DRN-4041362

Financial Ombudsman Service

The complaint

Miss R and Mr S, together complain that Everyday Lending Limited, trading as Everyday Loans ("EL"), lent to them irresponsibly and the loan placed them in a worse financial situation than before.

What happened

Miss R says she applied for the loan initially on her own. That altered to be a joint loan application in March and April 2018. It was for £6,000 which was used to pay off two of Miss R's credit cards. It was scheduled to be repaid over 60 months at £247.98 each month (£248 rounded up). The loan plus interest meant that they had to repay £14,878.80 which they say put them in more debt overall. There remains an outstanding balance.

Of the £6,000 loan, £2,699.81 was used to pay off one of Miss R's credit cards and £2,730.38 was used to pay off another of her credit cards directly. The cash balance of £569.81 was paid to Miss R and Mr S.

Miss R says that her debt situation spiralled out of control and she entered a debt management plan (DMP) in 2019 with a well know debt advice charity. Mr S continued to repay the full amount each month with some contribution from Miss R's DMP.

As part of her complaint letter to EL in November 2022, Miss R said '*You could see on bank statements that we were always in our overdraft and topping up any shortfalls with my savings at the time.'*

After Miss R and Mr S had received the final response letter from EL dated 8 December 2022, they referred the complaint to the Financial Ombudsman Service.

One of our adjudicators considered it and he thought the bank statements EL had reviewed showed that Miss R and Mr S would not have been able to afford the monthly repayment for this loan and have any breathing space in case anything went wrong.

Our adjudicator thought that EL ought to have seen that this loan might not be sustainable for them and that they might not be able to pay it off without resorting to borrowing again. And EL ought to have questioned whether the monthly repayment was affordable.

EL did not agree. And it had sent to us the incorrect '*disposable income calculator'* and so it apologised and resent the correct one.

Our adjudicator responded but said that his view had not changed.

The unresolved complaint was passed to me to decide.

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 the relevant rules, guidance and good industry practice - on our website.

Considering the relevant rules, guidance and good industry practice, I think the questions I need to consider in deciding what's fair and reasonable in the circumstances of this complaint are:

- Did EL, each time it lent, complete reasonable and proportionate checks to satisfy itself that the borrowers would be able to repay in a sustainable way?
- If not, would those checks have shown that the borrowers would have been able to do so?

The rules and regulations in place required EL to carry out a reasonable and proportionate assessment of Miss R and Mr S's abilities 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 EL had to think about whether repaying the loan would be sustainable. In practice this meant that the business had to ensure that making the repayments on the loan wouldn't cause Miss R and Mr S undue difficulty or significant adverse consequences. That means they should have been able to meet repayments out of normal income without having to borrow to meet the repayments, without failing to make any other payment they had a contractual or statutory obligation to make and without the repayments having a significant adverse impact on their financial situation.

In other words, it wasn't enough for EL to simply think about the likelihood of it getting its money back, it had to consider the impact of the loan repayments on Miss R and Mr S. 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.

Considering 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 the arguments, evidence and information provided in this context and what this all means for Miss R and Mr S's complaint.

We have received copy account notes relating to the dealings between Miss R, Mr S and EL. Originally, on 22 March 2018, Miss R was wanting a loan of £6,750 for loan consolidation. The note says that this '*does not budget'* and so '*will need to go joint'*.

On 28 March 2018 both together wanted a loan of £9,500 to pay down Miss R's cards, plus one of Mr S's cards. The EL note shows it was aware of her default on a credit card but that was old enough to not concern them.

3 April 2018 seems to have been the meeting at the branch to formally apply for the loan and they brought in identification documents and both brought 60 days' worth of bank statements for EL to review. It noted that Miss R earned around £1,118 when it had averaged out the previous four weeks wages. Mr S had a wage slip which showed that he earned £1,649 using the YTD (year to date average). So, EL calculated that their total income was £2,768 (rounded) each month after tax.

Their rent was £450 a month and the joint account statements showed nothing that gave rise to any concern, such as returned payments or exceeding their overdraft or any payday loan repayments. They had seventeen creditors between them and the total debt was £31,240. In the FRL, EL had said that it had used Office of National Statistics data to give an *'accurate estimation'* of living expenses. EL said:

> *'Your monthly financial commitments together with your general living expenses as detailed above, was calculated as £2571.76.*
>
> *Our affordability calculation conducted at the time showed you had a monthly disposable income of £281.58 after taking into account your consolidated loans and your Everyday Loans monthly repayments.'*

Those figures to substantiate the last sentence do not fit with what I have seen in the records overall. And I say that because the 'income and expenditure' document sent to us by EL (and the second corrected one sent to us recently) show that EL used the £2,767.68 joint incomes. And I make some points about the income figure later in this decision.

Then EL had a figure of £1,130.75 as monthly creditor repayments and so immediately I can see that it knew that they were spending around 41% of their income on the current situation. EL added in the rent/mortgage figure of £450 and the living expenses it had calculated of £991. That left them with a joint disposable income of around £196 a month

It then went on to indicate that the consolidating payment figure was £311.33 (meaning the monthly repayments EL said Miss R and Mr S would not have to pay after consolidating the two credit cards). And with the new loan payment of £247.98 then it would have left Miss R and Mr S with a new joint disposable income of £259.27. Even the corrected income and expenditure sheet in which it substituted the £311 figure for the £162.33 figure does not alter the 'remaining income figure' of £259.28 in the EL second set of calculations.

So, the net increase for them on those figures was about £60 a month more cash in their hands.

But I think that these figures were not correct just using the other information I've seen from the EL records for these customers.

A credit search report which covered the outstanding debts for both Miss R and Mr S was carried out and we have been sent those results. Overall EL would have been aware that Miss R and Mr S had significant credit card debt.

The headline information was that the outstanding loan debt figure was £5,298 and the revolving credit debt figure (which included credit cards) was £26,525. One of the accounts – with a balance of £5,845 - was a hire purchase (HP) debt which had started in November 2016. They had two searches registered in the last six months and no entries relating to insolvencies or Judgments.

Miss R had three defaults registered but all from 2012 and 2013. I have calculated that the regular credit commitment repayments for mail order, HP, telecom loans and things of that nature were £497 a month for them both. And the remaining credit card debt of around £26,525 at a minimum repayment of 3% would have been around £796 a month. That does add up to be around £1,291 which is almost the same figure that EL had for the creditor repayments figure. But their corrected figure of £981.75 does not correlate with the information I have gathered from the credit searches carried out by EL in 2018. Our adjudicator pointed that out in his second view – that he had used the information from the credit searches to get to the figures he had used.

And the figures and calculations I have done were based on the credit card debt minimum repayment figures of 3% (not 5%). And I have used 3% as I can see that EL had used 3% in its own debt table in which it had set out all the outstanding balances plus the usual monthly repayments for each debt. However, by using the 3% minimum repayment figures (as EL had done) then that had not made any allowances for any capital repayments that would have had to have been made on the remaining credit card debt after any consolidation. It was not realistic or feasible for EL to make a lending decision where Miss R and Mr S would continue just paying minimum 3% repayments on the credit cards for the next 5 years.

Turning to that figure EL had used, its own ‘debt table’ provided to us, it indicated that the two credit cards it paid off directly with part of the loan was costing Miss R and Mr S around £163 a month and that does work out to have been around the 3% minimum repayment figure for those two cards. And so, I do not think that the ‘consolidating figure’ was around £311 as EL initially indicated it was. The corrected ‘Income and expenditure ‘ table it has sent does substitute the £311 figure of just under £163. But for the reasons I’ve said below and just on a common-sense level, I do not consider that this loan was a responsible lending decision.

In relation to the income figure used for Mr S, it utilised one of his payslips (March 2018) and used the YTD figure to calculate that it was a monthly income of around £1,650 a month. But that average YTD figure was more than the payslip figure he’d presented which was a ‘net pay’ of just under £1,425. And that £1,425 figure included about 84 hours of overtime. Mr S’ job looked like his contractual hours were 76 a month and so I think this was a part time job with overtime. So, I do not consider that to have been a solid basis on which to approve such a large loan. Miss R’s salary at around £260 a week was a relatively low wage.

Miss R had shown EL that she had savings in an ISA and the balance in April 2018 was £902. But as Miss R has said to us – that would have run out relatively quickly and may well have been used to pay down one of the cards. And so, then she would have had no ‘emergency cash’ if anything started to go wrong over the coming five years.

I appreciate that Miss R and Mr S said that they were in their overdraft but that was a relatively modest figure on the joint account it presented to EL of £350 (limit shown on the credit search).

Overall, EL sold Miss R and Mr S a loan which was going to ‘save them’ around £163 a month on the two credit card minimum repayments and went on to charge them £248 a month for five years. I uphold their complaint.

Putting things right

To put things right EL should buy back the loan if it has been moved to a third party debt collector or assigned. Then EL should

- remove all interest, fees and charges applied to the loan including any of the third party charges and fees, and,
- treat any payments made by Miss R and Mr S in respect of this loan as payments towards the capital amount of £6,000,
- If Miss R and Mr S have paid more than the capital then any overpayments should be refunded to them with 8% simple interest* from the date they were paid to the date of settlement,
- But if there's still an outstanding balance, EL should come to a reasonable repayment plan with them.
- remove any adverse information about the loan from both Miss R and Mr S' credit files.

*HM Revenue & Customs requires EL to take off tax from this interest. It must give Miss R and Mr S a certificate showing how much tax it's taken off if they ask for one.

My final decision

I uphold the complaint and I direct that Everyday Lending Limited, trading as Everyday Loans, does as I have said in the 'putting things right' section of my decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R and Mr S to accept or reject my decision before 30 May 2023.

Rachael Williams
Ombudsman