DRN-3163054

The complaint

Mr D and Miss M say Everyday Lending Limited (ELL), trading as Everyday Loans, lent to them irresponsibly.

What happened

Mr D and Miss M took out a joint loan from ELL on 15 June 2020 for £4,500 over 48 months. The monthly repayment was £232.92 and the total repayable was £11,181.12.

Mr D and Miss M say the loan was not affordable and ELL's checks were not thorough enough.

The adjudicator upheld Mr D and Miss M's complaint. She found the lender's checks for were proportionate, but that ELL did not make a fair lending decision based on the information it gathered. It could see Miss M was already struggling financially, and both parties would be left with insufficient disposable income for the loan to be sustainably affordable.

ELL disagreed. It said this was a joint loan and the assessment should not be based on what Miss M's bank statements showed. It resubmitted a form showing Mr D and Miss M confirmed they didn't know of any reason that would mean they couldn't sustain the repayments over the term of the loan.

As an agreement wasn't reached the complaint 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 Financial Conduct Authority (FCA) was the regulator when ELL lent to Mr D and Miss M. Its rules and guidance, set out in its Consumer Credit Sourcebook (CONC), obliged ELL to lend responsibly. Amongst other things, ELL was required to carry out a reasonable and proportionate assessment of whether Mr D and Miss M could afford to repay what they 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 D and Miss M. 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 D and Miss M.

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 D and Miss M, and have considered the following questions:

- did ELL complete reasonable and proportionate checks when assessing Mr D and Miss M's loan application to satisfy itself that they 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?

ELL asked for some information from Mr D and Miss M before it approved the loan. It asked for details of their income and estimated their monthly costs using national statistics. It asked for copies of their bank statements and payslips to verify some of this information. It reviewed their credit file to understand their credit history and existing commitments. It also asked about the purpose of the loan which was for debt consolidation. From these checks combined ELL concluded that Mr D and Miss M would have monthly disposable income of £161.22 after taking on this loan and so could afford it.

I agree with the adjudicator that the checks ELL completed were proportionate, but I don't think it reacted appropriately to the data it gathered when it made its lending decision. I'll explain why.

ELL's affordability assessment showed Mr D and Miss M would be left with just £80.61 monthly disposable income each, taking into account the debts they were settling. This loan was over a four-year term and I don't think it was reasonable to leave them with that amount of money to cover all unplanned and seasonal cost for such a considerable period of time. I think ELL, as a responsible lender, ought to have realised this meant there was a significant risk the loan would not be sustainably affordable.

In response to the adjudicator's assessment ELL said Mr D and Miss M signed confirming they were not aware of anything that would make them unable to sustain payments. I can see this is this case, but them doing so does not change ELL's obligation to reach a fair lending decision that considers the borrower(s) and not just the likelihood of it getting its money back.

It could see Miss M was already struggling financially – she had used payday loans in the two months prior, there were returned direct debits on her bank statements, she was overdrawn each month, typically a week after her payday, and a credit card she opened in November 2019 was already in arrears and over its limit. ELL argues the lending decision should not be based Miss M's bank account transactions – but it was required to consider the creditworthiness of both applicants, and I don't think it responded appropriately to the clear indicators that Miss M was already having problems managing her money.

It follows, for the reasons set out above, I don't think ELL should have given a joint loan to Mr D and Miss M.

I haven't seen any evidence that ELL acted unfairly or unreasonably in some other way towards Mr D and Miss M.

Putting things right

It's reasonable for Mr D and Miss M to repay the capital amount that they borrowed as they had the benefit of that money. But they have paid interest and charges on a loan that shouldn't have been given to them. So they have lost out and ELL needs to put things right.

It should:

- Refund all the interest and charges on the loan – so add up the total Mr D and Miss M repaid and deduct the sum from the capital amount.
- If reworking Mr D and Miss M's loan account results in them 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 D and Miss M's loan account results in an outstanding capital balance, ELL should try to agree an affordable repayment plan with Mr D and Miss M.
- Remove any adverse information recorded on Mr D and Miss M's credit files in relation to the loan.

*HM Revenue & Customs requires ELL to deduct tax from this interest. ELL should give Mr D and Miss M a certificate showing how much tax it's deducted, if they ask for one.

My final decision

I am upholding Mr D and Miss M's complaint. Everyday Lending Limited (ELL), 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 D and Miss M to accept or reject my decision before 31 March 2022.

Rebecca Connelley
Ombudsman