DRN-3433937

The complaint

Miss B complains about two loans provided to her by Everyday Lending Limited, trading as Everyday Loans, ("ELL"), which she says were unaffordable.

What happened

ELL agreed two loans for Miss B between August 2017 and July 2019. Loan 2 was used to repay Loan 1. According to the most recent information I've seen, Loan 2 hasn't been repaid. Some of the information ELL provided about the loans is shown in the table below.

Loan number	Start date	End date	Loan amount	Monthly repayments	Term (months)
1.	26/8/2017	4/7/2019	£4,000	£206.37	48
2.	4/7/2019	Unpaid	£5,000	£247.70	48

Miss B says that ELL was irresponsible in its lending and that it could see she was already in persistent debt when it lent to her. This led her to amass close to £40,000 in debt overall and has affected her health.

Our investigator's view

Our investigator recommended that Miss B's complaint be upheld. With regard to Loan 1, the investigator said that from the information ELL gathered, there were signs that Miss B wouldn't be able to afford to repay the loan in a sustainable way. She was making repayments of at least £600 a month to her existing creditors including minimum repayments to credit card providers. And whilst Loan 1 was being used to consolidate some of Miss B's existing debts, it didn't improve her financial circumstances because her overall indebtedness went up. So, the investigator thought that the checks ELL carried out demonstrated that Miss B would have been unlikely to be able to make her repayments sustainably.

With regard to Loan 2, the investigator said that there wasn't any persuasive evidence to suggest that there had been any significant and sustained improvement in Miss B's financial circumstances since taking out Loan 1. She wasn't persuaded that Loan 2 - which only increased Miss B's indebtedness when she was already struggling financially – was likely to have been deemed sustainable and affordable.

ELL responded to the investigator's view by agreeing to uphold Miss B's complaint about Loan 2. But it disagreed with the investigator's recommendation that Loan 1 should be upheld. It said, in summary, that:-

- Its contact notes said that Miss B was using all of the proceeds of Loan 1 for debt consolidation. It agreed to pay two of her credit balances directly and the remaining money would be sent to Miss B's account so that she could distribute the money to each

of her chosen creditors. So, it didn't agree that it was increasing Miss B's debt. It had no reason to doubt Miss B's word that she was consolidating the debts she'd told it about.
- Miss B's credit report showed no cause for concern. There was a default, but it was historic from April 2014.
- Although Miss B might have been making minimum repayments on her credit cards, there were large amounts of discretionary spending seen on her bank statements. The statements also showed no payday loans or overdraft usage. The evidence suggested Loan 1 was both affordable and sustainable.

Miss B didn't accept ELL's offer.

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 Miss B and to ELL on 17 March 2022. I summarise my findings:

As ELL had agreed to uphold Loan 2, I'd not investigated this loan. But I'd included the redress for the loan in the redress section of the decision.

I'd noted that when ELL lent Loan 1 to Miss B, 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 their loan repayments in a sustainable manner over the lifetime of the agreement.

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 those 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 Miss B could sustainably repay her loan. In practice this meant that the lender had to ensure that making the payments to the loan wouldn't cause Miss B 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 Miss B.
In general, I'd expect 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 expect a lender to seek more assurance by carrying out more detailed checks

- the lower a borrower'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'd noted that ELL had provided Miss B with Loan 1 for £4,000 in August 2017. The interest rate was 54%, (69.6% APR). The loan was to be repaid by 48 monthly repayments of £206.37. If Miss B made each payment when it was due, she'd pay £9,905.76 in total. Miss B told the lender that the loan was to be used for debt consolidation.

It appeared that ELL had met with Miss B at its office and gathered some information from her about her income and accommodation expenses before it agreed the loan. Miss B said she lived with her parents and paid them no rent. She had no dependents. ELL also carried out a credit check and saw bank statements for Miss B's main current account for a period of around six weeks. It noted (on its contact notes) that the majority of Miss B's credit was at maximum, but that her bank account was well maintained, and she had no returned payments, no payday loans, and no gambling transactions. The contact notes said that ELL would settle two credit card balances directly (totalling £750.21). The balance of the loan (£3,249.79) would be paid to Miss B directly for her to distribute to each of her chosen creditors.

Miss B was entering into a significant commitment with ELL. She would need to make monthly repayments for a period of four years. So, I thought it was right that ELL wanted to gather, and independently check, some detailed information about Miss B's financial circumstances before it agreed to lend to her. I thought that the checks I'd described above allowed ELL to form a detailed view of Miss B'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 used the lower of the two income amounts shown on Miss B's bank statements which provided a net monthly income of £1,724.31. It used the results of its credit checks and other information to calculate Miss B's credit commitments to be £598.35 (as shown on its affordability calculation form). I'd noted that ELL used minimum repayment amounts to calculate Miss B's monthly credit card repayments. But I didn't think this was reasonable. As ELL would be aware, making minimum repayments effectively extends credit card debt potentially for years and it adds very significantly to the long term cost of that credit. Repayments at that level are insufficient to make any meaningful inroads into card balances.

ELL had estimated Miss B's living costs to be £603.51 by calculating 35% of Miss B's income and it said that her monthly disposable income after its loan repayment would be £372.47. But I thought in Miss B's circumstances, it needed to tailor its assessment to Miss B's actual financial situation.

I'd reviewed ELL's credit checks and I could also see that the lender had made a list of Miss B's credit commitments. I'd noted that the list showed two loans which weren't on its credit checks. So, ELL was aware that its credit checks might not provide a complete picture of Miss B's credit commitments. A lender might only see a small portion of a borrower's credit file, or some data might be missing or anonymised. Its checks might not necessarily be up to date. Also, not all lenders reported to the same credit reference agencies.

I'd noted that the credit checks showed that Miss B had two loans and eight credit cards with a total loans balance of £2,523 and a total credit cards balance of £5,091, making a total credit balance of £7,614. One of the loans on ELL's list had a balance of £2,100 and Miss B showed ELL evidence that the other loan on the list had been repaid. All of Miss B's three loans were high cost loans.

The credit checks showed that Miss B had opened six new credit accounts in the year before her loan application. Four of these were short term loans totalling £1,700 and the most recent loan for £600 had only been taken out around four months before the loan application. These four loans had been repaid. In addition, Miss B had borrowed a high cost loan for £2,000 and taken out a credit card in June 2017 which had a £244 balance. I didn't know when Miss B had taken out the £2,100 loan shown on ELL's list. Miss B was also using five other credit cards. Four of the card balances were approaching their respective credit limits and one balance was £16 over the card's credit limit. The credit checks also showed that Miss B had taken out at least ten payday loans in 2016.

Altogether I thought ELL's credit checks ought to have caused it concerns as Miss B's finances appeared to be under pressure and suggested that Miss B was likely struggling to manage her money. This was shown on its credit checks by Miss B's relatively recent need for a relatively high amount of credit as shown by at least five high cost (short and long term) loans taken out in the year before the loan application, four credit card accounts near their respective credit limits and one card account over its credit limit. I thought it would have been reasonable for ELL to conclude from its credit checks that despite the disposable income it had calculated, it was likely that Miss B was experiencing financial difficulties. So, I thought ELL needed to carefully scrutinise the bank statements it received from Miss B to check that she would be able to repay the loan sustainably over the term of 48 months.

Miss B told ELL she would be using the loan proceeds to consolidate some of her debts. I'd noted that ELL was paying two of the credit cards balances (totalling £750.21) directly from the loan proceeds. The balance of the loan proceeds was paid to Miss B so that she could choose which creditors to pay. But I couldn't see from the information received from ELL that it had made consolidation of the other debts a condition of the loan. So, ELL wasn't in control of making sure Miss B's other debts were repaid. And it couldn't have been sure it wasn't putting Miss B in a worse position by increasing her overall debt. In addition, Miss B would still have been left with a relatively large amount of debt to repay even if she did repay some of her debts with the loan proceeds. And she would be using a loan of £4,000 to repay those debts, but she would need around £9,900 to repay that loan over the loan term.

I also thought the relatively recent high cost borrowing shown on the credit checks might have suggested that Miss B was having problems managing her finances that a debt consolidation wouldn't have solved. Miss B's need for credit appeared to be an ongoing one and her finances weren't stable. In view of Miss B's relatively recent need to borrow as shown in ELL's credit checks, I didn't think it could safely assume that Miss B wouldn't borrow again after she'd received its loan.

I'd also reviewed the bank statements ELL saw for Miss B's main current account. Whilst there were some notes on the statements that ELL appeared to have made about some of the transactions, it didn't seem that it had used the bank statements to verify its estimate of Miss B's expenses.

I'd reviewed Miss B's spending for July 2017 on the bank statements. Taking all of Miss B's existing (and ongoing) financial commitments and reasonably identifiable spend on food and drink, travel and phone costs into account wouldn't have left her with sufficient disposable income to repay ELL's loan. The bank statements for July 2017 appeared to show that

Miss B's living costs were over £1,000 and were higher than the amount it had estimated. I haven't included in this figure the spending on the discretionary items referred to in ELL's response to the investigator's view in my calculations. But I thought it would have been clear to ELL that Miss B was spending beyond her means.

I'd also noted from the statements that Miss B's spending on credit commitments was around £683 and this figure didn't include repayments for two of her credit cards. I'd appreciated that Miss B's credit commitments after Loan 1 wouldn't include the repayments on the one loan which had been repaid and the two balances which ELL was repaying. But I could see that ELL still thought that Miss B would be repaying around £600 each month for credit commitments (excluding its loan repayment) after taking out its loan. And taking this figure into account, I couldn't see that ELL could be sure that Miss B would have anywhere near enough to make the loan repayments for the duration of the agreement. So, I thought there was a reasonable prospect of Miss B experiencing significant adverse consequences.

So, had ELL considered fully the information it had received, I thought ELL ought reasonably to have realised that Miss B was most likely over committed financially, that there were indications she was having difficulty managing her finances and it was likely she would need to borrow elsewhere to repay Loan 1. I thought ELL ought reasonably to have realised that it was unlikely that Miss B would have been able to sustainably repay Loan 1 over the 48 months term. So, it should reasonably have concluded that it was unfair to lend Loan 1 to her.

I could see from ELL's credit checks on Loan 2 that Miss B had borrowed two payday loans totalling £600 within four months after Loan 1. I thought this was foreseeable.

I'd noted that ELL had said in its final response letter that it believed the checks completed were reasonable and proportionate and that the loan was sustainable over the term of the loan as Miss B had disposable income. But it seemed to me that ELL was focussing on its calculation of whether the loan was affordable for Miss B on a pounds and pence basis. But the lender was required to establish whether Miss B could sustainably make her loan repayments – not just whether the loan payments were technically affordable on a strict pounds and pence calculation. The loan payments being affordable on this basis might have been an indication that a consumer could sustainably make the repayments. But it didn't automatically follow that this was the case. And as a borrower shouldn't have to borrow further in order to make their payments, it followed that a lender should realise, or it ought fairly and reasonably to realise, that a borrower wouldn't be able to sustainably make their repayments if it was on notice that they were unlikely to be able to make their repayments without borrowing further.

So, subject to any further representations by Miss B or ELL, I said that I intended to uphold Miss B's complaint about Loan 1 and that ELL should put things right for Miss B on Loans 1 and 2 (which it had already agreed to uphold) as follows:-

Putting things right – what ELL needs to do

I understand that Loan 1 was repaid from the proceeds of Loan 2, and that Loan 2 hasn't been fully repaid. In order to put Miss B back into the position she would have been had Loans 1 and 2 not been agreed for her, ELL needs to ensure that Miss B only repays the total amount of money she received as a result of having been given Loans 1 and 2. So, ELL needs to:

1. Add up the total amount of money Miss B received as a result of having been given Loans 1 and 2. For the avoidance of doubt this added up amount should not include any interest, charges, document, or any other administration fees;

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

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

Miss B hasn't provided a response to my provisional decision.

ELL hasn't provided a 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 Miss B 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 Miss B to accept or reject my decision before 6 June 2022.
Roslyn Rawson
Ombudsman