complaint

In summary, Mr D has complained that Everyday Lending Limited (ELL) provided him with a loan that he wasn't able to afford.

background

In April 2018 ELL provided Mr D a loan for £3,000 repayable over two years. It was a high interest loan with an interest rate of 127.1% APR. The total charge for the credit was £3,436.80, which meant the total amount repayable by Mr D for the £3,000 he was borrowing was £6,436.80. The monthly repayments were £268.20. His net of tax salary was approximately £3,564 a month. He had several pay day loans. In addition, he had nine credit cards with a total outstanding debt of approximately £23,000. He also had four unsecured loans and the total level of his debt was in excess of £29,000.

In its response to Mr D's complaint, ELL said the loan was taken out to repay payday loans. It also explained that it carried out suitability and affordability checks on all loan applications. It had found no evidence to suggest that any necessary checks hadn't been carried out.

As part of that process, it said a credit search was performed to establish his credit history and any outstanding debt. It was satisfied from the affordability calculation carried out which was based on the information provided by Mr D, that the loan was affordable.

It also said it had made an allowance for £500 in respect of rent as this was what was recorded on Mr D's bank statements. It allowed £732 a month for general living expenses, and it took into account all creditor repayments. It went on to say that if the funds had been utilised as intended, his disposable income went from -£171.90 per month to +£531.55 per month. Information about his debts and gambling were taken into account as well.

Mr D's concerns were investigated by one of our adjudicators. He thought ELL should have realised Mr D was unlikely to have been able to sustainably repay the loan. This was because the bank statements showed he was spending a significant amount of his monthly income on gambling in the three months prior to taking out the loan.

ELL didn't agree with the adjudicator's assessment. It thought the assessment should have been based on the information it had obtained at the time. It had questioned Mr D about his gambling and based on his response that which it was happy with, it didn't question him about what he had told it.

ELL went on to say it believed the loan was sustainable based on the checks conducted at the time the loan was agreed. And it said that by consolidating the debt which was the stated purpose of the loan, Mr D would reduce his monthly loan repayments from 70% of his salary to 51%.

As ELL didn't agree with the adjudicator's assessment, the case was passed to me for review. I issued my provisional decision explaining why I wasn't intending to uphold Mr D's complaint on 16 February 2021.

Mr D didn't agree with my decision. In summary he said:

- He was a gambling addict who was in financial hardship when the loan was taken out.

- He had debts amounting to £70,000 as a result of his gambling.
- He used this money for gambling and told ELL about his gambling habit. It shouldn't have provided him with this loan.
- He was now in a debt management plan.
- He agreed that ELL had carried out suitable checks, but they failed to act on the findings and ignored red flags.
- It shouldn't have concluded that he could sustainably have repaid the loan.
- He agreed with the adjudicators view.

my findings

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 approach to considering unaffordable and irresponsible lending complaints on our website - including the key relevant rules, guidance, good industry practice and law. And I've considered this approach when deciding Mr D's complaint. I've also thought very carefully about what Mr D has said in response to my provisional decision. Having done so, I've decided not to uphold Mr D's complaint. I'll explain why.

There are several questions that I've thought about when deciding if ELL treated Mr D fairly and reasonably when it provided him with the loan.

1) Did ELL complete reasonable and proportionate checks to satisfy itself that Mr D would be able to repay his loan in a sustainable way?
2) If not, what would reasonable and proportionate checks have shown at the time?
3) Ultimately, did ELL make a fair lending decision?
4) Did ELL act unfairly or unreasonably in some other way?

Did ELL complete reasonable and proportionate checks to satisfy itself that Mr D would be able to repay his loan in a sustainable way?

The rules that ELL had to follow, required it to carry out checks that would enable it to reasonably assess, whether Mr D could afford to repay the loan he was wanting to take out. This is often referred to as an "*affordability assessment*".

The rules don't set out what specific checks it needed to carry out, but it did set out that those checks needed to be proportionate to the circumstances of the application. I think what this meant in practice, was that the scope and extent of ELL's checks needed to reflect the nature of the loan, bearing in mind things such as the amount of credit, the interest rate, the duration of the loan, the monthly and total amounts repayable, and any indications of customer vulnerability.

The checks ELL carried out as part of its affordability assessment, needed to be "borrower focussed". What I mean by this is that the checks had to assess whether paying the loan back would cause Mr D any difficulties or have any adverse consequences for him. It would also need to take into account factors such as the amount of money being lent, the term of the loan and the monthly repayments, total charge for the credit and the interest rate being charged. This isn't an exhaustive list.

And as a result of the above I think a reasonable and proportionate check needed to be more thorough if Mr D had a low income. This would reflect that it could be more difficult for him to make the loan repayments with a low income.

It would also need to be more thorough the higher the amounts he had to repay, as it would be more difficult to make higher loan repayments on a given income.

The length of the loan term would also be relevant, partly because where the loan duration is longer, the total cost of credit was likely to be higher. It would also be relevant because there is greater risk of a negative change in circumstances affecting Mr D's ability to repay, where repayments need to be sustained over a longer period.

With these principles in mind I've thought about whether ELL completed reasonable and proportionate checks to satisfy itself that Mr D would be able to repay his loan in a sustainable way.

In summary, then, the circumstances of this loan application are as follows:

- Mr D was applying for a high-cost credit product which had an APR of 127.1.%.
- Mr D was on a relatively high income as his net of tax salary was over £3,500 a month.
- The monthly loan repayment was relatively small, particularly when viewed as a percentage of Mr D's monthly income (around 7.5%); and even more so considering that he would need to allocate this proportion of his income towards his loan repayments for two years.
- The total cost of the loan was very high, particularly when viewed as a percentage of what Mr D borrowed. He was using the loan to repay other debts, which suggests he was already struggling with existing credit.

ELL has said it did carry out some checks before it agreed to provide Mr D with the loan. And this seems to be based on carrying out a credit check, reviewing his March and April 2018 bank statements and carrying out an affordability assessment based on this. It said it made a deduction £500 of his monthly income for rent, £732 for living expenses and bills and payments of approximately £2,504 a month to creditors.

It recorded a schedule of his loans. Its records also show that it discussed Mr D's gambling and various pay day loan activity. Based on its assessment, ELL says that it thought Mr D's loan was affordable for him.

It seems to me from the information ELL gathered about Mr D, that he was quite clearly in a very difficult financial position. His bank statements show his current account was significantly overdrawn. And as I've summarised above, he had significant levels of debt and approximately 70% of his monthly income was servicing that debt.

Mr D was borrowing £3,000 over a relatively short period of time. From what I've seen in this particular case, I think that ELL carried out reasonable and proportionate checks on Mr D's financial position. I say this because it looked at 2 months bank statements and carried out a credit check, which didn't record any defaults. Using the information it had about Mr D, it appears that it carried out an affordability assessment taking into account his income and outgoings.

The assessment included an analysis of all of his outstanding debts. ELL also discussed with Mr D why he wanted to take out the loan. And in the context of his salary and the amount being borrowed, I think the checks it carried out were sufficient in all of the circumstances of this particular case.

I do have concerns, that with the level of debt Mr D had, he was intending to borrow more money. ELL's analysis showed that Mr D had had outstanding debts amounting to approximately £52,000. And this level of debt and the proportion of Mr D's monthly income which was being expended on servicing that debt, should have raised concerns with ELL as to whether it was appropriate to provide him with more credit.

I've also noted that ELL's case file shows a discussion about Mr D's gambling. He is recorded as saying that he hadn't realised he had spent the amount recorded and that he didn't gamble very often. So, I accept that ELL would have been aware from what Mr D told it and his bank statements that he did gamble. I've thought about what Mr D has told us about his gambling. And I acknowledge that from what he's told us, this has caused him significant financial problems.

I'm satisfied from the evidence I've seen that the purpose of the loan was debt consolidation. And that ELL did carry out an appropriate affordability assessment on Mr D. I say this because ELL's customer review document shows that the purpose of the loan was for debt consolidation. And another record from the file provided by ELL, shows the purpose of the loan as paying off two of his pay day loans and to clear the arrears on one of his other loans. In addition, there are screenshots from Mr D's pay day lending accounts which record the outstanding balances on the loans he intended to consolidate. It also appears that ELL reviewed Mr D's credit file, identifying his debts and the monthly payments he was making to his creditors.

ELL's file also records it carried out an affordability assessment. Mr D's financial position prior to taking out the loan, showed that he was making repayments of approximately £2,500 a month to his creditors. When allowances for rent and day to day living expenses were taken into account, he had no disposable income each month. And I'm satisfied that this is supported by his bank statements showing his current account as being overdrawn.

<u>Did ELL make a fair lending decision?</u>

Notwithstanding the above, I also need to consider what the impact of this additional borrowing would be on Mr D's financial position, and in that context, the appropriateness of ELL's lending decision.

So, with this financial background for Mr D in mind, I've thought very carefully about the lending decision ELL made to offer him the loan, and the impact on Mr D of ELL providing him with this additional credit.

The analysis ELL carried out, could suggest that further lending shouldn't have been made to Mr D. And as I've explained above, I do have concerns given the financial position Mr D found himself in; that ELL provided him with additional credit. And debt consolidation which was the recorded objective in this case, is often an indicator that someone such as Mr D isn't managing their finances in an effective or sustainable manner.

In addition, I've considered what Mr D has told us about the financial difficulties he was in and the impact on him of his gambling. I do understand that Mr D was in a very difficult position financially at the time he was provided with this loan. But, given the information ELL had about Mr D’s gambling, I don’t think this necessarily indicated in this case, that he had a gambling addiction. Or, that although there was evidence of gambling, that this meant in this particular case, that it was wrong of ELL to have provided Mr D with the loan.

I say this because I think ELL needed to make an assessment about whether Mr D could sustainably afford to repay the loan based on all of the information it had. Mr D was making monthly repayments of £971 in respect of the two payday loans that were going to be repaid from the proceeds of the loan. His monthly repayments for the proposed loan were £268.20 a month. By consolidating the two payday loans, he would be approximately £703 a month better off, taking into account the new monthly loan repayment. And as a result, the percentage of his income being utilised to pay his creditors would reduce from 70% to 51%. This would leave him with surplus income each month which doesn’t appear to have been the case prior to taking out the loan.

I acknowledge what Mr D has said about our adjudicator’s assessment, but I’ve reached a different conclusion. I think Mr D would have been in a better financial position after consolidating the two pay day loans, even after taking into account the new loan and repayments he was taking on. The analysis shows that as a result of consolidating the loans with the additional lending from ELL, this would have impacted on him in a significantly positive way. This is because it would leave Mr D with an income surplus each month. And I don’t think the cash withdrawals that could be seen on his statements were necessarily indicative of a gambling addiction in this case. So, as a result I don’t agree with the adjudicator’s conclusions.

Mr D has told us that he used the proceeds from the loan for gambling, not to repay his two pay day loans. But I can’t see anything which suggests that ELL shouldn’t have relied on what Mr D appears to have told it. The evidence provided by Mr D to ELL about the loans he was planning to consolidate, supports what he told ELL, that he was intending to use the proceeds of this loan to repay existing debt. And if he had, he would as I’ve explained, have been in a much better financial position than he was before taking out the loan.

Therefore, whilst I have concerns about Mr D taking on further borrowing given his difficult financial position; for the reasons I’ve set out above, I’m satisfied that the loan was affordable for Mr D. So, I don’t think it was wrong for ELL in this particular case, to provide him with the loan, or that it acted unfairly towards him in some other way.

my final decision

For the reasons I’ve set out above, I’ve decided not to uphold Mr D’s complaint. Under the rules of the Financial Ombudsman Service, I’m required to ask Mr D to accept or reject my decision before 29 April 2021.

Simon Dibble
ombudsman