DRN-3806077

The complaint

Mr C says Everyday Lending Limited (ELL), trading as Everyday Loans, irresponsibly lent to him.

What happened

Mr C took out two instalment loans from ELL. A summary of his borrowing follows.

loan	taken out	repaid	value, £	term in months	monthly repayment, £	total repayable, £
1	26/06/2018	21/03/2019	1,500	18	139.58	2,512.44
2	21/03/2019	10/07/2020	3,000	18	340.16	6,122.88

Loan 2 was used in part to settle loan 1.

Our adjudicator upheld Mr C's complaint. He said ELL's checks were proportionate, but he did not think it had made fair lending decisions based on the information it gathered.

ELL disagreed and asked for an ombudsman's review, so the complaint was passed to me. It said we had considered the monthly cost for Mr C of repaying his existing revolving debt at 5% of outstanding balance, it uses 3% in its affordability assessment and this complies with the relevant regulations.

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 general approach to complaints about unaffordable/irresponsible lending - including all of the relevant rules, guidance and good industry practice - on our website. Having carefully thought about everything, I think that there are two overarching questions that I need to answer in order to fairly and reasonably decide Mr C's complaint. These two questions are:

1. Did ELL complete reasonable and proportionate checks to satisfy itself that Mr C would be able to repay the loans in a sustainable way without experiencing significant adverse consequences?
- If so, did it make fair lending decisions?
- If not, would those checks have shown that Mr C would've been able to do so?
2. Did ELL act unfairly or unreasonably in some other way?

The rules and regulations in place required ELL to carry out a reasonable and proportionate assessment of Mr C's ability to make the repayments under this agreement. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower" focused – so ELL had to think about whether repaying the loan would cause significant adverse consequences *for Mr C*. In practice this meant that business had to ensure that making the payments to the loan wouldn't cause Mr C undue difficulty or significant adverse consequences.

In other words, it wasn't enough for ELL to simply think about the likelihood of it getting its money back, it had to consider the impact of the loan repayments on Mr C. Checks also had to be "proportionate" to the specific circumstances of the loan application.

In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount/type/cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different applications.

In light of this, I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- the *lower* a consumer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- the *greater* the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Mr C's complaint.

ELL has provided evidence to show that before lending it asked for some information from Mr C. It asked for his monthly income and estimated his living costs using national averages. It carried out credit checks to understand his credit history and his existing credit commitments. It reviewed recent bank statements to verify his salary and some outgoings. I can't see it asked about the purpose of loan 1, loan 2 was to refinance loan 1 and for a holiday. Based on these checks ELL thought Mr C had enough disposable income to afford the loan repayments and so it was fair to lend.

I think these checks were proportionate, but I don't think ELL made fair lending decisions based on the information it gathered. I'll explain why.

Loan 1

ELL has shared the affordability assessment it completed. This shows Mr C would have £325.75 of monthly disposable income after taking on this loan. But as part of its checks it asked for his recent bank statements and I can't reconcile ELL's assessment to Mr C's actual financial situation. These show that Mr C was under financial pressure, he was persistently reliant on his overdraft and incurring daily overdraft fees. I accept they include his discretionary spend but from what I can see this was very limited and not the cause of his financial strain. So I don't think ELL properly took into account all the information it gathered to reach its lending decision. Rather it based its assessment in part on national statistics, not the actuals that it had. Plus Mr C was already spending a significant percentage of his income on credit which can be an indicator that any further debt is unlikely to be repaid sustainably.

Based on Mr C's financial position at the time he applied I think ELL ought to have realised there was a risk he would be unable to repay this loan sustainably – so without borrowing to repay (using his overdraft to make his repayments, for example) or suffering other adverse financial consequences.

It follows I think ELL was wrong to give loan 1 to Mr C.

Loan 2

Logically, I would want to see that ELL got the reassurance it needed that Mr C's financial position had stabilised before considering lending in March 2019. From its checks it could see Mr C's external borrowings had increased from £10,775 to £40,900 – and so the amount of income he now needed to spend to service his debt had increased significantly. ELL calculated Mr C would have £252.22 of monthly disposable income, but again I can't see the bank statements it had copies of supported this analysis.

In the months before his application Mr C was persistently overdrawn and he would now need to spend over half his income on his credit commitments so I think it was most likely the loan would not be sustainably affordable for Mr C.

It follows I think ELL was wrong to give loan 2 to Mr C.

ELL argued in response to the adjudicator's view that it was reasonable to account for a lower level of repayment on Mr C's revolving credit and so it maintained that the loans were affordable. But for the reasons set out above its comments do not change my conclusion.

I've also thought about whether ELL acted unfairly in some other way towards Mr C and I haven't seen any evidence that it did.

Putting things right

I think it is fair and reasonable for Mr C to repay the capital amount that he borrowed, because he had the benefit of that lending. But he has paid extra for lending that should not have been provided to him so ELL needs to put that right.

It should:

- refund all interest and charges Mr C paid on the loan;
- if reworking Mr C's loan account results in him having effectively made payments above the original capital borrowed, then ELL should refund these overpayments with 8% simple interest calculated on the overpayments, from the date the overpayments would have arisen, to the date of settlement*;
- if reworking Mr C's account results in there still be a capital balance outstanding ELL should work with Mr C to agree an affordable repayment plan; and
- remove any negative information about the loan from Mr C's credit file.

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

My final decision

I am upholding Mr C's complaint. Everyday Lending Limited (ELL), trading as Everyday Loans, must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 23 December 2022.

Rebecca Connelley
Ombudsman