DRN-3738518

The complaint

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

What happened

ELL agreed three loans for Mr P. The proceeds of Loan 2 were used to repay Loan 1. Mr P repaid Loan 2 from his own money. 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.	17/1/2015	15/5/2015	£1,000	£102.75	24
2.	15/5/2015	22/10/2015	£3,300	£253.82	24
3.	29/7/2016	Unpaid	£5,000	£346.67	36

Mr P says that because ELL continued to approve loans that were unaffordable, he got into further debt and suffered financial hardship as a result.

ELL didn't uphold Mr P's complaint. In its final response letter, it concluded that the checks completed were reasonable and proportionate and that the loans were sustainable over the respective loan terms as he had disposable income. It believed Mr P would have been able to make the repayments to his loans without undue difficulty over the life of the credit agreements.

Our adjudicator's view

Our adjudicator recommended that Mr P's complaint should be upheld. He thought ELL ought to have realised Mr P was having difficulty managing his finances from the outset and that it was unlikely he would have been able to sustainably make his repayments for each of the loans without taking out further borrowing.

ELL disagreed with the adjudicator's view. In summary, it said with regard to Loan 1 that Mr P had a very good disposable income amount of £785 but his discretionary spending was high. There was nothing on his credit file to suggest he was struggling with his creditors. With regard to Loan 2, it said that Mr P had told it that he'd taken out payday loans for an unforeseen emergency situation and overstretched himself. Loan 2 was required to clear these. With regard to Loan 3, it said in response to the adjudicator's statement that Mr P's income fluctuated, that the average of the last four weekly payments it had used was £1,591.17. And even if it had averaged all of the last 12 weekly payments, this would be £1,406.75 which still left a disposable income of £205.07. As Mr P was paid weekly, his loan repayments were also to be paid weekly at £86.67 per week. So, the variable income wasn't an issue. With regard to Mr P's more regular payday loans, he had told it that these had been for car repairs and because he'd had time off work. Loan 3 was to be used to clear the payday loans.

The adjudicator responded to say that his assessment was based on Mr P's overall financial circumstances at the time of lending. Although Mr P may have had £785 disposable income based on ELL's monthly expenses calculations, his bank statements showed he wasn't managing his finances well, using short term borrowing or borrowing from his mother, to not stay overdrawn. With regard to Loan 3, his loan repayments had increased but his income appeared to have reduced.

ELL disagreed and asked for an ombudsman to review the complaint.

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 P and to ELL on 6 September 2022. I summarise my findings:

I'd said that where the evidence was incomplete, inconclusive, or contradictory (as some of it was here), I would reach my decision on the balance of probabilities – in other words, what I considered was most likely to have happened in light of the available evidence and the wider circumstances.

I noted that when ELL lent to Mr P the regulator was the Financial Conduct Authority and relevant regulations and guidance included its Consumer Credit Sourcebook.

I'd said that ELL would bel be aware of the relevant regulations and how we considered irresponsible lending complaints, so I wouldn't go into detail on these points.

I'd thought about whether ELL completed reasonable and proportionate checks when assessing Mr P's 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 1

Loan 1 was for £1,000. I'd noted that ELL gathered some information from Mr P about his income and it estimated his expenditure by using 35% of Mr P's net income. It carried out a credit check and also asked Mr P for information about his credit commitments. In addition, ELL asked Mr P to provide two months' bank statements.

Mr P said he was using the loan for car repairs. He lived with his parents and in his employer's accommodation. He paid no rent or board. Mr P told ELL that he would pay £250 each month to reduce the loan balance more quickly.

Mr P was entering into a significant commitment with ELL. He would need to make monthly repayments of around £103 for 24 months. So, I thought it was right that ELL wanted to gather, and independently check, some detailed information about Mr P's financial circumstances before it agreed to lend to him. I thought that the checks I'd described above allowed ELL to form a detailed view of Mr P's finances, and I thought that the checks ELL did were proportionate.

ELL said that Mr P's average net monthly income was £1,679.55. It calculated Mr P's monthly living expenses and credit commitments to total £790.84. So, it said that Mr P had a disposable income of £785.95 after taking into account its loan repayments.

I'd reviewed ELL's credit checks. These appeared to show that Mr P had no active accounts.

I'd reviewed the list of credit commitments ELL had compiled. This included a loan, two current accounts, a credit card and a utility loan. I could see that the list didn't include a monthly amount for Mr P's credit card. But ELL would have seen from each of Mr P's bank statements that he'd paid around £490 to the lender each month. So, I didn't think ELL's calculation of Mr P's financial commitments was likely to be accurate and this meant that he'd have less disposable income than it had calculated. But it still appeared that he would have had around £300 disposable income each month after the loan repayment was made.

I'd also reviewed the bank statements Mr P provided to ELL. I could see that he was in receipt of the monthly income ELL used in its calculations.

I could also see on the statements that Mr P's overdraft limit was exceeded for two days in the two months' period. In itself, I didn't think this was enough to raise any particular concerns. But I could also see that Mr P was spending more than his income. He'd needed to borrow two payday loans during the two months' period, although each of these was repaid within ten days. He'd also borrowed a loan for £1,500 to be repaid over 12 months which he'd told ELL was for a car.

I could also see that Mr P appeared to be spending a relatively large amount (over £1,000 each month) on discretionary expenditure (which included cash withdrawals) and significantly less than this on essential living costs as he wasn't paying anything for board. And I thought ELL might have reasonably expected Mr P to reduce his discretionary expenditure, if necessary, to make his loan repayments.

Looking at everything in the round, and on balance, I hadn't seen enough to find that ELL ought to have declined to lend Loan 1 to Mr P and I wasn't persuaded that ELL had lent irresponsibly on this occasion.

Loan 2

Mr P had taken out Loan 2 around four months after Loan 1. The loan was for £3,300 and the repayments had more than doubled to £253.82. But ELL said that Mr P was voluntarily making increased monthly payments of £250 to Loan 1. So, it appeared that he was able to make payments of around this amount.

ELL had used around £442 from the loan proceeds to repay Loan 1. Mr P had received around £828 from the loan proceeds. Mr P said that the loan was also to be used for debt consolidation and ELL paid around £2,029 to two of Mr P's creditors directly from the loan proceeds.

Mr P was still living with his parents and in his employer's accommodation and paid no rent or board.

I'd again noted that ELL gathered some information from Mr P about his income and it estimated his expenditure by using 35% of Mr P's net income. It had carried out a credit check and also asked Mr P for information about his credit commitments. In addition, ELL had again asked Mr P to provide two months' bank statements.

I thought that the checks I'd described above allowed ELL to form a detailed view of Mr P's finances, and I thought that the checks ELL did were proportionate.

ELL said that Mr P’s average net monthly income was £1,726.27. ELL calculated Mr P’s monthly living expenses and credit commitments to total £1,393.04. It said that Mr P had a disposable income of £840.49 after taking into account its loan repayments and the loans to be consolidated.

I’d reviewed ELL’s credit checks. I’d noted that he had two loans and a credit card as well as two current accounts. I thought ELL might have had some concerns that the two current accounts and the credit card balances were very near their respective credit limits.

I’d also noted ELL’s list of Mr P’s credit commitments which were higher than ELL had seen in its credit checks. But I could also see that he was using Loan 2 to repay two high cost lenders and thereby reducing his monthly credit commitments by £658. After the debt consolidation, I could see that Mr P was left with a disposable income around the amount ELL had calculated.

I’d also reviewed Mr P’s bank statements. I could see that Mr P was in receipt of the income ELL used in its calculations. I could see that Mr P’s overdraft limit was exceeded for two days in one month and five days in the second month which might have raised some concerns. I’d also noted that Mr P had again borrowed two payday loans and borrowed from family. I could see from ELL’s account notes that Mr P explained that payday loans had been used to pay for a family member’s funeral and he had overstretched himself. This appeared a plausible explanation. The loan purpose to help him clear them made his situation more comfortable.

I could also see that Mr P was spending a relatively large amount on discretionary expenditure and significantly less than this on essential living costs as he wasn’t paying anything for board. And again, I thought ELL might have reasonably expected Mr P to reduce his discretionary expenditure, if necessary, to make his loan repayments.

After the consolidation of the two accounts I’d mentioned above, and on balance, overall, I hadn’t seen enough to find that ELL ought to have declined to lend Loan 2 to Mr P and I wasn’t persuaded that ELL lent irresponsibly on this occasion.

Loan 3

I’d noted that Mr P repaid Loan 2 around five months after taking it out. And around nine months later he took out Loan 3. The loan amount was £5,000 and the monthly loan repayment amounts had increased to £346.67.

Mr P said that the loan was to be used for debt consolidation and a holiday. ELL paid £1,909 to two of Mr P’s creditors directly from the loan proceeds. Its account notes indicated that it expected Mr P to repay his two payday loan providers and that he would be left with no creditors after that. I couldn’t see from the information received from ELL that it had made this a condition of the loan. So, it couldn’t be sure that the loans would be paid off.

I’d again noted that ELL gathered some information from Mr P about his income and it estimated his expenditure by using 35% of Mr P’s net income. It carried out a credit check and also asked Mr P for information about his credit commitments. In addition, ELL again asked Mr P to provide two months’ bank statements.

I thought that the checks I’d described above allowed ELL to form a detailed view of Mr P’s finances, and I thought that the checks ELL did were proportionate. But simply performing proportionate checks isn’t always enough. A lender also needed 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 said that Mr P's average net monthly income was £1,591.17. ELL calculated Mr P's monthly living expenses and credit commitments to total £1,161.91. It said that Mr P had a disposable income of £332.58 after taking into account its loan repayments and the loans to be consolidated.

I'd noted that Mr P was now in a different job and was a tenant paying monthly rent of £355. ELL's account notes indicated that Mr P was working as a temporary worker for a company via an agency and that he hoped to be taken on permanently by that company. But I'd seen from Mr P's bank statements that he was paid weekly and that his income varied significantly each week. I'd not seen anything to show that Mr P was guaranteed to be taken on permanently, nor what his salary would be. I'd calculated from the 16 weekly salary payments on the bank statements that I'd seen that Mr P earned an average of around £1,363 each month, which was significantly less than the monthly income calculated by ELL.

I'd reviewed ELL's credit checks. These showed the two credit card accounts which were being paid by ELL from the loan proceeds. The balance of one of the accounts was very near its credit limit. But perhaps more worryingly the checks showed that Mr P had taken out seven payday loans from 6 April 2016 to 23 June 2016 ranging in size from £50 to £417. I thought the results of ELL's credit checks ought to have caused it some concerns as they suggested that Mr P was struggling to manage his money as shown especially by his recent frequent use of and apparent reliance on payday loans. I could see that ELL did have concerns about the payday loans Mr P had taken out and asked him about the reason for these. Mr P explained that he'd taken time off in March 2016 and needed money for car repairs. I didn't think this explanation was sufficient to explain the use of payday loans from April 2016 to June 2016. In its account notes, ELL said that the payday loans were an obvious issue and that Mr P had gambled some of the payday loan proceeds.

I'd noted that ELL had said that the loan was sustainable over the term as Mr P had a disposable income. But this assumed Mr P's need for credit wasn't an ongoing one. I'd noted from Mr P's bank statements that he'd taken out at least 12 payday loans since 1 April 2016. And ELL would have been aware from the credit checks for Loans 1 and 2 that Mr P had been using payday loans the previous year. It appeared that Mr P was reliant on expensive short term loans to meet his existing spending. It seemed to me there was a risk here that Mr P would need to borrow to meet his repayments on this loan, as he was currently doing so for his existing spending and that would likely have a significant adverse effect on his financial situation.

I'd also reviewed the bank statements Mr P had provided to ELL. They covered a period of almost four months. I'd calculated that Mr P was spending an average of around £1,050 each month between May 2016 and July 2016 on rent and living costs. This would have left around £310 monthly disposable income which wouldn't have been enough to pay the loan repayments on Loan 3. I'd not included his credit card or loan repayments in these amounts as ELL expected these to be repaid from Loan 3. Mr P had also borrowed an average of £566 on payday loans from April 2016 to July 2016.

Altogether, I didn't think ELL's checks went far enough given Mr P's circumstances. It didn't seem to have used the bank statements it had to verify its estimate of his monthly disposable income to ensure that Mr P would have enough funds to be able to sustainably make the loan repayments over 36 months. And as I'd said above its account notes indicated that it was already concerned about his use of payday loans.

So, had ELL considered fully the information it had received, I thought it would have learned that the loan wasn't likely to have been affordable for Mr P and so I considered it was irresponsible to have agreed it.

So, I thought ELL made an unfair lending decision here and I intended to say that Mr P's complaint about Loan 3 should be upheld.

Subject to any further representations by Mr P or ELL, I intended to uphold Mr P's complaint in part and say that ELL should put things right as follows.

Putting things right – what ELL needs to do

I understand that Loan 3 hasn't been repaid. In order to put Mr P back into the position he would have been had the loan not been agreed for him, ELL needs to ensure that Mr P only repays the principal borrowed on the loan. In other words, Mr P shouldn't repay more than the capital amount of £5,000 he borrowed. So, ELL needs to:

a) treat all payments that Mr P has made towards the loan as payments towards the principal amount borrowed;
b) if Mr P has made payments above the capital amount of £5,000, then these should be refunded to him, along with simple interest at the rate of 8% per year on these amounts from the date they were paid to the date of settlement*;
c) if Mr P hasn't made payments above the capital amount of £5,000 and there is still an outstanding capital balance then ELL needs to treat Mr P fairly and sympathetically in this matter. This may mean agreeing a mutually agreeable repayment plan with him; and
d) remove any adverse information about Loan 3 from Mr P's credit file.

If ELL has sold the outstanding debt on the loan, 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 a) to d) above.

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

Mr P responded to my provisional decision to say he accepted it.

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 Mr P 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 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 P to accept or reject my decision before 2 November 2022.
Roslyn Rawson
Ombudsman