DRN-4370513

The complaint

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

What happened

Mr T took out two instalment loans from ELL. Loan 1, in March 2020, was for £3,000 over 24 months. The monthly repayments were £215.01 and the total repayable was £5,160.24. Loan 2, in June 2021, was for £5,000 over 36 months. The monthly repayments were £279.75 and the total repayable was £10, 071. It was used in part to settle loan 1. There is an outstanding balance.

Mr T says he managed to repay loan 1 but was having financial difficulties. ELL then kept pressuring him to take out another loan. He says it knew he had payday loans but gave loan 2 anyway, without him having to pay these off. He says ELL is now harassing him to repay loan 2, contacting him continuously and threatening to visit his home. This is impacting his mental health. Mr T asks for all interest and fees he has paid to be refunded, with interest.

ELL says its checks for both loans were reasonable and proportionate and showed Mr T had the disposable income to sustainably make his repayments.

Our investigator did not uphold Mr T's complaint. He said ELL's checks were proportionate and did not show there was a risk Mr T would be unable to sustainably repay the loans. He also found ELL's conduct during both the sale of loan 2 and the subsequent collections activity once Mr T's account fell into arrears to be appropriate.

Mr T asked for an ombudsman's review. He said the investigator had not really addressed the problem and he disagreed with the findings. He said they showed bias. He said the loans were unaffordable, but did not provide any specific details about what part(s) of the assessment disagreed with.

I reached a different conclusion to the investigator so I issued a provisional decision to give everyone a chance to comment. An extract follows and forms part of this final decision. I asked both parties to reply by 4 October 2023.

Extract from my provisional decision

I can see ELL asked for some information from Mr T before it approved the loans. It asked for details of his income and checked this. It asked for copies of recent bank statements and a payslip. It completed an employment check. It estimated his living costs using national statistics and added a buffer to cover unexpected costs. It also checked Mr T's credit file to understand his existing monthly credit commitments and credit history. It asked about the purpose of the loans: loan 1 was to repay credit card debt and for property repairs, loan 2 was to settle a loan and to purchase a car.

From these checks combined ELL concluded Mr T could afford to take on the loans as he would have £1,668.05 monthly disposable income left after taking on loan 1 and £759.76 *after loan 2.*

I think these checks were proportionate but I am not currently persuaded that ELL made fair lending decisions based on the results of its checks.

It seems ELL's decisions to lend focused solely on its pounds and pence affordability calculations. But it was required to do more than this, it needed to be certain the loans would not cause Mr T any financial harm and that he would be able to repay them sustainably – so without borrowing to repay or suffering some other adverse financial consequence over the term of the loans. It was not enough to rely on somewhat theoretical calculations when it had sight of Mr T's current account information that suggested he was struggling financially - and did not have the level of disposable income it had calculated. ELL was required to respond to all the information it gathered.

Loan 1

ELL has told us it reviewed Mr T's bank statements from the two months prior to his application. It could not provide copies but Mr T was able to send them in. I find these show the kind of signs of financial instability that often indicate pending financial difficulties – such as a persistent reliance on an overdraft facility, multiple returned direct debits and paying daily overdraft fees. Mr T's account was never in credit in the two months ELL would have reviewed. There was also evidence he was using payday loans. So I think there were clear signs that Mr T was struggling to manage his money. He told ELL this loan was to clear credit card debt and for property repairs. So he was not planning to repay his overdraft. This would have meant ELL knew he would most likely be repaying its loan whilst using his overdraft facility – so in essence, borrowing to repay.

ELL pointed out that the credit check showed Mr T was up-to-date on all his active credit, but from the evidence available I think it's reasonable to conclude Mr T was struggling to keep on top of all his debts and was only doing so by continually borrowing to repay. In the circumstances ELL ought to have realised that extending more credit to Mr T was not responsible.

It follows I find ELL was wrong to give loan 1 to Mr T.

Loan 2

My findings are the same for loan 2 as they are for the first loan. The bank statements ELL had sight of at this time show Mr T's was still persistently reliant on his overdraft. And he had made no inroads into reducing this reliance. He was also using payday loans and, increasingly, 'buy now pay later' plans. Mr T's current account was in credit for only a day or two after his payday each month.

The credit check showed he now had around £3,000 of overdraft across his different current accounts and many of his credit cards and mail order accounts were at, or close to, their limit. This time the loan was taken out to repay a payday loan and for a car. So again, this meant ELL knew Mr T would most likely be repaying its loan whilst using his overdraft facility – so in essence, borrowing to repay.

It should have been clear to ELL that Mr T was in a cycle of debt and was reliant on credit so it ought not to have increased this reliance.

ELL points out that Mr T had made his repayments on time and in full for loan 1, but it does not know how he did this and whether it was in a sustainable way so this does not change my conclusion.

It follows I find ELL was wrong to give loan 2 to Mr T also.

Did ELL act unfairly towards Mr T in some other way?

I don't think that it did. Mr T said the sale of loan 2 was aggressive and the collections activity since he went into arrears has been threatening. From the available evidence – which I understand is not complete – I have not found that was the case. I think ELL moved forward with loan 2 as Mr T indicated he wanted to do so. It therefore followed up to request the information it needed to progress his application.

With regards the collections activity, at that time Mr T had a contractual duty to repay the loan and once his direct debit had been cancelled and it struggled to contact him, I think it was reasonable for it to set out what might happen next. I can't see it made excessive or inappropriate contact.

I then set out what ELL would need to do to put things right.

Both parties replied before the deadline. Mr T accepted the outcome. ELL said whilst it did not agree with all the reasoning, it would agree to take the remedial action I had requested.

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.

As neither party has submitted any new evidence or specific points for me to consider, I have no reason to change the findings or outcome set out in the provisional decision.

It follows I find ELL should not have given loans 1 and 2 to Mr T.

Putting things right

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

So ELL should:

- For loans 1 and 2 add up the total amount of money Mr T received and deduct the repayments he made from this amount.
- If this results in any overpayment this should be refunded to Mr T along with 8% simple interest (calculated from the date the overpayments were made to the date of settlement)*.
- If this results in there being an outstanding capital balance ELL must agree an affordable repayment plan with Mr T.
- Remove any adverse information from Mr T's credit file once any outstanding capital balance has been repaid.

*HM Revenue & Customs requires ELL to take off tax from this interest. ELL must give Mr T a certificate showing how much tax it's taken off if he asks for one.

My final decision

I am upholding Mr T'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 T to accept or reject my decision before 25 October 2023.

Rebecca Connelley
Ombudsman