DRN-3387594

The complaint

Mr N has complained about a loan granted to him by Everyday Lending Limited, trading as Everyday Loans, ("ELL"), which he said was unaffordable. The complaint is brought to this service on Mr N's behalf by a claims' management company. But for ease I have referred below to all actions being taken by Mr N.

What happened

ELL agreed a loan for Mr N on 30 September 2020. The loan was for £1,000 and was repayable by 18 monthly payments of £116.57. The interest rate on the loan was 110.9%, (188.8% APR). If Mr N made each repayment when it was due, he would pay £2,098.26 in total. Mr N had told ELL the loan was to be used for car repairs and home improvements.

Mr N said that he was in financial difficulty at the time the loan was contracted. He was on furlough and short of money when he took out the loan. He has struggled to meet the monthly payments to ELL.

Our investigator's view

The investigator recommended that the complaint should be upheld. He said that ELL's checks showed that Mr N was in a deficit on his main current account and he had several outstanding defaults that he'd been unable to reduce or clear over time.

ELL disagreed and responded to say that it had reviewed Mr N's bank statements from July 2020 and August 2020, and it could see that the account was well maintained, and Mr N was never overdrawn on his statements. ELL said there was no evidence of financial distress on Mr N's account that should have led its branch to reasonably know that this loan wasn't going to be affordable for Mr N. With regard to the historic defaults, ELL said that its branch had asked Mr N about these and he said that these occurred when he was out of work. It had factored in repayments on these defaulted accounts in its assessment of the disposable income Mr N would have.

As the complaint hadn't been resolved informally, it was passed to me, an ombudsman, to decide.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr N and to ELL on 22 February 2022. I summarise my findings:

I noted that when ELL lent to Mr N, the regulator was the Financial Conduct Authority and relevant regulations and guidance included its Consumer Credit Sourcebook (CONC).

ELL was entering into a regulated credit agreement. So, it had to carry out a reasonable assessment of Mr N's creditworthiness before it entered the agreement. This meant that ELL had to consider both the risk to it that Mr N wouldn't make the repayments under the agreement when due, and the risk to Mr N of not being able to make these repayments.

In particular, ELL had to consider Mr N's ability to make repayments under the agreement as they fell due over the life of the agreement, without him having to borrow to meet the repayments, without him failing to make any other repayment he had a contractual or statutory duty to make, and without the repayments having a significant adverse effect on his financial situation.

The rules don't set out any specific checks which must be completed to assess creditworthiness. But the lender should take into account the borrower's income (over the full term of the loan) and their ongoing expenditure for living expenses and other debts. Whilst it is down to the lender to decide what specific checks it wishes to carry out these should be reasonable and proportionate to the type and amount of credit being provided, the length of the term, the frequency and amount of the repayments and the total cost of the credit. So, a lender's assessment of creditworthiness would need to be flexible and what is appropriate for one person might not be for another. And what might be sufficient for a borrower in one circumstance might not be so for the same borrower in other circumstances.

In general, I'd expect a lender to require more assurance the greater the potential risk to the consumer of not being able to repay the credit in a sustainable way. So, for example, I'd expect a lender to seek more assurance by carrying out more detailed checks

• the lower a consumer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);
• the higher the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
• the longer the period of time a borrower would be indebted for (reflecting the fact that the total cost of credit was likely to be greater and the borrower was required to make repayments for an extended period).

I said that ELL made a number of checks before it lent to Mr N. It had also spoken to and met with Mr N and discussed his application. I could see that it had asked Mr N for details of his employment, monthly income and rent and it had used Office for National Statistics ("ONS") data to estimate the rest of Mr N's expenditure. ELL also asked Mr N to provide a payslip and two calendar months' bank statements. ELL also checked Mr N's credit file to assess how much he was paying other creditors and how he'd managed his credit in the past. It used the results of those checks to calculate Mr N's credit commitments.

Mr N was entering into a significant commitment with ELL. He would need to make monthly repayments of £116.57 for 18 months. So, I thought it was right that ELL wanted to gather, and independently check, some detailed information about Mr N's financial circumstances before it agreed to lend to him. I thought that the checks I'd described above allowed ELL to form a detailed view of Mr N's finances, and I thought that the checks ELL did 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. So, I'd looked at the results of ELL's checks to see whether it made a fair lending decision.

ELL's disposable income calculator form showed Mr N's earned net income as £1,759.74 and that he received £140 child benefit. It showed rent of £440, credit repayments of £221.96 and living expenses of £743. After ELL's loan repayment, it said that Mr N would have a monthly disposable income of £377.80. But I thought ELL might have been concerned as to why someone with an available income of £377.80 (according to its own calculations) would need to borrow a high cost loan for £1,000.

ELL asked Mr N about his income. He told it that he was no longer furloughed. He provided his payslips for August 2020 and September 2020 to ELL. I could see that Mr N was furloughed in August 2020, but he wasn't furloughed in September 2020. I thought it would have been reasonable for ELL to use Mr N's basic net income from his (non-furloughed) September 2020 payslip excluding the amounts he received for overtime and standby as these amounts weren't necessarily guaranteed income going forward. As Mr N was paid every four weeks, I'd calculated that his net basic monthly income after deductions was around £1,585. As he also received child benefit of £140, I'd calculated his total net monthly income as around £1,725. I noted that this was around £175 less than the income amount used by ELL in its calculations.

I'd reviewed ELL's credit checks before the loan. These showed that Mr N had four live loans with a total loans balance of £1,506. Three of the loans were live communications loans with monthly repayments totalling £93. Mr N also had a hire purchase loan balance of £175. The account had been taken out in 2016 and had been subject to a payment arrangement with a debt collector. But the account hadn't been updated on the checks since January 2020. Mr N also had a default balance from April 2018 of £316, but the account hadn't been updated on the checks since April 2019. I thought ELL might have queried the current status of these two historic debts.

ELL appeared to have looked into Mr N's credit commitments further. I could see that it had listed and calculated Mr N's monthly credit commitments. The list included monthly payment amounts for the two historic loans mentioned above together with monthly payment amounts for four other historic accounts which hadn't appeared on ELL's credit checks and were defaulted. There was also an active car loan on which Mr N was paying around £171 each month.

I appreciated that having some historic debt wasn't automatically a barrier to taking on further credit. But I thought ELL ought to have taken further steps to check that Mr N would be able to meet its repayments without adverse effects, given he wasn't potentially able to clear his existing debts.

As I'd said above, ELL used ONS data to calculate Mr N's living costs as £743. But I didn't think it was reasonable here for ELL to rely on statistical information about Mr N's living costs without verifying them. ONS data is based on the finances and expenditure of the average consumer. But I didn't think ELL could be confident that such data reasonably reflected Mr N's situation and was appropriate to rely on in this case. ELL's affordability assessment wasn't tailored to Mr N and I thought it should have been in his circumstances.

ELL had been provided with Mr N's bank statements for July 2020 and August 2020, and I thought it would have been reasonable for it to verify Mr N's living expenses from those statements. It didn't appear to have done this.

I'd reviewed the bank statements that ELL saw. I could see that Mr N was transferring savings to his current account and in receipt of transfers from his partner which kept his account from going overdrawn. Taking all of Mr N's reasonably identifiable spend on food, phone, travel, utilities, broadband/cable, and insurance yielded a total expenditure significantly higher than that provided by the ONS data. And taking into account the amount of £440 Mr N said was spent on rent and the monthly credit commitments calculated by ELL, I'd calculated that he wasn't left with sufficient disposable income to repay ELL's loan and for him to have enough money to meet any unexpected costs. I thought ELL ought to have reasonably expected that Mr N would be likely to incur unexpected expenses over a term of 18 months, especially as he had two dependents.

Altogether, I didn't think ELL's checks went far enough. It didn't seem to have used the bank statements it had to verify the estimate of Mr N's living costs and I thought it shouldn't have included overtime and standby income in its income calculation. Overall, I was satisfied that the available information demonstrated that Mr N wasn't in a position to take on any more debt. So, I thought ELL's decision to arrange the loan wasn't fair and reasonable in the circumstances and I considered it was irresponsible to have agreed it.

So, for the reasons set out above, I didn't think ELL acted fairly when it provided the loan to Mr N. And, subject to any further representations by Mr N or ELL, I said that I intended to uphold Mr N's complaint and that ELL should put things right as follows:

Putting things right – what ELL needs to do

I understand that the loan hasn't been fully repaid. In order to put Mr N back into the position he would have been had the loan not been agreed for him, ELL needs to ensure that Mr N only repays the principal borrowed on the loan. In other words, Mr N shouldn't repay more than the capital amount of £1,000 he borrowed. So, ELL needs to:

a) treat all payments that Mr N has made towards the loan as payments towards the capital amount borrowed;
b) if Mr N has made payments above the capital amount of £1,000 then these should be refunded to him, along with simple interest at the rate of 8% per year on these amounts from the date they were paid to the date of settlement*;
c) if Mr N hasn't made payments above the capital amount of £1,000, ELL should treat Mr N positively and sympathetically regarding repayment of the balance. This might mean agreeing a mutually agreeable repayment plan with him; and
d) remove any adverse information about the loan from Mr N's credit file.

If ELL has sold the outstanding debt on the loan, it should buy it back if it is able to do so or chooses to do so and then take the steps listed above. If ELL isn't able to buy the debt back or chooses not to, then it should liaise with the new debt owner to bring about steps a) to d) above.

*HM Revenue & Customs requires ELL to take off tax from this interest. ELL must give Mr N a certificate showing how much tax it has taken off if he asks for one.

Mr N responded to my provisional decision to say that he accepted it.

ELL hasn't provided any comments in response to my provisional 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.

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

Given that Mr N and ELL have given me nothing further to consider, I see no reason to depart from the conclusions I reached in my provisional decision. It follows that I uphold this complaint and require ELL to take the steps set out above under the heading "Putting things right - what ELL needs to do".

My final decision

My decision is that I uphold this complaint. In full and final settlement of this complaint, I order Everyday Lending Limited, trading as Everyday Loans, to put things right as I've set out above under the heading “Putting things right – what ELL needs to do”.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 20 April 2022.

Roslyn Rawson
Ombudsman