DRN-3827048

The complaint

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

What happened

This complaint is about a 36-month instalment loan for £3,000 that ELL provided to Mr M on 21 May 2021. The monthly repayments were £207.74 and the total repayable was £7,478.64.

Mr M says the loan was unaffordable for him, he had multiple recently-opened credit cards that were at or near their limit. ELL would then not accept his reduced payment offer and continued to charge interest. He asks for all interest and charges to be removed and that he only pay back the money he received.

Our adjudicator upheld Mr M's complaint saying ELL's checks were proportionate, but it did not make a fair lending decision based on the information it gathered.

ELL disagreed and asked for an ombudsman's review, so the complaint was passed to me.

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 M's complaint. These two questions are:

1. Did ELL complete reasonable and proportionate checks to satisfy itself that Mr M would be able to repay the loan in a sustainable way without experiencing significant adverse consequences?
- If so, did it make a fair lending decision?
- If not, would those checks have shown that Mr M 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 M'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 M*. In practice this meant that business had to ensure that making the payments to the loan wouldn't cause Mr M 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 M. 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 M's complaint.

ELL has provided evidence to show that before lending it asked for some information from Mr M. It asked for his monthly income and checked this against recent payslips. It estimated his living costs using national averages and added a buffer to accommodate unexpected costs. It carried out a credit check to understand his credit history and his existing credit commitments. It reviewed a recent bank statement to check other credit commitments and certain expenses. It asked about the purpose of the loan, which was in part to settle old defaults. Based on these checks ELL thought it was fair to lend.

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

There has been debate over the appropriate monthly income figure to use for Mr M – ELL used a YTD figure of £2,900 saying this was fairer. Our adjudicator pointed out in the two months prior to application it was lower at around £1,800. My finding that follows however is still valid using the higher value so I will not comment in detail on this. Only to say that as ELL relied on the YTD figure I would have expected it to understand why this was so much higher than the recent months. I can't see it did this.

ELL could see from its checks that Mr M had a significant amount of debt - £27,296. Just under 10% of that debt that had defaulted in late 2018 and was still to be settled. ELL points out Mr M planned to do this with its loan to repair his credit rating, but it also needed to consider that Mr M was taking on a high-cost loan to repay defaulted debt that would most likely be attracting no interest. That in itself might not be problematic but in the circumstances of this case I think it needed to be considered. ELL knew Mr M had previously had financial difficulties. And this loan increased Mr M's monthly credit commitments to a very significant portion of his income. This is a strong indication that there is a high risk that the repayments would not be sustainable over the term of the loan – meaning it was likely

Mr M would need to borrow again to repay, or suffer some other adverse financial consequence.

ELL argues that the regulator does not set a debt to income ratio, nor how much of a consumer's income should be spent on repaying credit each month. And whilst that is the case, it does make clear that lenders need to be sure borrowers can sustainably repay their debt. I don't think the results of ELL's checks gave it the assurances it needed that that would be the case here. I note Mr M only made his first five repayments out of 36 before encountering difficulties.

It follows I think ELL was wrong to give the loan to Mr M.

Mr M says ELL did not accept his offer for a reduced repayment and has continued to apply interest. As I am upholding the complaint all interest will be removed from Mr M's loan account. But I would remind ELL of its obligation to treat Mr M fairly if it needs to agree a repayment plan for the capital.

Putting things right

It's reasonable for Mr M to repay the capital amount that he borrowed as he had the benefit of that money. But he has paid interest and charges on a loan that shouldn't have been given to him. So he has lost out and ELL needs to put things right.

It should:

- Refund all the interest and charges on the loan – so add up the total Mr M repaid and deduct the sum from the capital amount.
- If reworking Mr M'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 M's loan account results in an outstanding capital balance, ELL should try to agree an affordable repayment plan with Mr M.
- Remove any adverse information recorded on Mr M's credit files in relation to the loan.

*HM Revenue & Customs requires ELL to deduct tax from this interest. ELL should give Mr M a certificate showing how much tax it's deducted if he asks for one.

My final decision

I am upholding Mr M'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 M to accept or reject my decision before 27 December 2022.

Rebecca Connelley
Ombudsman