

## The complaint

Mr M complains, in summary, about the customer service provided by Everyday Lending Limited, trading as Everyday Loans, ("ELL"), in respect of a loan provided to him by ELL.

## What happened

ELL provided Mr M with a loan for £2,000 in October 2019. The loan was to be repaid by 24 monthly payments of £189.68. The interest rate was 94.9% (149.3% APR). If Mr M made each payment when it was due, he'd pay £4,552.32 in total. Mr M missed some payments following his employment being terminated as a result of the Covid pandemic and ELL agreed to reschedule the loan. The end date of the loan was subsequently extended until 1 April 2022. ELL said it charged Mr M no additional interest for this.

There are four main aspects to Mr M's complaint.

1. He is unhappy that two payments had been deducted from his bank account in March 2020 which had left him in extreme financial difficulty. He said that he had previously phoned and emailed ELL's branch well in advance of these payments to tell it he had lost his job due to the Covid pandemic and that they should not attempt to claim his payments. He received conflicting information from ELL about a refund and was told he'd receive a call about the deferment process and the refund which didn't happen.
2. Mr M complains that the early settlement quotes he received were incorrect and he wasn't alerted to the early settlement calculation method the lender used when he took out the loan. Mr M said that the early settlement quote ELL provided in October 2020 was absurdly high and it included additional amounts which weren't explained to him adequately when he took the loan out. Mr M believes a fair and reasonable settlement proposal would be for him to repay the loan amount of £2,000 plus interest until April 2020 less the total amount of his repayments. He said that the loan terms enabled the loan to be repaid early without fees or charges.
3. Mr M is unhappy that ELL said that its systems couldn't provide him with an early settlement figure without him having to pay arrears.
4. Mr M complains that ELL didn't respond to his requests for information. On 3 August 2020, Mr M spoke to ELL to say he wanted to settle the loan. He asked for information about the accrued interest and his repayments so he could work out a fair and reasonable settlement taking into consideration the poor service he'd received. Mr M said he didn't receive a response. Subsequently Mr M was told by ELL that its system couldn't take off interest and charges from his account. So, he would have to repay his arrears in order that it could calculate a settlement figure. Mr M asked for confirmation that this was correct but didn't receive a response.

Mr M also asked for a formal apology for the treatment he'd received from ELL.

In its first final response letter, ELL provided details of the two early settlement figures which Mr M requested in August 2020 and October 2020. ELL said that these were calculated in compliance with the format prescribed under the Consumer Credit (Early Settlement) Regulations 2004 (the "Regulations") and pursuant to the Consumer Credit Act 1974. Under the Regulations, ELL said it was permitted to issue a settlement date for the purposes of calculating any rebate to which Mr M was entitled at a date falling 28 days from the date he requested the settlement figure. The lender was further permitted to defer the settlement date by 30 days more for the calculation of the rebate to which Mr M was entitled. This was also outlined in Condition 10 of the terms and conditions of Mr M's loan agreement. So, ELL said that the settlement quotes were correct.

With regard to the delay in providing Mr M with a refund for the payments ELL had taken in error, ELL apologised for this administrative error. In addition, it offered Mr M £200 compensation for the distress and inconvenience caused by this.

ELL later issued a second final response letter. This said that ELL's branch office hadn't received Mr M's email in March 2020 about his payments as it was in the process of being set up to work remotely. ELL also understood that Mr M's attempts to contact the branch were also not a success. After Mr M complained about this, ELL contacted him and said that it would be able to arrange for any further due payments to be suspended for the following three months and that it would put his credit file on hold for the time being. ELL also attempted to contact Mr M in June 2020 on several occasions without success.

The final response letter also said that on 3 August 2020, Mr M spoke to ELL's branch to discuss a fair early settlement amount. ELL said that the settlement figure was £2,835.77. Mr M said he wanted the unauthorised payments to be reflected in the offer as well as the way the account had been handled. Mr M said he was thinking of offering £1,300 to settle the loan.

The letter also said that ELL had later contacted Mr M in October 2020 to say that his loan term had been extended to accommodate any missed payments during the Covid pandemic, and that he would not pay any more than he was due to pay it before the pandemic.

Mr M rejected ELL's offer of £200 compensation. He also said that he believed that ELL had failed to explain at the start of his loan that all the interest over the course of the loan was payable regardless of how early he wanted to settle the loan.

#### *Our adjudicator's view*

The adjudicator provided detailed information in his view about the complaint, Mr M's responses and ELL's final response letters. He noted that ELL had apologised for its delays in responding to the request for a refund and that it had offered Mr M £200 compensation for the distress and inconvenience caused. The adjudicator didn't consider that the offer was inappropriate under the circumstances.

The adjudicator also referred to ELL's early settlement quotations and Mr M's claims that they hadn't been calculated on a fair basis. This was because Mr M believed that if he was to repay the loan early, he would still be paying all the interest he would have had to pay if he kept the loan for the full two year term. The adjudicator referred to Condition 10.2 of the loan's terms and conditions which said

*'Where you settle your agreement early, the full amount of interest which would have been payable up to the end of the loan is payable, less any statutory rebate to which you might be entitled.'*

The adjudicator was unable to recommend that this part of Mr M's complaint (together with the associated delays involved whilst Mr M disputed this matter with ELL) be upheld.

Mr M disagreed and he responded to say, in summary, that Condition 10.2 of the terms and conditions didn't say when the end of the loan was and ELL didn't tell him about the payment of 58 days interest on early settlement when he took out the loan.

The adjudicator raised Mr M's response with ELL. The lender said that the loan term was scheduled to end on 1 November 2021. It also said that Mr M's understanding of the additional 58 days interest was incorrect. The additional interest was added to the loan balance at the time when the early settlement figure was requested which had been shown in the breakdowns of the settlement figures set out in its final response letter. In addition, ELL said that the early settlement process was included in Condition 10 of its terms and conditions which Mr M signed to agree to when he agreed to the loan.

Mr M said that ELL's response was inadequate, and he still believed he had been mis-sold the loan. He noted that ELL had said that the 58 days interest gets added on to the loan balance, but he queried how ELL had worked out the loan balance. He'd received conflicting information when he phoned three of ELL's branches where each of ELL's advisers gave him different answers when he asked about settling the loan early, none of which was the same as what was written in ELL's final response letter.

Secondly, Mr M said that he was misinformed before he signed the loan agreement. He specifically asked ELL if he could pay off the loan early and how this would work. After that conversation he was under the impression that he would repay the amount due up to the date of early settlement rather than the amount due for the full term. He was still yet to see a valid reasonable explanation of ELL's breakdown of charges/fees and interest and why the balance was so high when he asked for an early settlement quote.

Mr M also said that before committing to the loan, he asked ELL if he could pay back the loan at any time and ELL said that he could do so without any early repayment charges. The 58 day interest period wasn't mentioned, and the loan agreement also said that the loan could be paid off early at any time.

The adjudicator referred Mr M's comments to ELL. It provided the comments of its salesman (who sold the loan to Mr M) who said:-

*"To be very honest with you in all my loan closes I always do refer to settlements and how settlement charge is 58 days in line with the credit consumer act. I do say this on all loan closes and leave the room for over 5 min to then give the customer time to re-read the pre contract and contract and do inform them to also read the terms and conditions as well. I then normally go in and ask if they have any questions to then clarify. I then leave the room again to allow them to sign with a clear understanding. I believe I did do the same with this customer as I do this process with all my customers."*

Mr M said in response to ELL's comments that he stood by his belief that he was misinformed when he took out the loan regardless of what ELL's salesman had said. He also provided the contents of a "chat" he'd had with another loan provider about early settlement which he thought would be useful for the ombudsman to see to understand his point of view.

As this complaint hadn't been resolved informally, it was passed to me, as an ombudsman, to review and resolve.

*my provisional decision*

After considering all the evidence, I issued a provisional decision on this complaint to Mr M and to ELL on 12 January 2022. I summarise my findings:

I could see that the adjudicator had provided details of the complaint history up until the time of his view. I didn't want to completely replicate the information provided by the adjudicator in his view which both parties would already be aware of. But, for context, I'd set out in some detail in my decision a summary of Mr M's complaint points and ELL's responses which were provided both before and after the adjudicator's view.

I'd said that where information was conflicting or incomplete, I needed to make my decision on the balance of probabilities, which was what I'd done here.

There appeared to be four aspects to Mr M's complaint, and I'd dealt with these separately.

#### *1. Refund of payments taken contrary to Mr M's instructions*

I'd noted that ELL had accepted that it made an administrative error here and offered Mr M £200 compensation for this aspect of his complaint. As ELL had upheld this aspect of Mr M's complaint, I didn't propose to investigate this aspect further. Mr M told this Service that he could accept the amount of £200 as compensation for this aspect of his complaint if I felt this was appropriate. I thought £200 compensation was appropriate here for the trouble caused to Mr M by ELL's error.

#### *2. Mr M's mis-selling claims and the early settlement figures*

I'd noted that Mr M said that he wasn't told when he took out the loan that he would have to pay 58 days interest at early settlement. I'd also noted that Mr M complained that all the interest over the course of the loan was payable regardless of how early he wanted to settle the loan.

I'd noted that ELL said in its final response letter that it had calculated the early settlement figure in compliance with the format prescribed under the Regulations.

Mr M told this service that before committing to the loan agreement, he'd wanted to make sure he could pay back the loan at any time and to his recollection, ELL's salesman replied that he could without any early repayment charges. Mr M also said that ELL's salesman didn't mention that he would have to pay 58 days' interest on early settlement.

The adjudicator asked ELL for its comments and it responded by providing ELL's salesman's comments which I'd set out above.

Overall, whilst it wasn't possible for me to know for certain what was discussed between Mr M and ELL's salesman, on balance, I couldn't safely say that Mr M wasn't told by the salesman about the 58 days' interest payable on early settlement. ELL's salesman also said that he gave all his customers time to read the loan terms and conditions, and I thought it was more likely than not that he did the same with Mr M, and that Mr M was given an opportunity to read these before he signed the loan agreement and to ask questions.

Even if ELL's salesman had omitted to refer to the 58 days' interest payable on early settlement, Mr M ought to have seen this referred to in Condition 10.2 of the loan terms and conditions .

I'd noted that Condition 10.1 and 10.2 of Mr M's loan agreement with ELL said

*“10.1 You have the right under section 94 of the Consumer Credit Act 1974 to repay early in full or in part. If you wish to pay any amount early you must give notice to us either by contacting your branch, writing to us... telephoning us...or emailing us at [ELL’s email address]*

*10.2 Where you settle your agreement early, the full amount of interest which would have been payable up to the end of the loan is payable, less any statutory rebate to which you may be entitled. For the purposes of calculating the rebate, we will defer the settlement date by 28 days after we receive your notice of early settlement (this is how long the settlement quote is valid for) and, if your agreement term exceeds one year, we would defer the settlement date by a further month as prescribed under the Consumer Credit Act 1974. This will mean you will pay up to 58 days interest. We will send you a statement setting out the amount you should pay, taking into account the statutory rebate to which you may be entitled.”*

In the signature box of the loan agreement it said that the borrower should only sign it if he wanted to be bound by its terms. And as Mr M signed the agreement, I couldn’t say that he didn’t agree to be bound by the agreement terms. And I couldn’t hold ELL responsible if Mr M didn’t read the terms and conditions.

Mr M said that the salesman told him that he wouldn’t have to pay any early settlement charges. I couldn’t see that ELL had charged any early settlement fees, although it was entitled to charge additional interest under the Regulations and in line with Condition 10.2 of the terms and conditions. I’d noted that Mr M had sent this Service a settlement calculation which he’d received from ELL in October 2020. This showed the amount of £64.99 which was described as a “CCA fee”. But I could see from ELL’s first final response letter that this was the amount described in that letter as equivalent to 30 days added interest due to the deferral of the settlement date. So, I could see it was interest rather than a fee.

I could also see that Condition 10.2 referred to the full amount of interest which would have been payable up to the end of the loan *less any statutory rebate* (my italics for emphasis). A rebate needed to be made to ensure that the early settlement figure reflected the interest charged for the period the loan was open. When working out any settlement figure, a lender had to work out the total interest payable as if the loan had remained outstanding for the full term. That amount was then reduced by the interest rebate to reflect that the loan was being repaid early.

I’d asked the adjudicator to ask ELL for copies of the settlement quotes sent to Mr M in August 2020 and October 2020 which ELL had provided. I could see that they contained the information set out in the Consumer Credit (Settlement Information) Regulations 1983 as later amended, including the total amount left to pay and the interest rebate amount. So, I could see that Mr M’s complaint that all the interest over the course of the loan was payable regardless of how early he wanted to settle the loan, wasn’t correct as the settlement quotes showed that an interest rebate had been made.

I’d noted that Mr M didn’t appear to have received these two settlement quotes, although ELL’s contact notes said that the lender had sent Mr M a breakdown of the settlement and a statement of transactions on 12 August 2020. The notes also said that a breakdown of the settlement figure was requested and sent to Mr M on 26 October 2020. Both quotes were addressed to Mr M at his home address. So, it was likely they were sent by post. The address shown on the quotes appeared to be correct as it was the same as that in Mr M’s

complaint form. On balance, I cannot hold ELL responsible for the failures of the postal service if the quotes didn't reach him.

I'd asked the adjudicator to provide the settlement quotes to Mr M so that he could see that a rebate was deducted from the outstanding balance of the loan to provide a settlement figure. The settlement figures in the two quotes were the same as the total settlement figures set out in the first final response letter.

I could also see that Mr M thought that the interest on the loan agreement was front loaded. I asked the adjudicator to ask ELL about this and it said that the interest on the agreement wasn't front loaded. I'd noted that the loan agreement said that interest would be calculated on the daily balance outstanding on the Account and applied to the Account monthly on the date the Monthly Payments were due. So, I didn't think the loan terms reflected the interest being front loaded.

I'd noted from listening to the recordings of the phone calls between Mr M and ELL that he was seeking a further discount on the early settlement figures to reflect the customer service difficulties he'd had with ELL. But ELL wasn't under any obligation to provide a further discount to the early settlement quotes.

I'd also noted that Mr M had provided this Service with a copy of the "chat" between himself and another lender. But I'd noted that each lender provides different products on different terms. It wasn't appropriate to use the response of the other lender for the purposes of resolving this complaint as the product terms and the circumstances might be very different.

So, for the reasons set out above, I didn't propose to uphold this aspect of Mr M's complaint.

### *3. ELL's request that Mr M pay arrears before being able to obtain an early settlement figure*

I'd asked the adjudicator to ask Mr M if he still wished this Service to investigate this aspect of his complaint further. I'd noted that the adjudicator's view didn't refer to this issue and that Mr M had made no comment about this in his responses to the adjudicator's view.

Mr M responded to say that from his recollection and the conversation with ELL's branch he had to resume his monthly payments to bring the account back into good standing from arrears which he did. Once the account was active again, ELL could then provide him with a settlement figure. Mr M also said that he could recall being informed that a settlement figure could be generated without doing this.

I'd also asked the adjudicator to ask ELL for its comments on this aspect of Mr M's complaint. ELL said that an early settlement figure could be generated whilst the account was in arrears and it did provide settlement figures.

I'd noted from ELL's contact notes that ELL had sent Mr M a breakdown of the settlement and a statement of transactions on 12 August 2020 which was at a stage when the account was in arrears.

On balance, as it appeared that a settlement figure could be provided at a time when the account was in arrears, I didn't propose to uphold this aspect of Mr M's complaint.

### *4. The lack of responses from ELL to some of Mr M's requests*

Mr M had also said in his complaint form that ELL didn't respond to some of his requests for information. Mr M said that on 3 August 2020 he spoke to ELL to say he wanted to settle the loan. He'd asked for information about the accrued interest and his repayments so he could

work out a fair and reasonable settlement taking into consideration the poor service he'd received. Mr M said he didn't receive a response. Subsequently Mr M said he was told by ELL that its system couldn't take off interest and charges from his account so he would have to repay his arrears so that ELL could calculate a settlement figure. Mr M asked for confirmation that this was correct but didn't receive a response. I could see that the lack of response in each of these cases would have been frustrating for Mr M and caused him inconvenience.

I'd asked the adjudicator to ask ELL if it agreed that no response was provided within a reasonable time in each case. ELL was also told that if responses hadn't been provided, that I considered that a total compensation amount of £50 would be appropriate for Mr M's trouble and inconvenience caused by the lack of responses. ELL responded to say that it agreed with this.

So, I intended to uphold this aspect of Mr M's complaint and say that ELL should pay Mr M £50 compensation for the trouble and inconvenience caused by ELL in relation to it.

So, for the reasons set out above, I didn't think ELL provided satisfactory customer service to Mr M in relation to the first and fourth aspects of his complaint. And subject to any further representations by Mr M or ELL, I'd said that I intended to uphold Mr M's complaint in part and say that ELL should put things right as shown below.

### **Putting things right – what ELL needs to do**

To settle Mr M's complaint, ELL should pay Mr M a total of £250 compensation in relation to the first and fourth aspects of his complaint.

Mr M responded to my provisional decision to say that he was disappointed and disagreed with the decision, but he did appreciate the attention to detail and effort that was put into his case. For that reason, he didn't have any further information to add to his case that would be useful to me in making the final decision. But moving forward there were some things that he would like all parties to consider regarding the loan. He had fallen behind again on payments and he couldn't see his financial situation improving any time soon. So, he'd said that he would appreciate an instalment plan that was flexible and reasonable for the remainder of the balance which wouldn't hurt his credit score. In addition, he would like the option of having the £250 compensation paid to him or deducted from the loan balance.

ELL hasn't provided a response to my provisional decision other than to respond to some queries I'd asked the adjudicator to raise with it in relation to Mr M's response to my provisional decision. There is more information on this below.

### **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.

I have also taken into account the law, any relevant regulatory rules and good industry practice at the time.

I asked the adjudicator to ask ELL to confirm that it was happy for the redress to be amended to reflect that Mr M had asked for the option to have the compensation I'd awarded set off against the loan balance. ELL responded to say that it agreed to the compensation being set off against the loan balance, but it hasn't provided any comments on Mr M having the option to decide whether to receive the compensation or for it to be offset against the debt.

I note that Mr M said he is suffering financial difficulties and that he is seeking a flexible and reasonable instalment plan which won't hurt his credit score. As ELL is obliged to follow the Financial Conduct Authority's Consumer Credit Sourcebook ("CONC") in relation to arrears difficulties, I would expect it to act in line with the provisions of CONC in dealing with Mr M's arrears difficulties.

As Mr M said he was suffering financial difficulties, I'd also asked the adjudicator to tell ELL that I was proposing to amend my decision to reflect this and to ask for its comments on the amendment. The proposed amendment was to remind ELL of its obligations to treat Mr M sympathetically and positively if he was having difficulties repaying the loan. ELL responded to say that it was happy with this amendment.

Other than as set out above, Mr M and ELL have given me nothing further to consider. So, I see no reason to depart from the conclusions I reached in my provisional decision save for the amendments referred to above. It follows that I uphold this complaint in part and require ELL to take the steps set out below. I would also remind ELL of its obligations to treat Mr M sympathetically and positively if he is having difficulties repaying the loan.

### **My final decision**

My decision is that I uphold this complaint in part. In full and final settlement of this complaint, I order Everyday Lending Limited, trading as Everyday Loans, to pay compensation of £250 to Mr M for the inconvenience and upset he has been caused.

I note there's an outstanding balance on Mr M's account. ELL should give Mr M the option to decide if he wishes to receive the compensation of £250 or if he would like the compensation offset against his debt.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 16 March 2022.

Roslyn Rawson  
**Ombudsman**