DRN-4183797

The complaint

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

What happened

Mr L took out two instalment loans from ELL. The first, approved on 2 October 2019, was for £1,250 over 18 months. The monthly repayments were £142.52 and the total repayable was £2,565.36. The second loan was taken out on 7 July 2022 and was for £1,000 over 18 months. The monthly repayments were £91.20 and the total repayable was £1,641.60.

Mr L says he was already struggling to repay other debts and ELL ought to have done more thorough checks.

Our investigator upheld Mr L's complaint in part. She said ELL completed proportionate checks for both loan applications and made a fair lending decision for loan 1, but its checks showed loan 2 would not be affordable for Mr L. So it was wrong to approve loan 2.

ELL disagreed with this assessment and asked for an ombudsman's review. It said if Mr L's housing costs were shared on a pro-rata basis with his partner loan 2 was affordable.

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 L 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 L. 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 L.

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 L. So to reach my conclusion I have considered the following questions:

- did ELL complete reasonable and proportionate checks when assessing Mr L'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 L before it approved the loans. It asked for details of his income and checked this using recent bank statements for loan 1 and open banking data for loan 2. It estimated his living costs using national statistics and added a buffer to cover unexpected expenses. It also checked Mr L's credit file to understand his existing monthly credit commitments and credit history each time. It asked about the purpose of the loans, Mr L said they were both for debt consolidation and car repairs. From these checks combined ELL concluded Mr L could afford to take on the loans as he would have £300.37 monthly disposable income left after loan 1 and £71.08 after loan 2.

I think these checks were proportionate for both loans. And based on the information it gathered I think ELL made a fair lending decision for loan 1, but not for loan 2. I'll explain why.

Loan 1

ELL's checks showed Mr L could afford loan 1 on a pounds and pence basis and I have seen nothing to suggest the repayments might not be sustainable. At the time ELL's credit check showed he was up-to-date with all his active accounts. He did have some older adverse data on his credit file with two accounts that had defaulted over a year ago, but he was repaying these debts. I don't think there was a level of adverse data such that ELL ought to have declined Mr L's application. There was also evidence Mr L had outstanding payday loans, but this loan was to settle that more expensive debt and would reduce his monthly commitments by about £110 to around 23% of his income which I find to be reasonable.

It follows I don't think ELL was wrong to give loan 1 to Mr L.

Loan 2

I have thought carefully about loan 2 as it left Mr L with little disposable income. I am satisfied it is fair for ELL to portion the household housing costs as it did. But I think the checks showed there was a high risk the loan would not be sustainably affordable for Mr L. ELL could see from the open banking data that Mr L was persistently reliant on his overdraft, typically only in credit for a few days after payday. He was also still using payday loans. The credit check showed he was in late arrears on an active loan and he had defaulted on an additional two credit accounts since loan 1. I think ELL ought to have realised it was likely Mr L would either need to borrow to repay or suffer some other type of financial harm as his finances were clearly already under pressure.

So, overall, I don't think ELL made a fair lending decision. It follows I think ELL was wrong to give loan 2 to Mr L.

I haven't seen any evidence that ELL acted unfairly or unreasonably in some other way.

Putting things right for loan 2

It is fair for Mr L to repay the capital he borrowed as he had the benefit of that money. But he has been charged interest and fees on a loan that should not have been given to him.

So ELL should:

- Refund all interest and charges applied to the loan.
- If this results in Mr L having paid more than he received, then any overpayments should be refunded along with 8% simple interest (calculated from the date the overpayments were made until the date of settlement).*
- If any capital balance remains outstanding, then ELL should attempt to arrange an affordable payment plan with Mr L.
- Remove any negative information recorded on Mr L's credit file regarding loan 2 once any outstanding capital balance is repaid.

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

My final decision

I am upholding Mr L's complaint in part. 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 L to accept or reject my decision before 13 July 2023.

Rebecca Connelley
Ombudsman