DRN-4105188

The complaint

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

What happened

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

loan	taken out	value, £	term in months	monthly repayment, £	total repayable, £
1	Jul-18	5,050	48	294.54	14,137.92
2	Nov-18	10,000	60	365.20	21,912
3	Oct-19	3,000	36	210.17	7,566.12
4	Oct-20	5,000	48	256.24	12,299.52

Loan 2 was used in part to repay loan 1; loans 2 and 3 were settled early and I understand there remains a balance on loan 4.

Mr C says his applications were not suitably assessed, he had other debts at the time. And he was not given an adequate explanation of the terms of the loans. He says he was desperate at the time so just accepted the loan offers.

Our investigator upheld Mr C's complaint. He said ELL was wrong to lend to Mr C as there was evidence he was having problems managing his money and these loans meant he would be spending a significant portion of his income on his credit commitments. This would most likely not be sustainable.

ELL disagreed with this assessment for loans 1 to 3, but accepted loan 4 should not have been given. For the earlier loans it said its affordability calculations showed they would be affordable for Mr C. It also clarified how it had calculated Mr C's income at the time of loan 1. It asked for an ombudsman's review.

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 rules and regulations when ELL lent to Mr C required it to carry out a reasonable and proportionate assessment of whether he 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 C. 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 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 C. So to reach my conclusion I have considered the following questions:

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

I can see ELL asked for some information from Mr C before it approved the loans. It asked for details of his income and checked this on pay slips. It asked for copies of recent bank statements. It estimated his living costs using national statistics and added a buffer to cover unexpected expenses. It also checked Mr C's credit file to understand his existing monthly credit commitments and credit history each time. It asked about the purpose of loans 3 and 4. Mr C said they were for home improvements and debt consolidation respectively. From these checks combined ELL concluded Mr C could afford to take on the loans and repay them sustainably.

I think these checks were proportionate for the loans, although I think ELL ought to have used the bank statements to verify the average costs it used given the term and size of the loans. However, I won't comment further on this as based on the information it gathered and the approach it adopted, I'm not satisfied ELL made fair lending decisions. I will explain why.

As the parties are no longer in dispute about loan 4, and agree it should not have been given, I will focus here on loans 1 to 3. I will include loan 4 in any redress I award.

Loan 1

There has been some discussion about the income figure ELL used for its affordability assessment. This stems largely from the value it attributed to Mr C's second job (£391.77 per week). But I find its decision to rely on the average salary for the four weeks prior to application, not just the most recent week (£205.38) to be fair.

However, this does not change my overall finding as I agree that ELL ought to have realised there was a risk that this loan would not be sustainably affordable for Mr C. ELL has focused on the pounds and pence affordability, but as it knows it was also obliged to ensure repaying the loan wouldn't cause any financial harm to Mr C. I am not satisfied it considered this.

Giving Mr C this loan meant he would need to increase his spending on credit to £1,058.52, so over 25% of his income – and this figure would be higher had ELL budgeted for more sustainable repayment of his credit card debt, rather than the minimum monthly requirement.

There were already signs that Mr C's finances were under pressure - he had three active short-term high-cost credit agreements and there is no evidence that this loan was to consolidate any of this debt. He had two credit cards close to their limits too. In the round, I think there were clear indicators that increasing Mr C's indebtedness would most likely mean he would need to borrow to repay, or suffer some other adverse financial consequence.

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

Loans 2 and 3

ELL would need to know that Mr C's finances had improved before agreeing to lend when he returned just four months into the term of loan 1, particularly as he was looking for twice the loan value over a longer term of 60 months. I cannot see it could fairly conclude he was no longer under financial pressure based on the information it gathered. He was still using short-term high-cost credit and his overall indebtedness had increased. I can see he was managing to make his contractual repayments, but his credit cards remained close to their limit showing he was not able to sustainably to manage this debt. I think it is fair to conclude he was in a cycle of borrowing to repay, and simply moving debt around. In this context ELL ought not to have lent to Mr C. And there were no signs his financial circumstances had changed – rather his indebtedness had further increased - by the time he applied for loan 3.

It follows I think ELL was wrong to give loans 2 and 3 to Mr C.

Did ELL act unfairly or unreasonably in some other way?

Mr C says he was not given details of the terms of the loans so he could not make an informed decision. But ELL has supplied copies of the agreements he signed and I am satisfied they clearly set out the key facts, interest and charges. However, as I have concluded the loans should not have been given all interest and charges will refunded to Mr C anyway.

Putting things right for loans 1 to 4

It is fair that Mr C repay the capital he borrowed as he had the benefit of that money. But he has paid interest and charges on loans that should not have been given to him and this is not fair.

So ELL must:

1. Refund all the interest and charges Mr C has paid to date.
2. If the loan 4 borrowing is still in place, reduce the outstanding capital balance by the amount calculated at step 1.
3. If, after step 2, there remains an outstanding capital balance, ensure that it isn't subject to any historic or future interest and/or charges. But if step 2 leads to a positive balance, the amount in question should be given back to Mr C and 8% simple interest* should be added.
4. Remove any adverse information recorded on Mr C credit file as a result of the interest and charges once any outstanding capital balance is repaid.

*HM Revenue & Customs may require ELL to take off tax from this interest. If it does, 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 15 June 2023.

Rebecca Connelley
Ombudsman