DRN-3403823

The complaint

Mr C complains that four personal loans provided to him by Everyday Lending Limited, trading as Everyday Loans, ("ELL"), were unaffordable. He also complains that ELL refused to give him a Covid payment break.

What happened

Mr C was given four loans by ELL from April 2017 to November 2019. Loan 2 was used to repay Loan 1, Loan 3 was used to repay Loan 2 and Loan 4 was used to repay Loan 3. According to the most recent information I've seen, Loan 4 hasn't been repaid. A summary of Mr C's borrowing history is as follows:-

Loan number	Date of loan	Date of loan repayment	Loan amount	Number of monthly repayments	Highest monthly repayment
1.	13/4/2017	13/10/2017	£1,500	24	£137.49
2.	13/10/2017	28/9/2018	£4,000	36	£335.21
3.	28/9/2018	27/11/2019	£10,000	48	£434.68
4.	27/11/2019	Unpaid	£10,000	48	£435.59

Mr C said that he initially had one loan for £1,500. Then ELL offered him a loan for £2,000, then a further loan for £10,000 and then another loan for £10,000. He said this was unaffordable lending and the loans put him in financial difficulties. Mr C also said that he'd asked for a Covid payment break in 2020 which ELL refused.

In its final response letter, ELL didn't uphold Mr C's complaint about unaffordable lending. It provided details about its checks on each loan. ELL said that considering everything, it believed the checks it completed were reasonable and proportionate and that the loans were sustainable over their respective terms as Mr C had disposable income. With regard to Mr C's complaint about the Covid payment break, ELL offered Mr C £100 compensation for the distress and inconvenience caused as a result of its error.

Our adjudicator's view

Our adjudicator recommended that Mr C's complaint about Loans 2, 3 and 4 should be upheld. The adjudicator said that it was irresponsible of ELL to have approved Loans 2, 3 and 4 for Mr C based on the knowledge it had of his financial circumstances when he made his applications to the lender. The adjudicator didn't investigate Mr C's complaint about the Covid payment break as this had been resolved.

ELL disagreed with the adjudicator's view on Loans 2 and 3, but it accepted the adjudicator's view regarding Loans 1 and 4. It didn't think the increase in Mr C's monthly credit repayments from £730.78 at the time of his application for Loan 1 to £849.56 at the time of his application for Loan 2 was sufficient evidence to suggest that Mr C wasn't properly managing his credit. In addition, the credit checks it made at the time Loans 2 and 3 were taken out didn't show any missed payments or defaults to suggest Mr C wasn't able to meet his monthly obligations. ELL's affordability assessment also showed that Mr C had significant monthly disposable income of £382.71 and £522 at the time of Loans 2 and 3 respectively. In terms of Mr C's overall loan indebtedness, this reduced form £19,787 at the time of his application for Loan 1 to £17,571 when he applied for Loan 2 and subsequently to £3,643 when he applied for Loan 3. ELL said that all this suggested that it shouldn't have reasonably known that Mr C could not sustainably repay Loans 2 and 3.

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 C and to ELL on 25 February 2022. I summarise my findings:

As ELL had agreed with the adjudicator's recommendations regarding Loan 4, I said that I didn't propose to investigate this loan but would include the redress for it within the award section. I also said that I wouldn't investigate Mr C's complaint about the Covid payment break as this had already been resolved.

Where the evidence was incomplete, inconclusive, or contradictory (as some of it was here), I reached my decision on the balance of probabilities – in other words, what I considered was most likely to have happened in light of the available evidence and the wider circumstances.

I noted that when ELL lent Loans 1 to 3 to Mr C, the regulator was the Financial Conduct Authority ("FCA") and relevant regulations and guidance included its Consumer Credit Sourcebook ("CONC"). Its rules and guidance obliged ELL to lend responsibly. As set out in CONC, this meant that ELL needed to take reasonable and proportionate steps to assess whether or not a borrower could afford to meet its loan repayments in a sustainable manner over the lifetime of the agreements.

Repaying debt in a sustainable manner meant being able to meet repayments out of normal income while meeting normal outgoings and not having to borrow further to meet these repayments.

The lender was required to carry out a borrower focussed assessment each time - sometimes referred to as an "affordability assessment" or "affordability check". Neither the law nor the FCA specified what level of detail was needed to carry out an appropriate assessment or how such an assessment was to be carried out in practice. The FCA said that the level of detail would depend on the type of product, the amount of credit being considered, the associated cost and risk to the borrower relative to the borrower's financial situation, amongst other factors.

The checks had to be "borrower" focussed – so ELL had to think about whether Mr C could sustainably repay his loans. In practice, this meant that the lender had to ensure that making the payments to the loans wouldn't cause Mr C 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 loan repayments on Mr C.

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

- the lower a person'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 term of the loan (reflecting the fact that the total cost of the credit was likely to be greater and the borrower was required to make payments for an extended period);
- the greater the number and frequency of loans, and the longer the period of time during which a person had been given loans (reflecting the risk that repeated refinancing might signal that the borrowing had become, or was becoming, unsustainable).

Loan 1

Loan 1 was for £1,500. The interest rate was 94.9%, (149.3% APR). The loan was to be repaid over 24 months with monthly repayments of £137.49 If Mr C made each payment when it was due, he'd pay £3,299.76 in total.

ELL said in its final response letter that the loan was to be used for consolidating a payday loan, a revolving credit product and a catalogue loan. It said that Mr C was self-employed with an average monthly income of £2,200. He lived with his parents and didn't pay anything for his board. He had no dependents. ELL estimated Mr C's living costs by using 35% of Mr C's net income to calculate these. It had done a credit search and reviewed Mr C's personal and business bank statements and Mr C's accountant's certificate. ELL calculated Mr C's financial commitments and living costs to total £1,500.79 and that Mr C had a disposable income of £717.99 after taking account of the credit to be consolidated and its monthly loan repayment.

Mr C was entering into a significant commitment with ELL. He would need to make monthly repayments of £137.49 for 24 months. So, I thought it was right that ELL wanted to gather, and independently check, some detailed information about Mr C'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 C'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 had made a fair lending decision.

I'd reviewed ELL's credit checks before Loan 1. I could see that Mr C had a hire purchase loan with monthly repayments of around £445 which appeared to have been made regularly. He also had two credit cards and a mail order account. One of the credit cards was over its credit limit, but the other two accounts were well within their respective limits. Overall, I didn't think ELL ought to have been unduly concerned with the results of its credit checks.

But I was aware that a lender's credit checks might not reveal the full extent of a borrower's credit commitments. ELL would likely be aware of this too. The information it saw wasn't necessarily up to date. A lender might only see a small portion of a borrower's credit file, or some data might be missing or anonymised. I was also aware that not all lenders reported to the same credit reference agencies.

Whilst Mr C had told ELL that he would be using the loan proceeds to consolidate some of his debts, I couldn't see from the information received from ELL that it had made this a condition of the loan. So, it couldn't be sure that debt would be paid off. And Mr C would still have been left with a relatively large amount of debt to repay even if he did repay some of his debts with the loan proceeds.

I could also see that even if Mr C had used the proceeds of Loan 1 for debt consolidation, his total indebtedness was still increasing. He said he was using a loan of £1,500 to repay debt, but he would need around £3,300 to repay Loan 1.

Mr C told ELL he was self-employed. I could see that ELL had used a monthly income of £2,200 in its assessment. But I thought the fact that Mr C was self-employed meant that his income might have been sporadic or likely to fluctuate. His declared income might not have been his available income and might not have been net of all tax, national insurance, and business expenses. There was also an element of uncertainty – especially as Mr C was unlikely to receive any sick pay or holiday pay. So, I thought this might have caused ELL to take additional care when reviewing Mr C's loan applications.

As it wasn't clear to me how ELL had calculated Mr C's monthly net income of £2,200, I asked the adjudicator to ask ELL how this had been calculated. I'd also noted that ELL had seen an accountant's certificate and I asked the adjudicator to ask for this as it didn't appear that we'd received it.

ELL said that the monthly income of £2,200 was calculated using the average of two years of information on company turnover, net profit and personal earnings provided by Mr C's accountant for the year 1 June 2015 to 31 May 2016 and projections for the year 1 June 2016 to 31 May 2017. The accountant said that the projected information was based on information from Mr C.

ELL provided the accountant's certificate to this Service. I'd noted that the projections for the year 1 June 2016 to 31 May 2017 showed projected personal earnings of £20,000 and this figure was said to be subject to tax and national insurance. It also showed a projected net profit of £80,000 which was substantially higher than the actual profit for the previous tax year. I thought ELL might have wanted to see more information about this projected profit figure before relying on it as evidence of potential income going forward. I couldn't see that it had asked for more information about this.

On balance, I didn't think in Mr C's circumstances that using an average of two years figures was likely to produce an accurate figure for Mr C's income going forward. And I didn't think it was reasonable for ELL to use a figure of £2,200 net monthly income for Mr C without further clarification as to whether this was likely to be accurate. I'd noted that the net monthly income based on a projected annual income of £20,000 was around £1,407. This was around £800 less than the monthly income used by ELL. I didn't think Mr C would have had any disposable income left if ELL had calculated a monthly income based on Mr C's projected personal earnings of £20,000.

I also didn't think it was reasonable for ELL to rely on using a percentage of Mr C's "average" income to calculate his living costs without verifying these. This was unlikely to reflect the existing commitments of someone in Mr C's circumstances. . But I could see that it had asked Mr C for his bank statements and it could have used these to check Mr C's income and living costs.

I'd reviewed the bank statements ELL received from Mr C which it had sent to this Service. The statements were for two current accounts which both appeared to have been used for both personal and business transactions. From my review of these statements, the expenses appeared to be greater than the income received by Mr C. This might have been the reason for Mr C having to take out a payday loan for £850 and revolving credit of £400 at the end of March 2017 to supplement his income. I thought this total credit amount of £1,250, which didn't appear on ELL's credit checks, ought to have caused it concerns as it appeared that Mr C was having difficulty managing his finances and was relying on expensive credit to supplement his income.

So overall, I thought ELL was irresponsible to have agreed to lend to Mr C based on the information it already had. I didn't think it could be certain that Mr C would be able to meet his repayments sustainably over two years in view of his expenditure exceeding his income and his need to borrow from high cost credit providers to supplement his income. Mr C was, after all, committing to repay around £3,300 over 24 months. And I thought that ELL made an unfair lending decision here.

Loan 2

Mr C initially told ELL he wanted a top up loan of £8,000. As ELL ultimately provided a loan of £4,000, I thought it might have had some concerns about Mr C's finances. Loan 1 was repaid by the loan proceeds of Loan 2 and Mr C was left with £2,470.04. The total amount payable was nearly £8,800 more than the total amount to be paid on Loan 1.

Loan 2 was to be repaid over a longer period and with higher monthly repayments than the previous loan. The monthly loan repayments had increased to £335.21 and were to be repaid over 36 months. The interest rate was 96.9%%, (153.9% APR). If Mr C made each payment when it was due, he'd pay £12,067.56 in total.

Mr C had told ELL he wanted to use the loan for debt consolidation. I thought ELL ought again to have been concerned by Mr C's need to borrow expensive credit for debt consolidation only around six months after Loan 1 which he'd borrowed for the same purpose. That might be the sort of behaviour that would indicate that someone was facing problems managing their money. And whilst Mr C said he was consolidating some of his debt, he was substantially increasing his overall indebtedness by taking out Loan 2.

ELL again noted that Mr C was self-employed with an average monthly income of £2,200. He still lived with his parents and didn't pay anything for his board. He said he had no dependents. ELL again estimated Mr C's living costs by using 35% of Mr C's net income to calculate these. It had done a credit search and reviewed Mr C's personal and business bank statements. ELL calculated Mr C's financial commitments and living costs to total around £1,620 and that he had a disposable income of £382.71 after taking account of the credit to be consolidated and its monthly loan repayment.

Mr C was again entering into a significant commitment with ELL. He would need to make monthly repayments of £335.21 for 36 months. So, I again thought it was right that ELL wanted to gather, and independently check, some detailed information about Mr C'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 C's finances, and I thought that the checks ELL did were proportionate. But as I'd said above, a lender also needed to react appropriately to the information shown by those checks.

I'd reviewed ELL's credit checks before Loan 2. I thought they suggested an increase in Mr C's need for credit which ought to have concerned ELL. His total revolving credit had almost doubled since he'd taken out Loan 1. Mr C had taken out two new credit cards since

Loan 1 and his balance was around the credit limit of £400 on one of those cards. On another credit card, his balance was £200 over the credit limit of £3,900 and on another credit card his balance was around the credit limit of £726. Mr C also had a mail order account with a £3,590 balance. I thought ELL ought to have been concerned that Mr C had taken out three new credit cards within the seven months before his application for Loan 2 and that one of his cards was overlimit and two were around their respective limits. And as I'd set out above, ELL's credit checks might not have revealed the full extent of Mr C's other credit commitments.

It wasn't clear to me if ELL had seen new information to calculate Mr C's monthly net income of £2,200. It didn't say that it had seen a current accountant's certificate or projected income. So, it seemed that it relied on the information it had received before Loan 1. As I'd stated above, I thought Mr C's projected net monthly income was more likely to be around £1,407. So, I didn't think Mr C would have had any disposable income if ELL had calculated a monthly income based on Mr C's projected earnings for the year ending 31 May 2017.

For the same reasons as I'd stated above, I also didn't think it was reasonable for ELL to rely on using a percentage of Mr C's income to calculate his living costs without verifying these. But I could see that ELL had again asked Mr C for his bank statements which could have been used to check Mr C's income and expenditure.

ELL had provided this Service with statements for one of Mr C's current accounts. ELL would have been aware from its credit checks that Mr C had four current accounts so just seeing one account was unlikely to provide it with a clear picture of his finances. I could see that ELL had seen excerpts from his statements in a mobile phone format for the period 31 August 2017 to 3 October 2017. The statements weren't complete and didn't include the running balance. Whilst these showed payments to various creditors, they didn't show the payments to ELL for Loan 1. So, ELL would have been aware that Mr C had another current account and I thought it needed to ask for statements for that account to obtain a better overall picture of Mr C's financial situation.

I'd seen and reviewed the bank statements from around the time of Mr C's application for Loan 2 for the account from which Mr C made his loan repayments to Loan 1. I could see that he'd paid many of his creditors from that account. The account went into overdraft on several occasions and Mr C paid unplanned overdraft fees. More worryingly on two occasions when the account was nearly overdrawn, Mr C borrowed expensive loans from high cost credit providers. He borrowed £2,000 at the end of September 2017 and £2,966.17 on 12 October 2017 from other high cost credit providers. He'd also borrowed £3,500 from another high cost lender at the end of July 2017 and borrowed additional amounts from a high cost revolving credit provider between August 2017 and October 2017. I could see that Mr C's spending on credit commitments in September 2017 exceeded £1,900 and was likely to be higher than this going forward after taking out the £2,000 loan at the end of that month. I thought if ELL had seen these statements, it ought to have reasonably realised that Mr C was over committed financially and that he was having difficulty managing his finances.

So, if ELL had obtained more information about Mr C's financial situation that I thought was needed for this loan, I thought ELL ought reasonably to have realised that it was unlikely that Mr C would have been able to sustainably repay his loan. So, I didn't think it made a fair lending decision when agreeing to provide Loan 2.

Loan 3

Mr C had been indebted to ELL for almost 18 months when he applied for Loan 3. The loan amount of £10,000 was £6,000 higher than Mr C's previous loan and his monthly repayments increased by around £100. The monthly repayments were to be made over the longer period of 48 months. ELL used the Loan 3 proceeds to repay the balance on Loan 2 of £4,345.10, leaving Mr C with a balance of around £5,654.90 which he'd told ELL would be used for debt consolidation. I'd noted that the interest rate on Loan 3 was 41.9%, (51% APR). And if Mr C made each payment when it was due, he'd pay £20,864.64 in total.

Mr C had told ELL he wanted to use the loan for debt consolidation. I thought ELL ought again to have been concerned by Mr C's need to borrow expensive credit for debt consolidation just short of a year after taking out Loan 2 which he'd borrowed for the same purpose. Again, I thought that might have been the sort of behaviour that would indicate that someone was facing problems managing their money.

ELL again noted that Mr C was self-employed, and it had calculated his average monthly income to be £5,381. He said he paid monthly rent of £87.50. ELL used statistical data from the Office for National Statistics ("ONS") to calculate Mr C's living costs to be £649. It had done a credit search and reviewed Mr C's bank statements. ELL calculated Mr C's credit commitments to total £1,205.03 and it said that he would have a disposable income of £3,522 after taking account of the credit to be consolidated and its monthly loan repayment.

Mr C was again entering into a significant commitment with ELL. He would need to make monthly repayments of £434.68 for 48 months. So, I again thought it was right that ELL wanted to gather, and independently check, some detailed information about Mr C'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 C's finances, and I thought that the checks ELL did were proportionate. But as I'd said above, a lender also needed to react appropriately to the information shown by those checks.

I'd reviewed ELL's credit checks. Mr C had 12 active accounts and a total balance of £8,611 (excluding the balance on Loan 2). I could see that he had a mail order balance of £2,443 and five credit card debts. Two of these credit cards had been taken out seven months before the loan application and had a total balance of around £1,200. I could also see that two of the cards were very near their respective credit limits. Overall, I didn't consider the amount of disposable income calculated by ELL to be consistent with the amount of debt Mr C had.

I could see that ELL had calculated that Mr C's average monthly income was £5,381 using a 2017/2018 tax computation for Mr C prepared in June 2018. This showed earned income of around £8,164 and dividend income of £69,000 for that year. After tax, this would provide an annual income of around £64,573 for 2017/2018. But Mr C was taking out Loan 3 more than three months after the tax computation was prepared and I thought it would have been reasonable for ELL to have asked Mr C for projected income information going forward to assess his income more accurately. Mr C said the earned income was paid in sporadic amounts. He also said that the dividend income was not all his. He would only receive 25% of it on which 10% would be repaid the following tax year.

I'd also noted that ELL used ONS data to calculate Mr C's living costs. I didn't think it was reasonable for ELL to rely on statistical information about Mr C's living costs without verifying it. ONS data was based on the finances and expenditure of the average consumer. But I didn't think it was reasonable here for ELL to think that Mr C's circumstances fell within this average portfolio.

I could see that ELL had obtained two months' bank statements from Mr C. It appeared to have made notes about some of the transactions on the statements. But I thought it could have used the statements to verify Mr C's monthly income and living costs. I'd reviewed these statements to see what ELL might have seen if it had made better checks.

None of the statements supported a monthly income of £5,381. I could see that Mr C sporadically received a total of around £3,550 in transfers from his company described as salary in August/September 2018, and payments totalling around £2,645 described as salary and a payment of £10,000 from his company described as "house purchase" in the previous month. Mr C said that the payment of £10,000 was part of his dividend income. I could see that most of the dividend income was transferred to Mr C's savings account and then most was transferred back to his current account in the same month and used for both living costs and discretionary expenditure.

However, looking at the August/September 2018 statement which appeared likely to be more typical of a standard month's income and expenditure than the statement for the previous month, from the information I'd seen, on balance I didn't think better checks by ELL would have suggested that Mr C might have difficulty repaying his loan sustainably. There was nothing to suggest to me that Mr C was at this stage dependent on credit or that he was having problems managing his finances. There were no gambling transactions, no payday loans, no returned payments, and his account was always in credit and managed by transfers which were mostly from his company's account. And I thought in Mr C's circumstances, it might not have been unreasonable for ELL to think here that some of Mr C's discretionary expenditure might cease when his finances had been stabilised by taking the consolidation loan. After the debt consolidation and based on what ELL could have seen from Mr C's bank statements, I thought it was reasonable for the lender to conclude that the loan would be sustainable for Mr C. So, overall, I didn't think that ELL made an unfair lending decision when agreeing to provide Loan 3 to Mr C, and I intended to say that Mr C's complaint about Loan 3 shouldn't be upheld.

So, subject to any further information or evidence I might receive from the parties, I intended to say that Mr C's complaint about Loans 1 and 2 should be upheld, and that ELL should put things right on those loans along with paying the compensation and taking the steps it had already agreed to do for Loan 4 as follows :

Putting things right – what ELL needs to do

I understand that Loans 1 and 2 were repaid from the proceeds of Loans 2 and 3 respectively and that Loan 4 hasn't been fully repaid. In order to put Mr C back into the position he would have been had Loans 1, 2 and 4 not been agreed for him, ELL needs to ensure that Mr C only repays the total amount of money he received as a result of having been given Loans 1, 2 and 4. So, ELL needs to:

1. Add up the total amount of money Mr C received as a result of having been given Loans 1, 2 and 4. For the avoidance of doubt this added up amount should not include any interest, charges, document, or any other administration fees;
2. The payments Mr C made (to Loans 1, 2 and 4) should be deducted from this amount;
3. Any payments made, if any, after the total amount repaid exceeds the amount of money Mr C was given should be treated as overpayments and refunded to Mr C;
4. Interest at 8% per year simple should be paid on any overpayments made, if they were, from the date they were paid by Mr C to the date of settlement;*
5. If the total amount of money paid by Mr C doesn't exceed the total amount of money he received as a result of having been given Loans 1, 2 and 4 (and for the avoidance of doubt any outstanding balance shouldn't include any interest, charges and document or other administration fees), ELL should treat Mr C positively and sympathetically regarding repayment of the balance. This might mean agreeing a mutually agreeable repayment plan with him; and

6. Remove any adverse information recorded on Mr C's credit file as a result of Loans 1, 2 and 4.

If ELL has sold the outstanding debt on Loan 4 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 1. to 6. above.

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

Mr C responded to my provisional decision to say that he was happy with it.

ELL hasn't responded 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 C 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 in part 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 part. 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 C to accept or reject my decision before 26 April 2022.
Roslyn Rawson
Ombudsman