DRN-5600431

The complaint

Mr M complains Everyday Lending Limited trading as Everyday Loans (EL) acted irresponsibly when agreeing to a loan he couldn't afford.

What happened

In November 2023 Mr M entered into a Fixed Sum loan agreement with EL for £1,540 with a fixed annual interest rate of 71.3%. After interest and charges were applied Mr M needed to repay in total £2,889.12. This was repayable over 24 months at £120.38 per month. Mr M said he'd initially only wanted to borrow £1,000 for household repairs but EL had offered more to cover an upcoming holiday. Mr M complained to EL as he'd struggled to sustain the repayments which he said EL should have seen if they'd properly checked his financial situation.

EL said their checks had been reasonable and proportionate. They'd checked Mr M's employment status, two months bank statements and his credit history. In carrying out their credit assessment they'd used statistical data to determine Mr M's essential spending. And based on these checks he'd sufficient disposable income to sustain the repayments.

Mr M wasn't happy with EL's response and referred his complaint to us.

Our investigator found EL's checks were reasonable and proportionate but didn't find they'd made a fair lending decision based on what these checks showed. And asked EL to put things right.

EL didn't agree they said Mr M shared his non-discretionary costs with his partner, and his credit file raised no concerns. They asked for Mr M's complaint to be referred to an ombudsman 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.

Having done so I'm upholding this complaint. I'll explain why.

I've considered the relevant rules, guidance and good industry practice when someone complains about irresponsible and/or unaffordable lending. There are two overarching questions I need to consider in order to decide what's fair and reasonable in all of the circumstances of the complaint. These are:

1. Did EL complete reasonable and proportionate checks to satisfy themselves that Mr M would be able to repay the credit in a sustainable way?

    a. if so, did EL make a fair lending decision?

    b. if not, would reasonable and proportionate checks have shown that Mr M could sustainably repay the borrowing?

2. Did EL act unfairly or unreasonably in some other way?

Regulations in place at the time EL lent to Mr M required them to carry out a reasonable assessment of whether he could afford to repay the loan in a sustainable manner. This is sometimes referred to as an “affordability assessment” or “affordability check”.

The affordability checks should be “borrower-focused”, meaning EL need to think about whether repaying the loan sustainably would cause difficulties or adverse consequences for Mr M. In other words, it wasn’t enough for EL to think only about the likelihood that they would get their money back without considering the impact of repayment on Mr M himself.

There’s no set list for what reasonable and proportionate checks are. But I’d expect lenders to consider the specific circumstances of the loan application. What constitutes a proportionate affordability check will generally depend on several factors such as the specific circumstances of the borrower, their financial history, current situation and whether there are any indications of vulnerability or financial difficulty.

I’ve considered whether EL in lending to Mr M had been thorough in the checks they made. And whether they’ve taken all these factors into account in deciding to lend to him.

EL has shown they used Mr M’s application data, two months bank statements as well as checking Mr M’s credit history with credit reference agencies (CRA). They also used statistical data provided by the Office for National Statistics (ONS) to determine Mr M’s other non-discretionary spending. I think these checks would have given EL a good understanding of Mr M’s income and essential spending. So, I’m satisfied their checks were reasonable and proportionate.

I’ve next considered based on these checks whether EL made a fair lending decision. And I don’t think they did. I say this as from their records their assessment shows Mr M’s monthly income as £1,983.92. Mr M declared his monthly mortgage to be £625, but as it’s a joint mortgage EL used 50% of this in the assessment, £312.50. They assessed Mr M’s credit commitments to be £926.90 and used ONS data of £1072.33. I can see this left Mr M with a deficit of £327.81, meaning he didn’t have any disposable income remaining to repay the repayment under this agreement. But EL in their assessment used a debt consolidation amount of £538.36 which from their note appears to be the holiday repayment Mr M mentioned in his complaint, as this would be a one off payment rather than a monthly commitment, I’d question the use of this figure in their assessment, unless they’d added the same amount into Mr M’s overall monthly credit commitments. If this was the case using this figure in the assessment and factoring in the new lending of £120.38 would have left Mr M with only a monthly disposable income of around £90 which considering his circumstances we’d consider insufficient to cover any discretionary or unexpected costs.

I’ve considered EL’s comments that these figures didn’t take into account Mr M sharing the non-discretionary costs with his partner and that any disposable income should reflect this. So, I’ve reviewed the information EL had. I can see that Mr M’s income fluctuates each month with his income sometimes being higher or lower than the income EL used in their assessment. I can see the transfers EL has stated that Mr M made towards his bills to his partner each month of around £750 to £800. But I can also see this didn’t cover all of Mr M’s essential spending as his bank details show he was paying other credit commitments, transport costs as well as food and other non-discretionary spending. I can also see that Mr M used payday loans to help manage his finances with one being taken out the month prior to this loan. And he was consistently using his overdraft and incurring monthly charges. There are also further signs of financial difficulty as I can see direct debits that were returned.

Taking all of the above into account I'm satisfied EL's checks were reasonable and proportionate, but I don't think they made a fair lending decision as based on their checks, their own assessment and the information they'd gathered I think it was evident that Mr M didn't have sufficient disposable income to sustain the repayments and that he was already struggling financially, and this loan only added to his financial burden. So, I think EL's lending decision was unfair.

I've also considered whether EL acted unfairly or unreasonably in some other way given what Mr M has complained about, including whether their relationship with him might have been viewed as unfair by a court under Section 140A consumer Credit Act 1974. But I'm satisfied the redress I've directed below results in fair compensation for Mr M in the circumstances of his complaint. I'm satisfied based on what I've seen that no additional award would be appropriate in this case

Putting things right

When a business has done something wrong, I'd look for the business to put the complainant in the position they would be in now if the mistake they'd made hadn't happened, as far as is reasonably practical. But Mr M has had the loan and used the money, so it's right that he should repay what he borrowed as he has had the benefit of those funds. But I don't think it's fair and reasonable that EL should apply any interest and charges incurred by Mr M because of the credit unfairly extended to him.

My final decision

I uphold this complaint. And ask Everyday Lending Limited trading as Everyday Loans to:

- Rework the account removing all interest and charges. If the rework results in a credit balance, this should be refunded to Mr M together with *8% simple interest per year calculated from the date of each overpayment to the date of settlement.
- Remove any adverse information in relation to the account from Mr M's credit file. Or
- If, after the rework, there is still an outstanding balance, they should arrange an affordable payment plan with Mr M. Once Mr M has cleared the balance, they should remove any adverse information in relation to the account from his credit file.

*HM Revenue & Customs requires Everyday Lending Limited to deduct tax from any award of interest. They must give Mr M a certificate showing how much tax has been taken off if he asks for one. If they intend to apply the refund to reduce an outstanding balance, they must do so after deducting the tax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 9 July 2025.

Anne Scarr
Ombudsman