DRN-3754002

The complaint

Mrs S complains about a loan provided to her by Everyday Lending Limited, trading as Everyday Loans, ("ELL"), which she says was unaffordable.

What happened

The loan was for £2,000 and was taken out in August 2018. It was to be repaid by 30 monthly repayments of £199.59. The loan was to be used for debt consolidation and home improvements. ELL paid £364.93 directly to a creditor from the loan proceeds and Mrs S received £1,635.07. The loan is still outstanding.

Mrs S said that she applied for the loan due to spiralling debts including a high interest loan and several payday loans whilst trying to manage essential bills such as rent, council tax and water which had already begun to fall into arrears. Mrs S believed that ELL took her tax credit payments into account as part of her income, but she said that money was used to pay for activities for her children to enable her to work full time. Mrs S said that ELL was aware that a family member was providing money to her to make ends meet on her current outgoings. She felt that ELL lent to her in the full knowledge that she was already highly dependent on high interest loans to manage month to month. She had four credit cards and several payday loans.

ELL said in its final response letter that the checks it completed were reasonable and proportionate and that the loan was sustainable over the term of the loan as Mrs S had disposable income. It said that after consolidation of Mrs S's debts and its monthly repayment, Mrs S would have a monthly disposable income of around £413.

Our adjudicator's view

The adjudicator didn't recommend that the complaint should be upheld.

Mrs S disagreed and responded to say, in summary, that her credit file had defaults and showed a high dependency on high interest loans. She had needed a guarantor for an existing loan that was still active, and she had missed payments on that loan. In addition, the majority of her tax credit income was used for childcare and wasn't available income. Her weekly childcare costs were in excess of £218. Mrs S said that ELL had also seen her bank statements which showed that she was borrowing thousands of pounds from a family member. She was reliant on money from that family member to make ends meet. Mrs S also said that the credit report obtained by ELL would have indicated that she had a current overdue balance on a utility account and also that she was in arrears with a communications' provider. This would have indicated that she was struggling before the inception of ELL's loan to maintain her payments as they fell due on existing financial commitments. She was also in arrears with short term loan repayments. She had three dependents and her partner was unemployed.

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 Mrs S and to ELL on 28 September 2022. I summarise my findings:

I 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 those points. But I'd said that ELL needed to check that Mrs S could afford to meet her repayments without difficulty before agreeing credit for her. In other words, it needed to check she could make her repayments out of her usual income without having to borrow to meet them, while meeting her existing obligations and without the payments having a significant adverse impact on her financial situation. The assessment needed to take into account the nature of the credit and Mrs S's circumstances.

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

ELL had gathered some information from Mrs S about her income and accommodation expenses before it agreed the loan. It had also carried out a credit check and saw a payslip and bank statements for Mrs S's main current account for a period of one month and another current account for 13 days. It had estimated Mrs S's living costs by using data from the Office for National Statistics ("ONS").

Mrs S was entering into a significant commitment with ELL. She would need to make monthly repayments for a period of two and a half years. So, I thought it was right that the lender wanted to gather, and independently check, some detailed information about Mrs S's financial circumstances before it agreed to lend to her. I thought that the checks I'd described above allowed ELL to form a detailed view of Mrs S's finances. 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 had made a fair lending decision.

Mrs S told ELL she was a tenant and paid £395 rent. Her average net monthly income was £2,252.66. She wanted to pay off her payday loans and a credit card account with the loan. The lender used the results of its credit checks and ONS data to calculate Mrs S's living costs and financial commitments to be £2,004.67 prior to the debt consolidation. It said that her monthly disposable income after its loan repayment and debt consolidation would be £413.33.

I'd noted that ELL's documents had showed Mrs S's net monthly income as £1,435.09. ELL had seen Mrs S's payslip for August 2018, but this showed a net monthly income of £1,271.90. It's not clear why ELL used the larger amount and not the amount shown in the payslip. It would have also seen from the bank statements it received that Mrs S had received an income of £1,271.90 in August 2018. I'd seen from the bank statements Mrs S provided to this Service that she received the same amount in July 2018. So, I thought ELL used too high a net monthly income in its calculations. ELL was also aware that Mrs S received benefit income. It said that Mrs S's total monthly income was £2,252.66. I'd calculated the monthly equivalent of the benefits I'd seen in the bank statements to be around £817. So, I'd calculated Mrs S's total monthly income to be around £2,090.

I'd reviewed ELL's credit checks. I could see that Mrs S had taken out two loans in the previous year with a current total balance of £8,050. She'd also taken out three credit cards and a mail order account in the same year. One of the credit cards was near its credit limit, one credit card was over its credit limit and a mail order account appeared to have been in arrears for five months. Mrs S had a current account on which the overdraft was £3 short of its limit. There was also a communications account which had been in arrears for three months until the month prior to the application. In addition, Mrs S had taken out a total of four short term loans totalling £680 in May 2018 and June 2018. She'd told ELL that these were due to her children being off school and extra costs. I thought the results of ELL's credit checks ought to have caused it some concerns as they suggested that Mrs S was struggling to manage her money as shown especially by her recent use of payday loans, an overlimit account and recent arrears. I thought ELL ought to have dug a bit deeper to obtain more information about Mrs S's debt.

Whilst Mrs S had told ELL that she would be using part of the loan proceeds she'd received to consolidate a credit card debt, 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 debt would be paid off.

I'd also reviewed the bank statements ELL saw for Mrs S's main current account for the period 20 July 2018 to 22 August 2018 and for a second current account for the period 26 July 2018 to 7 August 2018. ELL said that it had noted that Mrs S's tax credits had moved from being paid into the latter account into the main account.

Whilst ELL had 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 had received to verify Mrs S's living costs which it had estimated using ONS data as explained above. I didn't think it was reasonable for ELL to rely on statistical information about Mrs S's living costs without verifying it. ONS data was based on the finances and expenditure of the average consumer. But I didn't think it was reasonable for ELL to have thought that Mrs S's circumstances fell within this average portfolio. ELL's affordability assessment wasn't tailored to Mrs S and I thought it should have been in her circumstances. I didn't think ELL had properly scrutinised the information it did see to verify Mrs S's actual expenditure and ensure that Mrs S would have enough money to be able to make the payments over the 30 months' loan term.

ELL did seem to have noted from its review of the statement for the second current account that Mrs S was receiving a large amount of transfers from a third party. Its notes said *"multiple small transfers seen to and from a secondary account but only ten days statement obtained*". I could see that Mrs S had received £1,108 from 26 July 2018 to 7 August 2018 from a third party. I thought ELL ought to have asked Mrs S for more information about this money. Mrs S said it was from a family member and I could see that it was usually transferred from the second current account to Mrs S's main account. As I'd said above, Mrs S told this Service that she was reliant on this money to make ends meet. And I thought ELL ought to have seen that from its review of Mrs S's bank statements. There was also no guarantee that she would continue to receive this money throughout the loan period.

ELL also would have seen from the statements for the second current account that there were living costs paid from this account. I thought ELL should have asked to see statements for that account for a month's period to enable it to have a complete view of Mrs S's financial situation. I have seen Mrs S's account statements for July 2018 and August 2018 for that account and noted that payments were made from that account for rent, communications, a credit card and food/drink.

Having reviewed statements for both current accounts from around the time of the loan application, I could see that Mrs S's total living costs and credit commitments were higher than the amount ELL had calculated. I thought they were also likely to be greater than her monthly income (including her benefit income) after taking into account ELL's loan repayment and the consolidation of the payday loans that ELL knew about.

Overall, from the information I'd seen I thought ELL ought to have been concerned about Mrs S's ability to repay its loan out of her usual means, without borrowing and without receiving money from a family member, as she wasn't managing to do so with her existing debt. ELL needed to consider the impact of the loan repayments over 30 months on Mrs S and establish whether she could make her loan repayments sustainably without experiencing adverse consequences. Taking everything in the round, I thought ELL should have reasonably suspected that Mrs S was having problems managing her money and I thought that ELL made an unfair lending decision here when it agreed to lend to Mrs S.

So for the reasons given above, but subject to any further information or evidence I might receive from the parties, I intended to say that Mrs S's complaint should be upheld 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 the loan hasn't been fully repaid. In order to put Mrs S back into the position she would have been had the loan not been agreed for her, ELL needs to ensure that Mrs S only repays the principal borrowed on the loan. In other words, Mrs S shouldn't repay more than the capital amount of £2,000 she borrowed. So, ELL needs to:

a) treat all payments that Mrs S has made towards the loan as payments towards the principal amount borrowed;
b) if Mrs S has made payments above the capital amount of £2,000, then these should be refunded to her, 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 Mrs S hasn't made payments above the capital amount of £2,000 and there is still an outstanding capital balance then ELL needs to treat Mrs S fairly and sympathetically in this matter. This may mean agreeing a mutually agreeable repayment plan with her; and
d) remove any adverse information about the loan from Mrs S'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 Mrs S a certificate showing how much tax it has taken off if she asks for one.

Mrs S responded to my provisional decision by providing further information about her financial situation around the time of the loan.

ELL responded to my provisional decision to say that it 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 ELL has agreed with my provisional decision, and the additional information provided by Mrs S supports my provisional conclusions that she was having problems managing her money, I see no reason to depart from the conclusions I reached in my provisional decision. It follows that I uphold this complaint 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 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 Mrs S to accept or reject my decision before 5 December 2022.
Roslyn Rawson
Ombudsman