

The complaint

Mr D, through his representative, says Everyday Lending Limited (ELL), trading as Everyday Loans, lent to him irresponsibly.

What happened

Mr D took out a 24-month instalment loan from ELL on 4 July 2017. It was for £2,000. The monthly repayment was £205.12 and the total repayable was £4,922.88. I understand there remains an outstanding balance that ELL has sold to a third party.

Mr D says ELL has not responded in full to his complaint. He has struggled financially over the last few years and this has impacted his physical and mental health. I note Mr D's representative has also raised issues about the current owner of the debt and its conduct. As the investigator explained he would need to first log a complaint with that business. If he is unhappy with the response he can of course bring his complaint to this service.

Our investigator found Mr D's complaint against ELL should be upheld. She said Mr D had six payday loans and a credit card that was close to its limit when he applied, indicating he was having financial difficulties. He was also persistently reliant on his overdraft. Overall, the checks showed it was likely Mr D would have problems repaying the loan.

ELL disagreed, saying:

- It had asked Mr D why he'd needed to take out payday loans (his partner was out of work and for a holiday). It was this cycle he was trapped in that led to his reliance on his overdraft.
- This loan would allow him to end that cycle and gave him a monthly saving of £536.43. On the bank statement it saw, excluding payday loan repayments, his income exceeded his total expenditure (including all discretionary items) supporting its assessment that the loan was affordable.
- Its credit check showed, apart from the outstanding payday loans, Mr D had less than £600 of debt outstanding.

It asked for an ombudsman's review, so the case was passed to me. I reached a different conclusion to the investigator, so I issued a provisional decision. An extract follows and forms part of this final decision. I asked both parties to reply with any comments or new information by 26 April 2022.

Extract from my provisional decision

I can see ELL asked for some information from Mr D before it approved the loan. It asked for details of his income (£1497.37) and housing costs (£0 as living with parents); how many dependents he had and for copies of recent bank statements and a payslip to verify his declarations. It estimated his living costs (£524.08) using national statistics. It also checked Mr D's credit file to understand his existing monthly credit commitments and credit history. And finally it asked about the purpose of the loan which was to repay his outstanding payday loans. From these checks combined ELL concluded Mr D had enough monthly

disposable income to afford to repay the loan after his planned debt consolidation.

I think the checks were proportionate and based on the information it gathered, I currently think ELL made a fair lending decision. Our investigator thought ELL was wrong to lend given it could see Mr D was using payday loans and his overdraft facility. But I think its decision was fair given that this loan would be used to settle the more expensive payday loan debt of £741.55, leaving Mr D with monthly credit commitments of only £19.95 – in addition to this loan repayment of £205.12. That was 15% of his net monthly income, so not a level that I think ought to have suggested to ELL would cause financial stress. And its affordability assessment showed based on his income of £1497.37, expenses of £524.08 and ongoing credit commitments of £225.07 he would be left with £748.22 disposable income.

The credit check ELL completed did not show that Mr D was over-indebted with debt of £465, aside from the payday loans. It noted Mr D had two credit cards (again with low balances of around £100) that were not showing on its credit check and so took into account his monthly repayments on those as part of its affordability assessment. There was no adverse data on the credit check such as defaults or accounts in arrears. And the check showed Mr D's payday loan use was recent and relatively limited: there was no evidence of a long-term reliance, or of previous failed debt consolidation attempts.

In the round I think it was reasonable for ELL to conclude that as its loan would allow Mr D to settle all his existing payday loans, and break that cycle, that giving the loan was not most likely to cause financial harm.

I anticipate Mr D and his representative will be disappointed by my findings, and I can see Mr D went on to have financial difficulties. But for the reasons set out above I can't fairly find that was as a result of ELL's lending decision.

I haven't found that ELL acted unfairly or unreasonably towards Mr D in some other way. I know Mr D's representative has found it frustrating dealing with ELL, saying it ignored correspondence and issues he raised. ELL has said that if the branch received letters it would have acknowledged them but that it couldn't respond to the content as no authority had been provided by the borrower. I do find that ELL could have been more proactive in advising Mr D of the process he needed to follow if he wished to appoint a representative. But overall, I haven't found evidence of any failing that it still needs to take action to correct.

Mr D's representative responded to my provisional decision in detail. In summary his key points were:

- ELL not only lent irresponsibly but also provided appalling service once the loan was live.
- ELL gave this loan when Mr D was already having financial difficulties. He listed loan and repayment difficulties Mr D was having in 2010, saying there were likely more, and they likely persisted for years.
- It seemed ELL had made the decision to lend largely based on Mr D's own declarations.
- He asked if ELL had shared its credit check, contesting it was undertaken effectively.
- He questioned if ELL had asked for an ombudsman's review.
- He explained that Mr D appointed a debt management service in 2019 to manage his

creditors but he later took over this role. Given the long list of creditors involved some most have been live when Mr D applied for this loan.

- He then listed the contacts he had made to ELL to try to make repayments on the loan and to set up a payment plan. He also detailed the correspondence with the new debt owner.

I asked for copies of some of the correspondence he referenced and shared these with ELL asking for its comments.

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.

Where the evidence is incomplete or contradictory I have reached my decision based on the balance of probabilities, in other words what I think is most likely given the available evidence and the wider circumstances.

Our approach to unaffordable/irresponsible lending complaints is set out on our website and I've followed it here.

Mr D's representative sent in a detailed response to the provisional decision which I considered carefully. In keeping with our role as an informal dispute resolution service I will focus here on those points I find to be material to the outcome of the complaint.

Firstly, I can confirm ELL requested this ombudsman's review, and that it shared the credit check it completed. I know the investigator has now shared this with Mr D's representative.

The lending decision

Mr D's representative provided a list of Mr D's older debts dating back to 2010 and creditors from 2019. And I am not doubting his submission. But as I said in the provisional decision the credit check ELL carried out did not indicate that Mr D was struggling financially at the time he applied. The detail it instead showed is set out in the extract above.

On receipt of the copy of the credit check Mr D's representative observed that there did not seem to be any reference to Mr D's historical payment behaviour. It does show his payment status for all entries – for example 'O' means the payment was made on time and 'S' means the account is settled. Had any of the accounts listed defaulted, the default balance would also have been shown under the heading 'default balance' – but the report showed Mr D had no defaults.

It maybe that Mr D would have seen other entries on his full credit file as not all lenders report to all the credit reference agencies and there can be timing differences, but I can only fairly expect the lender to respond to the information its check returned. It may also be, given Mr D's representative dated the list of debts he sent in as 'in 2010', that the accounts would no longer be on Mr D's credit file as entries have a six-year time span. So Mr D's representative's points do not change my conclusion on the lending decision.

In addition, Mr D's representative said that it seems ELL largely based its decision to lend on Mr D's own declarations of income and expenses. I disagree with this and point to the checks the lender carried out. As I said in the provisional decision it reviewed Mr D's bank statements. And its conclusion that these didn't show anything to suggest the loan repayments would be unaffordable was reasonable. Plus, the repayments were not so high

relative to Mr D's income that there was a clear risk he would be unable to meet them over the term of the loan while meeting his other commitments.

It follows I don't think ELL was wrong to give the loan to Mr D. The overarching requirement was that ELL needed to pay due regard to Mr D's interests and treat him fairly. CONC 2.2.2G(1) gave an example of contravening this requirement as "targeting customers with regulated credit agreements which are unsuitable for them by virtue of their indebtedness, poor credit history, age, health, disability or any other reason." I have not found that the proportionate checks ELL carried out made it aware of any such information from which it ought to have concluded the loan was unsuitable for Mr D.

I do not mean to take away from the very difficult financial situation Mr D's representative has had to try and resolve for Mr D, but from the available evidence I can't fairly find ELL lent irresponsibly to Mr D at this point in time.

The post-loan service

ELL has now reviewed the two letters Mr D's representative sent to one of its branches in July and September 2019. These contained cheques, a payment plan offer and explained Mr D would now be represented. ELL says as the cheques were never cashed and applied to Mr D's account, nor a reply sent, it has to conclude the letters were never received. I have seen no evidence from Mr D's representative that shows that the cheques were cashed. And there is no record in ELL's contact notes that authority was given by the borrower to be represented by his father.

The contact notes ELL submitted show it logged the communications it had with the two different debt management agencies Mr D used in 2018 and 2019, through to July 2019, and that it accepted his reduced payment plans. So I am satisfied it responded to Mr D when he notified it of his financial difficulties. It seems these plans faltered as Mr D missed the necessary payments to the debt management agencies.

However, there is no reference in ELL's contact notes to any subsequent correspondence from Mr D's representative. On balance, I think it is most likely that ELL didn't receive the July and September 2019 letters and so was unaware Mr D wanted to appoint his father to act on his behalf and that he was again trying to set up a payment plan. Subsequent letters to Mr D about his loan arrears set out the number to call if he was having financial difficulties. I can't see he did this.

Mr D's representative also questioned why a loan statement was issued to Mr D by ELL on 29 June 2020 when the debt had already been sold on 12 December 2019. The lender has explained this was sent due to a delay closing the account after it was sold. I can see this would have been confusing and I think it was poor service, but Mr D's representative was already in communication with the new debt owner by then and this time he was set up as the authorised representative.

As we have explained previously we can't review the conduct of the new debt owner as part of this complaint.

So in summary, whilst I can accept that it has been very frustrating for Mr D's representative to try to resolve the repayment of this debt, I can't see ELL has done anything wrong to the extent that it need take any corrective action.

It follows my finding remains that I haven't found that ELL acted unfairly or unreasonably towards Mr D in some other way.

I anticipate that Mr D's representative will be frustrated and disappointed with this decision, but I hope he will see the complaint has been thoroughly and independently considered. I don't doubt Mr D has had financial difficulties but for the reasons set out above I hope they will understand why I haven't found this to be the fault of ELL.

My final decision

I am not upholding Mr D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 24 June 2022.

Rebecca Connelley
Ombudsman