DRN-3849488

The complaint

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

What happened

Mr B took out a 24-month instalment loan for £2,000 on 21 February 2018. The monthly repayment was £246.12 and the total repayable was £5,906.88

Mr B says the loan was unaffordable and made his financial situation worse. It pushed him further into debt and this impacted his mental health. He had to use payday loans to make his repayments. If proper checks had been done he would not have been offered the loan.

The adjudicator upheld Mr B's complaint. He said ELL completed proportionate checks but did not make a fair lending decision based on the information it gathered.

ELL did not respond to this assessment, so the complaint was passed to me to make a final 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.

Our approach to unaffordable/irresponsible lending complaints is set out on our website and I've followed it here.

The Financial Conduct Authority (FCA) was the regulator when ELL lent to Mr B. Its rules and guidance, set out in its Consumer Credit Sourcebook (CONC), obliged ELL to lend responsibly. Amongst other things, ELL was required to carry out a reasonable and proportionate assessment of whether Mr B could afford to repay what he owed in a sustainable manner. This is sometimes referred to as an affordability assessment or an affordability check.

The checks also had to be borrower-focused. So ELL had to think about whether repaying the credit sustainably would cause any difficulties or adverse consequences for Mr B. 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 B.
Checks also had to be proportionate to the specific circumstances of each loan application. In general, what makes up 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 and cost of credit they have applied for.

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

- the *lower* a customer's income (reflecting that it could be more difficult to make any repayments to credit from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet higher repayments from a particular level of income);
- the *longer* the period of time a borrower will be indebted for (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make repayments for an extended period).

There may also be other factors which could influence how detailed a proportionate check should've been for a given application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. I've kept all of this in mind when thinking about whether ELL did what it needed to before agreeing to lend to Mr B, and have considered the following questions:

- did ELL complete reasonable and proportionate checks when assessing Mr B's loan application to satisfy itself that he would be able to repay the loan in a sustainable way?
- if not, what would reasonable and proportionate checks have shown?
- did ELL make a fair lending decision?
- did ELL act unfairly or unreasonably in some other way?

ELL asked for some information from Mr B before it approved the loan. It asked for details of his income. It asked for copies of his bank statements and a payslip to verify his salary. It asked about his housing costs and estimated his other living expenses using national statistics. It reviewed his credit file to understand his credit history and existing commitments. From these checks combined ELL concluded that Mr B would have monthly disposable income of £174.49 after taking on this loan and so it was fair to lend.

I think the checks ELL completed were proportionate, but I don't think it reacted appropriately to the data it gathered when it made its lending decision. I'll explain why.

ELL used an income figure of £2,022.74 which it says was his average net monthly salary plus child benefits. But I can see from his payslip and bank statement that his most recent month's income was £1,791.91 – so significantly lower. I imagine ELL used a year to date figure but given the variance (which I think is driven by overtime fluctuations) I think it needed to check that the loan would be sustainably affordable for Mr B every month, not just in months where he received more overtime pay. Had it considered this I don't think it would have concluded Mr B could afford the loan as he did not always have the disposable income it had calculated.

His bank statement already showed signs of financial pressure as he was persistently reliant on his overdraft. He was using the loan in part to settle a car finance agreement it seems, but he would still be spending a significant proportion of his income to service his other debts. And this is frequently an indicator of pending financial difficulties.

Overall, I think from the information it had ELL ought to have concluded there was a high risk the loan would not be sustainably affordable for Mr B.

It follows I think ELL was wrong to lend to Mr B. I haven't seen any evidence ELL acted unfairly or unreasonably towards Mr B in some other way.

Putting things right

It's reasonable for Mr B 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 B repaid and deduct the sum from the capital amount.
- If reworking Mr B'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 B's loan account results in an outstanding capital balance, ELL should try to agree an affordable repayment plan with Mr B.
- Remove any adverse information recorded on Mr B's credit files in relation to the loan.

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

My final decision

I am upholding Mr B'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 B to accept or reject my decision before 9 January 2023.

Rebecca Connelley
Ombudsman