DRN-3155454

The complaint

Mr C is unhappy that Everyday Lending Limited trading as Everyday Loans (ELL) provided him with a loan that he couldn't afford to repay.

What happened

In August 2018, ELL agreed to lend Mr C £3,000, repayable over 36 months. The APR was 149.3%, the total amount repayable £9,130.68 and the monthly loan repayment £253.63.

ELL's records show that the loan was taken out to consolidate some existing borrowing that Mr C had and also towards a holiday.

According to ELL's records, the loan was repaid in February 2019. Mr C says he was able to repay the loan after he borrowed money from elsewhere.

In August 2020, Mr C complained to ELL that the loan had been unaffordable. ELL didn't uphold the complaint. It said that it had carried out relevant checks to ensure that Mr C could afford the loan and found that he had enough disposable income to meet the loan repayments.

Mr C remained unhappy and referred his concerns to this Service. An investigator here considered the matter and upheld the complaint. She said, in summary, that:

- The information ELL gathered before agreeing to lend showed signs that Mr C had recently experienced problems managing his money.

- It should've been apparent from the information it gathered that in fact Mr C didn't have enough disposable income to sustainably meet the loan repayments.

- Because of this, ELL should refund all interest and charges and remove any adverse information recorded on Mr C's credit file as a result of those interest and charges.

ELL disagreed. It said, in summary, that:

- Mr C's financial difficulties were historic – in 2013. There were no further signs of financial difficulty after this.

- Mr C's bank statements show he didn't use an overdraft and contain no other signs of financial distress. Also, a reasonable amount of the expenditure was non-essential.

- It still thought the checks it had carried out showed that Mr C did have enough disposable income to meet the loan repayments.

The investigator still thought the complaint should be upheld. She said, in summary, that:

- Mr C's credit file and bank statements show that he was experiencing problems managing his money in the lead up to this loan. He had taken out a number of short term loans and his borrowing seemed to be increasing.

- Bearing this in mind, ELL ought to have looked more closely at the bank statements Mr C supplied to them. An income and expenditure assessment based on the statements themselves, show that Mr C didn't have sufficient disposable income to sustainably meet the loan repayments (without factoring in non-essential expenditure).

ELL continued to disagree, so the complaint has been passed to me 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.

Having done so, I uphold this complaint for largely the same reasons as the investigator. I'll explain why.

When granting the loan, ELL needed to abide by the Consumer Credit lending rules (CONC). Relevant to this case, ELL needed to carry out reasonable and proportionate affordability checks to ensure that Mr C would be able to sustainably meet the loan repayments. ELL also needed to make a fair lending decision, based on the information it obtained when carrying out those checks.

ELL has said that it carried out an income and expenditure assessment before agreeing to lend Mr C the money. It says it verified Mr C's income by requesting bank statements and that it used ONS data to calculate his living expenses, based on factors such as his income and location. ELL's records indicate that it gathered information about Mr C's existing credit commitments (and expenditure towards these) and it also said it applied a 'buffer' for living expenses, to account for any unexpected minor changes in circumstances. ELL says this demonstrated that Mr C had enough disposable income to meet the loan repayments.

The key question here is whether it was reasonable of ELL to calculate Mr C's disposable income in this way it did, when it had more accurate and specific information to use in the form of Mr C's bank statements showing his account activity in the lead up to the loan. And I don't think it was.

Thinking about the amount Mr C was borrowing, the high APR, the total cost of the borrowing and the loan term, I don't consider it was reasonable or proportionate of ELL to rely on ONS averages for expenditure, when it had information available to establish a more accurate picture of his income versus expenditure.

And having looked at the bank statements that ELL received from Mr C, I agree with the investigator that they present a picture of someone struggling to manage their money. A basic calculation of Mr C's income versus expenditure for the period covered by the statements (June to August 2018), indicates that after taking into account the new loan repayment amount (and also allowing for the debt consolidation that was intended to happen), Mr C would be left with no disposable income. In other words, a review of the bank statements indicates that Mr C would not reasonably have been able to sustainably meet the loan repayments.

The bank statements show that Mr C was paying more towards his existing credit than ELL had accounted for. In addition, they show that Mr C took out four payday loans in the three month period. They show that in total, he borrowed £2,690 in payday loans and made total repayments of £528.92. This represents a significant deficit and strongly indicates a reliance on payday lending to support spending. This further indicates that Mr C was not in a position to sustainably meet the ELL loan repayments.

I think this means that ELL made an unfair lending decision and that it needs to put things right.

Putting things right

When I find that a business has done something wrong, I'd normally direct it – as far as it's reasonably practicable – to put the complainant in the position they *would be in now* if the mistakes it made hadn't happened.

In this case, that would mean putting Mr C in the position he would now be in if he hadn't been given the loan in question.

However, this isn't straightforward when the complaint is about unaffordable lending. Mr C *was* given the loan and he had use of the money. And, in these circumstances, I can't undo what's already been done. So, it isn't possible to put Mr C back in the position he would be in if he hadn't been given the loan in the first place.

I don't think it appropriate for ELL to benefit from an unfair lending decision.

Bearing this in mind, ELL needs to do the following:

1. Refund all the interest and charges Mr C has paid to date.

2. It appears the loan has been repaid. However, if the borrowing is still in place, reduce any outstanding capital balance by the amount calculated at step 1.

3. If, after Step 2, any outstanding capital balance remains, ensure that it isn't subject to any historic or future interest and/or charges. But if Step 2 leads to a positive balance, the amount in question should be given back to Mr C and 8% simple interest should be added to the surplus†.

4. Remove any adverse information recorded on Mr C's credit file as a result of the interest and charges.

† HM Revenue & Customs requires the business to take off tax from this interest. The business must give the consumer a certificate showing how much tax it's taken off if they ask for one.

My final decision

My final decision is that I uphold Mr C's complaint about Everyday Lending Limited trading as Everyday Loans. I direct it to do what I've said above under Putting things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 2 May 2022.

Ben Brewer
Ombudsman