DRN-3746684

Financial Ombudsman Service

The complaint

Ms M complains that Everyday Lending Limited trading as Everyday Loans ("ELL") lent loans to her when it shouldn't have. She says she was struggling financially at the time the loans were granted.

What happened

ELL lent Ms M two loans, loan 1 was lent in September 2017, the loan was for £3,000 which Ms M said she was taking for home improvements. It had a 24-month term with monthly repayments of around £291.33. Ms M struggled to repay this loan. In October 2018, Ms M was lent loan 2, the loan was for £3,500, around £2,200 was issued to settle loan 1 and Ms M took out the balance for home improvements. The loan term was 30 months with monthly repayments of around £316.

From what I can see Ms M struggled to keep up with the repayments on loan 2 as well and the account went to recoveries. There's likely still an outstanding balance on this loan. When she complained to ELL, it didn't uphold her complaint, it said it carried out sufficient checks and those checks showed she could afford the loans.

Ms M then referred her complaint to this service where it was looked at by one of our adjudicators. Our adjudicator thought ELL had carried out sufficient checks but said the results of the checks were concerning. She said Ms M had significant credit commitments which meant there was a high risk she'd struggle to sustainably repay the loan.

ELL didn't agree and the complaint has been passed to me for a 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've also taken into account the law, any relevant regulatory rules and good industry practice at the time the loans were offered.

Before lending money to a consumer, a lender should take proportionate steps to understand whether the consumer could repay without borrowing further or suffering significant adverse consequences.

A lender should gather enough information for it to be able to make an informed decision on the lending. Although the guidance and rules themselves didn't set out compulsory checks, they did list a number of things a lender could take into account before agreeing to lend. The key thing was that any checks needed to be proportionate and had to take into account a number of different things, including things such as how much was being lent and when what was being borrowed was due to be repaid. A business should also take into account and react appropriately to what it knew about the consumer at the time it made its lending decision.

ELL has shown that it checked Ms M's credit file, requested her bank statements and asked her about her monthly income and expenses before lending both loans. I think for both loans, those checks went far enough.

Looking at the results of those checks, I can see that for both loans, Ms M had historic defaults with outstanding balances which she was repaying, Ms M also had several active accounts which she was repaying. The credit search for loan 1 showed Ms M was making several weekly creditor repayments, which on a monthly basis was around £984, adding the repayment of this loan (£291.33) Ms M would be repaying around £1,275 on monthly unsecured credit. Taking into account her income of around £2,245.81, some of which included child benefit, she was due to pay more than half of that income towards unsecured debt on a monthly basis. ELL as a responsible lender would know that was a significant amount of her income and made it very likely that over the 24 month term of the loan, Ms M would struggle to repay it sustainably.

As it turned out, Ms M struggled to repay the loan and fell into arrears. In response to this, ELL lent Ms M a further loan, this time for a higher amount and used some of loan 2 to repay the balance on loan 1. Essentially Ms M was already obviously in a disadvantaged position when she took out loan 2, something ELL was aware of.

Also, by loan 2, Ms M's credit file showed that she was in further debt and continued to struggle to manage her finances, her income had reduced to around £1,778 and from what I can see almost all of her income would be going to repay credit commitments. Ms M had struggled to successfully meet monthly repayments of £291.33 and so I don't see how ELL expected her to sustainably meet the higher repayment of £316 over a longer term with less income.

ELL was aware that Ms M had previous problems repaying a lower amount and the results of its checks showed she was further in debt and was receiving less income. It should have been clear to ELL that Ms M would struggle to repay this loan and it shouldn't have lent.

Overall, I don't think it was right for ELL to lend any of the loans, it has given Ms M loans when it shouldn't have and she has suffered loss as a result of this and it needs to put things right.

Putting things right

I understand loan 2 is still outstanding and so to put things right for Ms M, I'm directing ELL to take the following steps and if the loan has been sold, ELL should either buy back the debt or if its unable to do so, ensure the third party purchaser takes the following steps to put things right for Ms M:

- To add up the total capital amount Ms M received as a result of having been given all the loans. The repayments Ms M made should be deducted from this amount.

a) If this results in Ms M having paid more than they received, any overpayments should be refunded along with 8% simple interest (calculated from the date the overpayments were made until the date of settlement). †

b) If any capital balance remains outstanding, then ELL should attempt to arrange an affordable and suitable payment plan with Ms M.

- To remove any negative information recorded on Ms M's credit file relating to loans once the loan capitals have been fully repaid.

†HM Revenue & Customs requires ELL to take off tax from this interest. ELL must give Ms M a certificate showing how much tax it's taken off if she asks for one.

My final decision

For the reasons given above, I uphold Ms M's complaint and direct Everyday Lending Limited trading as Everyday Loans to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 29 December 2022.

Oyetola Oduola
Ombudsman