduct tax from this interest. ELL should give Mr W a certificate showing how much tax it’s deducted, if he asks for one.

My final decision

I am upholding Mr W’s complaint. Everyday Lending Limited, trading as Everyday Loans, must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr W to accept or reject my decision before 30 March 2022.

Rebecca Connelley
Ombudsman