DRN-3188185

The complaint

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

What happened

Mr Y took out three instalment loans from ELL. A summary of his borrowing follows.

loan	taken out	value, £	term in months	monthly repayment, £	total repayment, £
1	05/02/2018	3,000	24	241.37	5,792.88
2	29/08/2018	4225.95	24	295.24	7,085.76
3	26/07/2019	6,415.29	48	300.48	14,423.04

Loans 2 and 3 were both used in part to settle the previous loan. I understand there is an outstanding balance on loan 3.

Mr Y says ELL's checks were not proportionate. The loans led to spiralling debt that he hasn't managed to clear.

Our investigator said he could find no reason ELL was wrong to give loan 1 to Mr Y, but loans 2 and 3 should not have been given as the lender's checks showed that it was likely Mr Y was having problems managing his money by then.

ELL disagreed. It said, in summary, the affordability assessments for loans 2 and 3 showed Mr Y would have disposable income each month of over £1,000. And neither of the credit checks indicated Mr Y was showing any signs of financial strain. It maintained loans 2 and 3 were sustainably affordable for Mr Y.

ELL asked for an ombudsman's review, so Mr Y's complaint was passed to me.

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 Y 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 Y. 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 Y.

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

- did ELL complete reasonable and proportionate checks when assessing Mr Y's loan applications to satisfy itself that he would be able to repay the loans in a sustainable way?
- if not, what would reasonable and proportionate checks have shown?
- did ELL make fair lending decisions?
- did ELL act unfairly or unreasonably in some other way?

I can see ELL asked for some information from Mr Y before it approved the loans. It asked for details of his income and checked this on the payslips and bank statements he provided. It estimated his living costs using national statistics, adding a buffer to cover unexpected costs. It also checked Mr Y's credit file to understand his existing monthly credit commitments and credit history each time. And finally it asked about the purpose of the loans: loan 1 was for debt consolidation; loan 2 was for debt consolidation and car repairs and loan 3 was for debt consolidation and a holiday. From these checks combined ELL concluded Mr Y had monthly disposable income of over £1,000 at the time of each application and so could afford to take on the loans.

I think these checks were reasonable and proportionate for the first loan and the decision to lend was fair, but not for loans 2 and 3. I will explain why.

<u>Loan 1</u>

The loan repayment was a relatively small percentage of Mr Y's income, which ELL says it had verified on both a payslip and bank statement. I note ELL used £3,278.86 in its assessment but the payslip and bank statement show £2,955.90 – but this does not alter my finding. He told ELL he was living with his parents and did not contribute to household costs. The credit check showed he had a significant amount of unsecured debt, but payments were up-to-date and the majority of it was a car finance agreement. There was no recent adverse data.

So given Mr Y's relatively high income and lack of mortgage/rent and household bills, and disposable income of over £1,000, I think it was fair to lend to Mr Y. I do note it meant Mr Y would be spending quite a significant proportion of his income on his credit commitments, but at this stage in the lending relationship I think this appeared sustainable given his salary and living arrangements.

It follows I don't think it was wrong for ELL to give loan 1 to Mr Y.

<u>Loan 2</u>

Mr Y applied for loan 2 just six months into the 24-month term of his first loan – and I note at the first opportunity he was able to apply for a top up. He had enquired two months earlier. This time ELL's assessment again showed he had disposable income of over £1,000. But this was Mr Y's second application in six months for high-cost credit – and ELL could see, as listed in its Go Live Audit, that Mr Y was also using short-term high cost credit. So at this stage I think it ought to have carried out better checks, in the form of a fuller financial review using verified actuals for his outgoings. However, I won't comment further on this as even based on the information it gathered I think ELL ought to have declined the application.

I say this because once Mr Y had settled loan 1 and a payday loan for £400 as he planned to, ELL's Go Live Audit shows he would need to spend around 45% of his monthly income to meet his ongoing credit commitments. This is significant and often a predictor of financial difficulties. In addition, the fact Mr Y was still taking out payday loans, as he had been six months earlier, suggests his finances were under pressure – and that it was most likely he did not have the level of disposable income ELL had opted to base its decision on.

In the round, I think ELL ought to have realised there was a risk this loan would cause financial harm to Mr Y and so it was most likely not sustainably affordable. And it had to check this, not just the pounds and pence affordability, to meet its obligations.

It follows I think ELL was wrong to give loan 2 to Mr Y.

<u>Loan 3</u>

I think at this stage from the overall pattern of its lending history with Mr Y ELL should reasonably have seen that further lending was unsustainable. This was the third time Mr Y had applied to ELL in 18 months and he was looking to borrow over twice as much as his first loan, increasing the total he would need to repay by around 150% - as well as the term of his indebtedness as he looked to repay loan 3 over 48 months.

In addition, the concerns noted above about loan 2 – that Mr Y would need to spend a significant portion of his income on his ongoing credit commitments and the Go Live Audit showed Mr Y was still taking out other high-cost loans - were relevant to Mr Y's third application. And they are another reason why I find that it was most likely loan 3 was not sustainably affordable for Mr Y.

It follows I think ELL was wrong to give loan 3 to Mr Y.

I have considered carefully ELL's response to the investigator's assessment. This focuses on the pounds and pence affordability and why it used national statistics to estimate Mr Y's living costs. I accept there are times when this is a proportionate approach, but for the reasons set out above this was not the case for loans 2 and 3. But as I said earlier, even without considering what better checks might have shown ELL, my conclusion is that there was sufficient information in the checks it did to conclude that giving loans 2 and 3 would most likely cause adverse financial consequences for Mr Y.

I have not seen any evidence that ELL acted unfairly or unreasonable towards Mr Y in some other way.

Putting things right

Loans 2 and 3

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

So ELL should:

- Add up the total amount of money Mr Y received as a result of having been given loans 2 and 3. The repayments Mr Y made should be deducted from this amount.
- If reworking Mr Y'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 Y's account results in there still be a capital balance outstanding ELL should work with Mr Y to agree an affordable repayment plan.
- Remove any adverse information recorded on Mr Y's credit file in relation to the loans 2 and 3.

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

My final decision

I am upholding Mr Y's complaint in relation to loans 2 and 3. Everyday Lending Limited (ELL), trading as Everyday Loans must put things right as set put above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Y to accept or reject my decision before 7 April 2022.

Rebecca Connelley
Ombudsman