DRN-3270712

The complaint

Mrs M complains that Everyday Lending Limited trading as Everyday Loans ("ELL") lent to her in an irresponsible manner.

What happened

Mrs M was given a loan by ELL in December 2018. She borrowed £5,100 that she agreed to repay in 36 monthly instalments. A large proportion of the loan was used to consolidate some other debts that Mrs M was repaying. Mrs M has faced problems repaying her loan and a balance remained outstanding when she made her complaint.

Mrs M's complaint has been assessed by one of our investigators. He thought that the results of ELL's checks should have led the lender to conclude that it was unlikely that Mrs M would be able to repay the loan in a sustainable manner. So he didn't think the loan should have been agreed and he asked ELL to put things right.

ELL didn't agree with that assessment. So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process. If Mrs M accepts my decision it is legally binding on both parties.

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.

We've set out our approach to unaffordable/irresponsible lending complaints on our website and I've kept this in mind while deciding Mrs M's complaint.

The rules and regulations at the time ELL gave this loan to Mrs M required it to carry out a reasonable and proportionate assessment of whether she could afford to repay what she owed in a sustainable manner. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower" focused – so ELL had to think about whether repaying the credit sustainably would cause difficulties or adverse consequences for Mrs M. In practice this meant that ELL had to ensure that making the repayments wouldn't cause Mrs M 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 any repayments on Mrs M.

Checks also had to be "proportionate" to the specific circumstances of the loan application. In general, what constitutes 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 / cost of credit they are seeking.

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 Mrs M.

ELL gathered some information from Mrs M before it agreed the loan. It asked her for details of her income, and used some industry statistical data to estimate her normal expenditure. And it checked Mrs M's credit file to see how much she was repaying to other creditors, and how she had managed credit in the past. ELL also verified Mrs M's employment through an offer letter she had received, and a phone call to her work. And Mrs M gave ELL some bank statements so it could further check what she'd said about her finances.

Mrs M was entering into a significant commitment with ELL. She would need to make monthly repayments for a period of three years. So I think it was right that ELL wanted to gather, and independently check, some detailed information about Mrs M's financial circumstances before it agreed to lend to her. I think that the checks I've set out above were sufficient to achieve that aim – I think that ELL's checks 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. And that is what I think should have happened in this case.

Mrs M told ELL that she had started a new job around two weeks before she applied for the loan. It appears from her bank statements, and the salary information from the job offer, that she would receive a much higher salary in her new role. But on taking the new job Mrs M entered into a six-month probationary period. During that time her new employer could terminate her employment by giving just one week's notice.

I accept that at the start of a new contract of employment both parties' honest intention is for the job holder to succeed and complete their probationary period. But I am also very aware that probationary periods are in place for a reason. In some cases a new employee is unsuitable for their new job – or they find it unattractive. A probationary period allows for the termination of that employment with minimal notice, or cost, to either party. So I think ELL should have been extremely mindful that Mrs M's employment wasn't as secure as it might have been had she been in the role for a longer period of time.

The credit check that ELL performed showed that Mrs M was heavily indebted at that time. And it showed that she had made extensive use of short-term lending in the past. I think those together might have led to a conclusion that her disposable income wasn't as great, or consistent, as ELL's estimations might have suggested.

Mrs M appeared to have met her contractual repayments on her recent borrowing. But there was evidence from the credit check that Mrs M had fallen behind on her repayments on a number of accounts in the past. As ELL will be aware, experience often suggests that consumers who have faced problems managing their money in the past have a greater likelihood of facing similar problems in the future.

I accept that Mrs M told ELL that she wanted to use the loan to refinance some of her existing debts. ELL repaid one of those debts on her behalf out of some of the proceeds of the loan. And I think it was reasonable for ELL to rely on Mrs M to repay the other debts herself when the loan was given to her. But after those loans had been repaid Mrs M would still be left with a significant amount of other debt to service.

I think of greater concern is the age of some of that debt. Mrs M had taken a significant hire purchase loan just over a month earlier. And the largest of the loans she was consolidating had been taken out at the same time. The other remaining debts were on credit and store card accounts. Two of those accounts were approaching not insignificant limits – and one of those accounts was less than six months old.

I think that the pattern of Mrs M's borrowing was indicative of someone that was finding it difficult to manage their money. And whilst ELL's checks suggested that Mrs M would be able to afford her repayments, that was on the basis that she successfully passed her probationary period and retained her employment. I think, taking all that together, there were too many risks for ELL to decide it would be responsible to lend to Mrs M at that time. So I don't think the loan should have been agreed, and ELL needs to put things right.

As I said earlier, Mrs M still owes a proportion of the capital she borrowed. Generally, in cases such as these, I think it reasonable for a consumer to repay the principal they borrowed. I have thought carefully about whether that approach would be fair in the specific circumstances of this complaint.

Mrs M has told us that she was in a Debt Management Plan ("DMP") shortly before she asked for this loan. She says that should have led ELL to decline her application. But it doesn't seem to me that ELL had any realistic method of discovering the DMP unless Mrs M declared it – which she didn't. So I'm not persuaded that it would be fair to divert from my normal approach here – I think it is reasonable to expect Mrs M to repay the principal that she borrowed.

I have seen that Mrs M has engaged the assistance of a debt management charity and the charity has been working with her and her creditors (including ELL) to agree a fair repayment plan. Following my decision I expect those discussions will need to continue, albeit with a reduced level of debt. I remind ELL that it should continue to treat Mrs M positively and sympathetically when agreeing a repayment arrangement.

Putting things right

I don't think ELL should have agreed to lend to Mrs M in December 2018. But I think it is reasonable that Mrs M still repays the principal that she borrowed. So ELL should;

- remove any interest and charges still outstanding on the loan and treat all the payments Mrs M made towards this loan as payments towards the capital

- if reworking Mrs M's loan account as I've directed results in Mrs M effectively having 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, as seems likely, reworking Mrs M's loan account leaves an amount of capital still to be paid, then I remind ELL that it should take a sympathetic view when seeking to agree an affordable repayment plan with Mrs M
- remove any adverse information recorded so far on Mrs M's credit file in relation to the loan

† HM Revenue & Customs requires ELL to take off tax from this interest. ELL must give Mrs M a certificate showing how much tax it's taken off if she asks for one.

My final decision

My final decision is that I uphold Mrs M's complaint and direct Everyday Lending Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 28 April 2022.

Paul Reilly
Ombudsman