DRN-3707403

The complaint

Mr H complains about two loans provided to him by Everyday Lending Limited, trading as Everyday Loans, ("ELL"), which he says were unaffordable. The complaint is brought to this service on Mr H's behalf by a claims' management company. But for ease, I shall refer below to all actions being taken by Mr H.

What happened

Whilst ELL agreed three loans for Mr H, his complaint was in relation to Loans 2 and 3. But for completeness I set out below the borrowing history.

Loan 1 was for £1,500 and taken out in January 2018. The loan was cancelled in February 2018. Loan 2 was for £1,000 and taken out in June 2018. Loan 3 was for £1,500 and taken out in June 2019. 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
1.	25/1/2018	27/2/2018	£1,500	24 monthly repayments of £156.39
2.	8/6/2018	June 2019	£1,000	Unknown
3.	13/6/2019	Unpaid	£1,500	24 monthly repayments of £147.35

Mr H said that ELL failed to carry out effective affordability assessments. He said that this was quite clearly demonstrated as it was clear that had an effective assessment been carried out, the lender wouldn't have provided further advances to him.

ELL's final response letter only dealt with Loans 1 and 3 which weren't upheld. It has since told this Service that it didn't deal with Loan 2 in error, but it holds no loan file for this loan.

The investigator's views

The investigator's first view dealt with Loans 1 and 3. She recommended that the complaint about Loan 3 should be upheld. With regard to Loan 3, she said there were signs that Mr H had recently experienced problems managing his money. She'd reviewed his credit report and could see that Mr H's circumstances had worsened over time and he was relying more on additional borrowing. He'd defaulted on a high cost loan and a short-term loan in May 2019 and he was in sustained arrears on two other high cost loans for three months leading up to Loan 3. He'd also taken out two further short-term loans in the two months leading up to Loan 3 which suggested Mr H didn't have the level of discretionary income ELL had calculated and he was struggling to repay existing borrowing. The investigator also noted that the bank statements ELL saw at the time showed that Mr H was gambling frequently.

ELL disagreed and responded to say that:-

- Mr H had one historic default and not the two defaults the investigator had referred to.

- It saw no evidence of the arrears the investigator had referred to. It said that Mr H was out of work and started his new job in May 2019 which explained the late payments on a loan and to a communications supplier.

- With regard to the new short-term loans, it referred to Mr H being out of work and that he was then in a different financial situation. As Mr H was now employed, Loan 3 was both affordable and sustainable.

The investigator then reviewed the complaint. She noted that Mr H's complaint referred specifically to the loans taken from June 2018. So, she issued a second view which addressed Mr H's complaint in relation to the lending taken in June 2018 (Loan 2) and June 2019 (Loan 3). She concluded that based on everything that had been said and provided by the parties, she was unable to say that ELL lent Loan 2 irresponsibly. But, as in her first view, she thought that ELL shouldn't have lent Loan 3 which meant that Mr H's complaint should be partially upheld.

Mr H responded to the second view to say that it was agreed.

ELL didn't provide a response to the second view.

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 H and to ELL on 19 August 2022. I summarise my findings:

I'd noted that as Mr H hadn't complained about Loan 1 in his complaint letter to ELL and in his complaint form to this Service, I didn't intend to investigate Loan 1. I understood that the loan had been cancelled, and the lender said it was unwound around a month after it was taken out.

Mr H had agreed to the investigator's findings in her second view in which she didn't uphold his complaint about Loan 2. So, I didn't intend to say more about Loan 2.

I'd said that ELL would be aware of the relevant regulations and how we considered irresponsible lending complaints, so I wouldn't go into detail on these points. I summarised by saying that ELL needed to check that Mr H could afford to meet his repayments without difficulty before agreeing credit for him. In other words, it needed to check he could make his repayments out of his usual income without having to borrow to meet them, while meeting his existing obligations and without the payments having a significant adverse impact on his financial situation. The assessment needed to take into account the nature of the credit and Mr H's circumstances.

With this in mind, my main consideration was whether ELL treated Mr H fairly when it agreed to lend to him. I'd thought about whether ELL completed reasonable and proportionate checks when assessing his applications to satisfy itself that he would be able to make his repayments without experiencing adverse consequences. I'd thought about the information it knew, and what it ought reasonably to have known.

Loan 3

The interest rate on Loan 3 was 105.9%, (175.9% APR). The loan agreement provided by ELL showed the loan was to be repaid by 18 monthly repayments of £163.72. If Mr H made each payment when it was due, he'd pay £2,946.96 in total. But ELL's final response letter and Go Live Form showed the loan being paid by 24 monthly payments of £147.35. with a total amount due of £3,536.40 and this appeared to be the repayment amount and term applied to Loan 3. The loan was to be used to buy a car. From the most recent information I'd seen, the loan was in arrears and hadn't been repaid.

ELL met with Mr H and gathered some information from him about his income and accommodation expenses before it agreed Loan 3. It had also carried out a credit check and saw bank statements for Mr H's main current account for a period of one month and his new employment contract. It estimated Mr H's other expenditure by using data from the Office for National Statistics ("ONS").

I'd noted that ELL was aware that Mr H had been unemployed and had recently started a new job. It had been provided with a copy of Mr H's employment contract and would have likely seen that Mr H was on a probation period for six months.

ELL had calculated from the gross salary information in the employment contract that Mr H had a basic net monthly income of £1,347. Mr H told ELL that he still lived with his parents and paid no board. The lender used the results of its credit checks and other information to calculate Mr H's credit commitments to be £81.06 (on its Go Live form). It estimated Mr H's expenditure as £393 using ONS data and it said that his monthly disposable income after its loan repayment would be £725.88.

I'd also reviewed ELL's credit checks. These showed that Mr H had two active loans and one revolving credit account. Mr H had a loans balance of £938. He had made 14 credit searches in the six months prior to the loan application which I thought might have concerned ELL as it suggested a recurrent and recent need for credit. I also thought that ELL might have been concerned that in the five months prior to the loan application, Mr H had borrowed a high cost loan for £1,097 and two payday loans. Mr H had missed his last repayment on the large loan. One of the payday loans had been repaid, but the second was taken out just five days later. I thought this suggested that Mr H needed to borrow again to fill a hole in his finances that was made by repaying the first payday loan which wasn't a sustainable form of borrowing. And whilst Mr H had told ELL that the second payday loan had been settled, I could see from Mr H's own credit report that this wasn't the case and it was later defaulted in September 2019. I could also see that Mr H was having difficulties paying a communications loan that he'd borrowed in November 2017. He'd missed his last payment on this account and had also missed his payment in around April 2019.

ELL had made a list of Mr H's credit commitments. I'd noted that ELL's list didn't include any credit not shown in its credit checks. But the lender would have been aware that its credit checks might not have revealed the full extent of Mr H'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.

In view of Mr H's recent need for credit and missed payments, I thought ELL needed to gather more information from him about his credit. I'd seen from Mr H's own credit report that he'd taken out a short-term high cost loan in early February 2019 for £568 on which no payments had been made. There was a further short-term high cost loan taken out in mid-February 2019 for £642 on which there had been arrears from April 2019. Mr H's current account was also showing as overdrawn in both January 2019 and April 2019.

I'd noted that ELL appeared to have made allowances for Mr H's missed payments and short-term borrowing as he was out of work. But Mr H appeared to have been taking out high cost credit since January 2019 on a regular basis which suggested he might have been reliant on it.

I'd also reviewed the bank statements ELL saw for the period 13 May 2019 to 13 June 2019. I could see that Mr H spent almost £500 on gambling. I'd noted that ELL said that the gambling was a one-off as Mr H was out of work. But it appeared that most of the gambling transactions were made after Mr H had started his new job (going by the date of his employment contract). Mr H was spending a significant proportion of his income on gambling. The gambling transactions were frequent enough that I thought it was more likely than not that the gambling would continue in the same pattern. And it pointed to a pattern of spending that posed a risk to Mr H being able to repay the loan without the payments having a significant adverse impact on his financial situation.

Whilst ELL appeared to have gone through the statements and made a tick mark against most of the transactions on the statements, it didn't seem that ELL had used the bank statements it received to verify Mr H's expenses as it had used ONS data to estimate these. I didn't think it was reasonable for ELL to rely on statistical information about Mr H's living costs without verifying it. ELL used ONS data, which was based on the finances and expenditure of the average consumer, to estimate Mr H's living expenses. But I didn't think it was reasonable for ELL to have thought that Mr H's circumstances fell within this average portfolio. ELL's affordability assessment wasn't tailored to Mr H and I thought it should have been in his circumstances.

ELL needed to consider Mr H's ability to make repayments under the agreement as they fell due over the life of the agreement, without him having to borrow to meet the repayments, without him failing to make any other repayment he had a contractual or statutory duty to make, and without the repayments having a significant adverse effect on his financial situation. It wasn't enough for it to ascertain whether the loan repayments were technically affordable on a strict pounds and pence calculation. So, had ELL considered fully the information it had received and enquired further into Mr H's financial situation, I thought ELL should have reasonably suspected that he was having problems managing his money and it was likely that the repayments on Loan 3 would have a significant adverse effect on his financial situation. So, I thought that ELL made an unfair lending decision about Loan 3.

For the reasons given above, but subject to any further information or evidence I might receive from the parties, I said that I intended to uphold Mr H's complaint in part and that ELL should put things right as I've set out below under the heading "Putting things right – what ELL needs to do".

Putting things right – what ELL needs to do

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

1. Calculate the amount of money Mr H received as a result of having been given Loan 3. For the avoidance of doubt this amount should not include any interest, charges, document or any other administration fees;
2. The payments Mr H made to Loan 3 should be deducted from this amount;
3. Any payments made, if any, after the total amount repaid exceeds the amount of money Mr H was given should be treated as overpayments and refunded to Mr H;
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 H to the date of settlement;*

5. If the total amount of money paid by Mr H doesn't exceed the amount of money he received as a result of having been given Loan 3 (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 H 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 H's credit file as a result of Loan 3.

If ELL has sold the outstanding debt on Loan 3 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 H a certificate showing how much tax it has taken off if he asks for one.

Both Mr H and ELL responded to my provisional decision to say that they agreed with it.

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 H and ELL agreed with my provisional decision and 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 H to accept or reject my decision before 14 October 2022.
Roslyn Rawson
Ombudsman