The complaint

Mr J complains that Everyday Lending Limited trading as Everyday Loans ("ELL") lent to him in an irresponsible manner.

What happened

Mr J was given two loans by ELL. He first borrowed £2,000 in November 2017 that he agreed to repay in 24 monthly instalments. Around a year later Mr J refinanced that loan and took around £1,782 of additional borrowing. So in December 2018 Mr J borrowed £3,100 that he again agreed to repay in 24 monthly instalments. Mr J repaid his loan, slightly earlier than planned, in December 2020.

Mr J's complaint has been assessed by one of our adjudicators. She thought that the checks ELL had done before agreeing each loan had been proportionate. But she thought the results of those checks should have led the lender to decline both applications. So she asked ELL to pay some compensation to Mr J.

ELL didn't agree with our adjudicator's assessment, but it offered to put things right on the second loan as had been proposed. But it still didn't think it had been wrong to give the first loan to Mr J. 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 Mr J 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 Mr J's complaint.

The rules and regulations at the time ELL gave these loans to Mr J 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 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 Mr J. In practice this meant that ELL had to ensure that making the repayments wouldn't cause Mr J 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 Mr J.

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 Mr J.

ELL gathered some information from Mr J before it agreed each loan. It asked him for details of his income, and his normal housing costs. It then used some industry statistical data to estimate the remainder of Mr J’s expenditure. It checked his credit file to assess how much he was repaying to other creditors and how he had managed credit in the past. And ELL looked at copies of Mr J’s bank statements to verify some of the information he’d provided.

Each time Mr J was entering into a significant commitment with ELL. He would need to make monthly repayments on each loan for a period of two years. So I think it was right that ELL wanted to gather, and independently check, some detailed information about Mr J’s financial circumstances before it agreed to lend to him. I think that the checks I’ve described 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.

I think the information shown on Mr J’s bank statements at the time of the first loan would bring into question some of the assumptions that ELL made when it was assessing how much disposable income he’d have available to make his loan repayments. There are two aspects in particular that I think ELL should have taken into account.

The bank statements Mr J provided showed two months of income payments from his employer. In July 2017 Mr J received £1,670, and in August 2017 he received £1,443. Mr J also provided ELL with a copy of his payslip for September 2017 that showed his income for that month as being £1,620. Using the year to date figures ELL calculated that Mr J’s average monthly income was £1,824. And it was that average figure ELL used when assessing the affordability of the loan.

Mr J's payslip showed that his income comprised a base salary and commission payments. It is clear from the variability in his income that those commission payments were not guaranteed and might fluctuate from month to month. His income in August was less than 80% of the income ELL used in its affordability assessment. I think ELL needed to take better account of the probability that, in at least some months, Mr J's income would be lower than average, and so it might be more difficult for him to meet any repayments.

When ELL calculated what Mr J would need to repay each month on his outstanding credit card balances it used an estimate of 3%. Generally I don't think that would be an unreasonable way of estimating those repayments – 3% was the normal minimum repayment that would need to be made on credit card accounts of this type. But the evidence from Mr J's bank statements showed that, for the two months they covered, he had made much higher repayments. On the two credit cards with the largest balances Mr J had repaid between 10% and 15% of the outstanding balances each month. I don't think it would be unreasonable to conclude that Mr J would expect to continue making repayments of that size after taking out the new loan.

ELL's assessment suggested that Mr J would have around £250 left over each month after making his repayments on the new loan. But, as can be seen from my comments above, that difference would be very quickly eradicated by a normal fluctuation in Mr J's income and/or him continuing to make credit card repayments as his payment history suggested was the norm.

So I don't think it was reasonable, from the information it received from its checks, for ELL to conclude that Mr J would be able to repay the first loan every month for a period of two years in a sustainable manner. I don't think ELL should have given this loan to Mr J.

As I said earlier, ELL offered to pay the compensation our adjudicator had recommended in relation to the second loan. But in its response ELL made it clear that it didn't agree with the adjudicator's finding that the loan had been lent irresponsibly. So I think it is right that I put ELL's offer to the side, and consider independently what happened at the time of the second loan.

The bank statements Mr J provided before the second loan again showed two months of income payments from his employer. In October 2018 Mr J received £2,431, and in November 2017 he received £1,439. Mr J also provided ELL with a copy of his payslip for November 2017 from which, using the year to date figures, ELL calculated that his average monthly income was £2,041. As before it was that average figure ELL used when assessing the affordability of the loan.

The difference between Mr J's monthly income in November and the average figure that ELL used in its affordability assessment was even greater than before. His November income was only 70% of the average. So I think that again underlined the real difficulty that Mr J would have in some months in meeting his loan repayments.

Mr J had asked to refinance his loan after just half of the agreed term. And at that time he asked to take some additional borrowing to support the costs he expected to face over the forthcoming Christmas period. The credit check showed that during the past year, whilst he was repaying his first loan, Mr J had regularly used short term lending to support his normal expenditure. The first loan that ELL had provided, that was partly for consolidating some other short-term debt, had not allowed Mr J to break out of the short-term borrowing cycle that he was in.

So I don't think it was reasonable for ELL to give the second loan to Mr J either. The same concerns about his disposable income in some months remained unchanged from the time of the first loan. And the worsening of Mr J's credit position suggested that he had struggled to manage his money in the previous year.

So I don't think ELL should have given either loan to Mr J, and as a result it needs to pay him some compensation.

Putting things right

I don't think ELL should have agreed to lend to Mr J in November 2017 or December 2018. So ELL should;

- refund all the interest and charges Mr J paid on each loan
- pay interest of 8% simple a year on any refunded interest and charges from the date they were paid (if they were) to the date of settlement†
- remove any adverse information recorded on Mr J's credit file in relation to the loans

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

My final decision

My final decision is that I uphold Mr J'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 Mr J to accept or reject my decision before 11 May 2022.

Paul Reilly
Ombudsman