DRN-3456464

Financial Ombudsman Service

The complaint

Mr T complains about two loans provided to him by GeorgeBanco.com Limited ("GBL"). GBL has since been acquired by Everyday Lending Limited. So, for ease, I shall refer to the lender as "ELL" below. Mr T says the loans were unaffordable.

What happened

ELL agreed two guarantor loans for Mr T between June 2018 and February 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.	12/6/2018	7/2/2019	£3,800	£149.94	60
2.	6/2/2019	Unpaid	£6,500	£292.42	60

Mr T says that he took loans with ELL out of desperation. He was a freelancer at the time and his income was very hit and miss. He could have a good month and earn well, then a poor month and earn next to nothing.

In its final response letter, ELL didn't uphold Mr T's complaint about Loan 1. But with regard to Loan 2, it said it was unable to find evidence to suggest that all the necessary checks had been carried out. So, it couldn't confirm that responsible checks were completed. ELL said that it was willing to refund anything Mr T had paid over £6,500. The amount paid at the date of its letter was £7,017.99. So, it said it would refund £517.99 plus an additional 8% statutory interest. ELL also said that it had requested that the details of Loan 2 be removed from Mr T's credit file.

Our investigator's view

Our investigator said that as ELL had made an offer on Loan 2 which was in line with this Service's recommendations, she wouldn't be investigating this loan in her view. With regard to Loan 1, she recommended that this be upheld. She said that ELL had carried out proportionate checks and that the loan appeared to be affordable as Mr T appeared to have a monthly disposable income of around £385 which would allow for any unexpected expenditure should it arise. But she didn't think ELL should have lent to Mr T based upon what ELL's credit search revealed.

ELL disagreed. It responded to the investigator's view to say, in summary, that:-

- It had discussed the defaults on its credit search with Mr T at the time and he provided an explanation that these were due to a relationship breakdown, and he was taking steps to clear these.
- The fact that Mr T chose not to use his available income to settle his previous debts didn't demonstrate that its decision to lend was flawed or irresponsible.

- Even with the item of credit in arrears, it had established that Mr T's disposable income should have been enough to reduce the arrears.

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 T and to ELL on 30 March 2022. I summarise my findings:

As ELL had offered to settle Loan 2, I said that I wouldn't be investigating this loan. But I would include the redress for this loan in the redress section of my decision.

I noted that when ELL lent Loan 1 to Mr T, 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 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 T could sustainably repay his loan. In practice this meant that the lender had to ensure that making the payments to the loan wouldn't cause Mr T 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 the loan repayments on Mr T.

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);

Bearing all of this in mind, in coming to a decision on Mr T's case, I'd considered the following questions:

- Did ELL complete reasonable and proportionate checks when assessing Mr T's loan application to satisfy itself that he would be able to repay the loan in a sustainable way? If not, what would reasonable and proportionate checks have shown?
- Did ELL make a fair lending decision?

Did ELL complete reasonable and proportionate checks when assessing Mr T's loan application to satisfy itself that he would be able to repay the loan in a sustainable way?

Loan 1

ELL provided Mr T with Loan 1 in June 2018. The interest rate was 41.1%, (49.7% APR). The loan was to be repaid by 60 monthly repayments of £149.94. If Mr T made each payment when it was due, he'd pay £8,996.40 in total. The loan was repaid from the proceeds of Loan 2. Mr T told the lender that the loan was to be used to pay legal fees.

ELL spoke to Mr T on the phone and gathered some information from him about his income and accommodation expenses before it agreed the loan. I'd listened to a recording of this call. Mr T said that his net monthly income was £2,200 and his rent was £800. He was single and had two dependents. ELL asked Mr T to provide a payslip or a bank statement so it could verify his income. It assessed Mr T's other expenditure as £815 by using statistics from the Office for National Statistics ("ONS"). It also carried out a credit check. After including the financial commitments from Mr T's credit file, ELL said that Mr T would have had approximately £380 of disposable income remaining each month.

I could see why ELL would have thought that the loan repayment would be affordable based on what it had calculated. But I thought it should have gathered more information than it did for the following reasons.

I noted that ELL said in its final response letter that it didn't obtain bank statements or payslips to verify Mr T's income. It said that it verified his income using a credit reference agency. But Mr T had told this Service that he was on a zero hours contract at the time of the loan application, and there were times when he would go without income for a period of time. So, I'd queried whether the credit reference agency was able to accurately verify Mr T's monthly income in his circumstances. I thought that a more accurate verification would have arisen from checking payslips or bank statements, but not from a credit reference agency tool.

I'd reviewed ELL's credit checks. Whilst ELL said that Mr T had no live loans, I'd noted that the checks showed that Mr T had opened five accounts since May 2017. He didn't appear to have used four of these accounts. But the fifth account had a balance of £457 and had been in arrears for the two months prior to the credit check. There were also two defaulted accounts. One had been defaulted in October 2013 with a default balance of £943 which had been reduced to £939. The second default appeared to be dated January 2018 but might have been earlier. This had a balance of £85. Whilst I thought the two defaults might not have caused ELL additional concerns, I did think that ELL might have been concerned that Mr T had made hardly any payments to those balances. In addition, I thought ELL might have been concerned that Mr T had been unable to repay the account with recent arrears of £457 despite having a disposable income according to its calculations which was sufficient to repay it over a couple of months.

In ELL's call with Mr T, it noted that he had no live borrowing although it noted historic defaults from a few years before the loan application which Mr T said were due to a relationship breakdown. ELL also noted that Mr T had an account which was around £425 over its limit, but Mr T said that he had agreed to pay monthly payments of £50 towards this account. ELL appeared to have accepted Mr T's explanations.

With regard to Mr T's expenditure, I didn't think it was reasonable for ELL to base its assessment on ONS data in Mr T's circumstances. I thought it needed to tailor its assessment to Mr T's actual circumstances. Mr T had two dependents. He was involved in legal proceedings in which more costs could be incurred. There was evidence of recent pressures on Mr T's finances in ELL's credit checks. Mr T was entering into a significant commitment with ELL. He would need to make monthly repayments of around £150 for 60 months. So, I would have expected that ELL would have wanted to gather, and independently check, some detailed information about Mr T's actual financial circumstances before it agreed to lend to him.

Altogether, I didn't think that ELL's checks went far enough. I thought it would have been proportionate for ELL to independently check the true state of Mr T's finances before agreeing the loan.

ELL was required to establish whether Mr T could make his loan repayments without being caused undue difficulty or adverse consequences and not just to ascertain whether the loan repayments were technically affordable on a strict pounds and pence calculation. It could have done this by, for example, requesting payslips and bank statements from Mr T, asking for copies of bills and/or receipts for his expenses and by asking him for more information about his existing credit commitments. I couldn't see that ELL took steps to do this. So overall, I didn't think the checks ELL carried out on this occasion were reasonable and proportionate.

But although I thought ELL should have asked for some additional information before agreeing the loan, that in itself didn't mean that Mr T's complaint should succeed. I also needed to be persuaded that any further information would have shown ELL that Mr T couldn't sustainably afford the repayments. So, I'd reviewed Mr T's bank statements from around the time of the loan, to see what additional checks would have shown the lender. I wasn't suggesting that this was the exact check that ELL should have carried out. But I thought ELL needed information about Mr T's actual financial situation. And looking at his bank statements was one way of achieving that although there were of course many other ways that level of detail could be established. But I thought that by looking at Mr T's bank statements I could get a good idea of what further checks might have shown.

What would reasonable and proportionate checks have shown? And did ELL make a fair lending decision?

Loan 1

Mr T had provided this Service with his bank statements from two current accounts from around the time of Loan 1. I'd reviewed Mr T's transactions in April 2018 and May 2018 to give me the best picture of what the lender should have seen if it had made better checks.

ELL would have likely seen that Mr T had received no income in both April 2018 and in early June 2018 up until the loan was provided. In May 2018 it appeared that Mr T had received income totalling about £758. I could see that this wasn't sufficient to even pay his rent. I could also see that Mr T was receiving amounts from third parties and I'd asked the investigator to query these with Mr T. He said that he received loans from friends and family who were keeping him afloat whilst his income was so sporadic. In those circumstances, I didn't think that ELL would have lent if it knew this, as I thought it ought to have if it had made better checks.

So, I thought if ELL had carried out what I considered to be proportionate checks, it was likely it would have discovered Mr T's relatively low and sporadic income. And I thought ELL ought reasonably to have realised that Mr T was having significant difficulties managing his finances. His finances weren't stable, and it was likely he would need to borrow elsewhere to repay Loan 1. So, I thought ELL ought reasonably to have realised that it was unlikely that Mr T would have been able to sustainably repay his loan over the 60 months' term. And it should reasonably have concluded that it was unfair to lend Loan 1 to him.

So, subject to any further representations by Mr T or ELL, I intended to uphold Mr T's complaint about Loan 1 and say that ELL needed to put things right as follows, including the redress for Loan 2 referred to above.

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 Mr T back into the position he would have been had Loans 1 and 2 not been agreed for him, ELL needs to ensure that Mr T only repays the total amount of money he received as a result of having been given Loans 1 and 2. So, ELL needs to:

1. Add up the total amount of money Mr T 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 Mr T 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 Mr T was given should be treated as overpayments and refunded to Mr T;
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 T to the date of settlement;*
5. If the total amount of money paid by Mr T doesn't exceed the total amount of money he 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 Mr T 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 T's credit file as a result of Loans 1 and 2;

If ELL has sold the outstanding debt, 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 T a certificate showing how much tax it has taken off if he asks for one.

Mr T responded to my provisional decision to say that he didn't have anything further to add.

ELL responded to my provisional decision to say that it upheld Mr T's complaint and agreed the recommended course of action.

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 T has given me nothing further to consider and ELL has upheld the complaint and agreed the recommended course of action, 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 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 T to accept or reject my decision before 2 June 2022.
Roslyn Rawson
Ombudsman