DRN-3575984

The complaint

Mr E and Mr M complain that Everyday Lending Limited (ELL) trading as Everyday Loans gave them a loan which they couldn't afford to pay back.

What happened

Mr E and Mr M took out a joint loan in September 2020 for £7,500 for debt consolidation. The repayments were £353.11 per month over five years and the total amount repayable was £21,186.60. Mr M and Mr E explained to ELL that they were consolidating five accounts with a total balance of £3,966.01 and a total repayment of £568.04.

Mr E and Mr M say that they were already struggling and couldn't afford to repay this loan.

ELL says that it carried out affordability checks and recorded the lowest joint monthly income as £4,179.12. It used ONS data to estimate living expenses which it calculated as £1359 per month. Mr E and Mr M's rent was £550 per month. After repayment of this loan ELL calculated that Mr E and Mr M had a disposable income of £1,917 to repay their remaining credit commitments. It calculated that after those credit commitments were paid Mr E and Mr M had a residual income of £431.71 which demonstrated that the loan was affordable.

Our investigator looked into the complaint they thought Mr E and Mr M's complaint should be upheld because ELL hadn't properly taken into account the level of indebtedness and had not correctly taken into account the effect of the remaining running credit agreements when assessing whether this loan was affordable. ELL didn't agree with the investigator's view and replied to say in summary that Mr E's credit file does not show that he had taken the total of the borrowing on any of the running credit agreements and had not missed any payments.

As the complaint hasn't been resolved it has been passed to me to decide.

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 considering unaffordable and irresponsible lending complaints on our website - including the key relevant rules, guidance, good industry practice and law. And I've considered this approach when deciding Mr E and Mr M's complaint.

Having done so, I've decided to uphold this complaint. I'll explain why.

There are several questions that I've thought about when deciding if ELL treated Mr E and Mr M fairly and reasonably when it provided them with the loan.

1) Did ELL complete reasonable and proportionate checks to satisfy itself that Mr E and Mr M would be able to repay their loan in a sustainable way?

2) If not, what would reasonable and proportionate checks have shown at the time?

3) Ultimately, did ELL make a fair lending decision?

4) Did ELL act unfairly or unreasonably in some other way?

The rules that ELL had to follow, required it to carry out checks that would enable it to reasonably assess, whether Mr E and Mr M could afford to repay the loan. This is often referred to as an *“affordability assessment”.*

The rules don’t set out what specific checks ELL needed to carry out, but it does set out that those checks needed to be proportionate to the circumstances of the application. I think what this means in practice, was that the scope and extent of ELL’s checks needed to reflect the nature of the loan, bearing in mind things such as the amount of credit, the interest rate, the duration of the loan, the monthly and total amounts repayable, and any indications of customer vulnerability.

The checks ELL needed to carry as part of its affordability assessment, needed to be “borrower focussed”. What I mean by this is that the checks needed to consider whether paying the loan back would cause Mr E and Mr M any difficulties or have any adverse consequences for them. It would also need to consider factors such as the amount of money being lent, the term of the loan and the monthly repayments, total charge for the credit and the interest rate being charged. This isn’t an exhaustive list.

And as a result of the above I think a reasonable and proportionate check needed to be more thorough the higher the amounts they had to repay, as it would be more difficult to make higher loan repayments on a given income.

The length of the loan term would also be relevant, partly because where the loan duration is longer, the total cost of credit was likely to be higher. It would also be relevant because there is greater risk of a negative change in circumstances affecting Mr E and Mr M’s ability to repay, where repayments need to be sustained over a longer period.

The purpose of the loan is also relevant here as Mr E and Mr M stated that they wanted to use the loan for debt consolidation which suggests that they may have been in difficulty meeting their existing credit commitments without recourse to further borrowing which would suggest the lending wasn’t sustainable.

With these principles in mind I’ve thought about whether ELL completed reasonable and proportionate checks to satisfy itself that Mr E and Mr M would be able to repay their loan in a sustainable way.

In summary then, the circumstances of this loan application are as follows:

- Mr E and Mr M were applying for a high-cost credit product which had an APR of 64.6.% repayable over five years. This is a high cost when seen as a percentage of borrowing and Mr E and Mr M intended to use the loan to consolidate some of their debt. This would suggest that Mr E and Mr M were struggling.

- Mr E and Mr M were recorded by ELL as having a monthly income of approximately £4,179.12.

- In addition to the monthly repayments for this loan, ELL calculated that Mr E and Mr M would be required to repay £1917 to other creditors, which equates to approximately 44% of their total monthly income.

Based on the above, I think there are several flags here which should have caused ELL to question whether it should have provided Mr E and Mr M with further credit. So, I think it was important for ELL to have conducted checks which gave it a thorough understanding of their financial position and to scrutinise the information it gathered carefully, asking follow-up questions where necessary, before agreeing to lend.

ELL has said it did carry out some checks before it agreed to provide Mr E and Mr M with the loan. It says it carried out a credit search, checked two months bank statements and carried out a job check and verified a payslip. It says it carried out an affordability assessment based on this.

ELL also says it made an assessment of £3962.35 as the living expenses of Mr E and Mr M by using ONS data and applying a buffer. ELL explained that this was the living expenses figure prior to any consolidation. It's not clear to me how it has reached this figure, or why it felt it necessary or appropriate to apply what appears to be a standard deduction from Mr E and Mr M's income for living expenses. And it hasn't explained why this was a more reliable and borrower focussed assessment of those living expenses, than scrutinising the information it did collect about Mr E and Mr M.

This is particularly confusing when it has said it did review two months of bank statements and payslip to evidence income and outgoings. And it seems to me that it would have been more logical to have made an actual assessment of Mr E and Mr M's income and expenses, taking into account the information it did have, rather than making assumptions which weren't necessarily accurate, appropriate or borrower focussed.

Looking at the bank statement there was evidence of payday loan payments going out and payday loan funds being credited to the account. And without these payday loans and transfers, it appears that Mr E and Mr M were using these loans to support their day to day living.

In addition, the loan was not being used to cover all of their debts and so Mr E and Mr M would still have had to make repayments to these accounts. After consolidation the amount outstanding was around £48,945. ELL calculated that the repayments to these accounts would be £1,917. Of those accounts five were mail order or credit card accounts and were essentially "running credit" accounts. ELL assumed the repayments to these accounts at 3% of the total outstanding balance. I agree with the investigator that this was not sustainable and the lending added to their overall borrowing.

Looking at the history of payday borrowing, the running credit agreements and the proportion of income that Mr E and Mr M were using to repay debt would have suggested that further credit was neither affordable nor sustainable. I think that if ELL had properly taken into consideration the information they were provided with as part of their affordability checks it would have seen that this lending was unaffordable.

ELL has said that repayments were made on time and that the running credit accounts were not "maxed out". This doesn't change my view. Mr E and Mr M explained that they struggled to make the repayments and borrowed again to repay this loan early which suggests that the repayments were not affordable or sustainable for them over the life of the loan.

Putting things right

I think it is fair and reasonable for Mr E and Mr M to repay the principal amount that they borrowed, because they have had the benefit of that money. But they have paid interest and charges on a loan that shouldn't have been provided to them. So, I think Mr E and Mr M have lost out and ELL should put things right for them. ELL should:

A) Remove all interest, fees and charges applied to the loan from the outset. Any payments made by Mr E and Mr M should then be deducted from the new starting balance. If the payments Mr E and Mr M B have made total more than the amount they were originally lent, then any surplus should be treated as overpayments and refunded to them with 8% simple interest* calculated on any overpayments made, from the date they were paid by Mr E and Mr M to the date the complaint is settled.

B) Remove any adverse information recorded on Mr E and Mr M 's credit file as a result of this loan. *HM Revenue & Customs requires ELL to deduct tax from this interest. ELL should give Mr E and Mr M a certificate showing how much tax it's deducted if they ask for one.

My final decision

For the reasons set out, my decision is to uphold this complaint and I direct Everyday Lending Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E and Mr M to accept or reject my decision before 13 October 2022.

Emma Boothroyd
Ombudsman