Financial Ombudsman Service

complaint

Mr G complains that Everyday Lending Limited ("ELL") lent to him in an irresponsible manner.

background

Mr G was given two loans by ELL in May 2014 and June 2015. The first loan, for £3,453, was due to be repaid over 18 months. But in June 2015 Mr G refinanced that loan and took some additional borrowing. So his second loan was for £4,500 and was due to be repaid over 24 monthly instalments. Mr G has faced problems repaying that loan and a balance remained outstanding when he made his complaint.

Mr G's complaint has been assessed by one of our adjudicators. He didn't think that it had been reasonable for ELL to give either loan to Mr G. So he asked ELL to pay Mr G some compensation. ELL accepted the adjudicator's conclusions in relation to the second loan, but still thought it had been reasonable for the first loan to have been agreed.

So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process. If Mr G accepts my decision it is legally binding on both parties.

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 unaffordable/irresponsible lending complaints on our website and I've kept this in mind while deciding Mr G's complaint.

The rules and regulations at the time ELL gave these loans to Mr G 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 assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower" focused – so ELL had to think about whether repaying the credit sustainably would cause difficulties or adverse consequences for Mr G. In practice this meant that ELL had to ensure that making the repayments wouldn't cause Mr G undue difficulty or adverse consequences. 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 any repayments on Mr G.

Checks also had to be "proportionate" to the specific circumstances of the loan application. In general, what constitutes 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 / cost of credit they are seeking.

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 G.

ELL gathered some information from Mr G before it agreed the first loan. It asked him for details of his income, and his normal expenditure. It checked Mr G's credit file to assess how much he was repaying to other creditors. And it looked at copies of Mr G's bank statements to get an overview of his financial situation.

Mr G was entering into a significant commitment with ELL. He would need to make monthly repayments for a period of 18 months. So I think it right that ELL wanted to gather, and independently check, some detailed information about Mr G's financial circumstances before it agreed to lend to him. I think that the checks it did were proportionate.

But simply doing proportionate checks isn't enough. A lender also needs to react appropriately to the information that those checks show. That might lead the lender to consider that further information should be gathered. Or it might lead the lender to conclude that the loan application should be declined outright. So I've looked at Mr G's bank statements, and what he's told us about his financial situation, to see what I think ELL should have decided from the checks it did.

At the time ELL identified that Mr G was borrowing heavily from a number of other short term lenders. Mr G told ELL that he intended to use some of the proceeds from the loan to repay those other short term loans. I think ELL was entitled to rely on what Mr G said and discount the repayment of those loans from the disposable income it calculated for Mr G.

But ELL's analysis of Mr G's bank statements also showed that he was spending money on what were identified as gambling transactions. ELL noted at the time that it thought the amount Mr G was spending was in line with his income and had decreased greatly.

It isn't clear to me what comparative figures ELL used when it determined that Mr G's gambling spend had reduced greatly. It might be that is simply a record of what Mr G himself said about those transactions. But from my review of Mr G's bank statements I don't think it would be reasonable to conclude at the time of the first loan that Mr G's gambling expenditure was showing a clear and consistent reduction over a reasonable period of time. It is true that there were some months he spent less than others. But gambling is present, at relatively large amounts, across all the statements I have reviewed for the months preceding this loan.

I think that a reasonable lender should have concluded that Mr G was facing problems managing his spending on gambling transactions. ELL was required to ensure that Mr G would be able to repay his borrowing in a sustainable manner. Given the erratic and at times excessive spending on gambling transactions I don't think it was reasonable for ELL to conclude that Mr G would be able to repay the loan sustainably. I don't therefore think it was appropriate for ELL to give this loan to Mr G.

Mr G didn't always make his repayments on time in the following months. So I think ELL should have been concerned when, around a year into the 18 month loan term, Mr G asked to increase the amount he was borrowing and refinance his existing loan. He would be extending the period he was indebted for, and greatly increasing his monthly repayments.

It seems that Mr G first asked ELL to refinance his loan in April 2015. At that time it noted that Mr G's bank statements showed heavy gambling and payday loans. Mr G agreed to leave his request until the following month. In May 2015 ELL noted that Mr G's gambling had reduced a little, but a payday loan remained.

I have also looked at Mr G's bank statements in the months leading up to the second loan. As before I don't think they show any evidence of a clear and consistent reduction in Mr G's gambling expenditure. And I think the fact that he had started using payday loans once again should have suggested to ELL that he was unable to manage his money in such a way that he could afford to repay any new borrowing in a sustainable manner. I note that ELL has accepted our adjudicator's findings in that regard, and I too don't think the second loan should have been given to Mr G.

So in summary I don't think ELL should have agreed to give either loan to Mr G based on the information shown on the checks it did. ELL needs to pay Mr G some compensation.

putting things right

I don't think ELL should have agreed to lend to Mr G in either May 2014 or June 2015.
So ELL should;

- refund all the interest and charges Mr G paid on the first loan

- pay interest of 8% simple a year on any refunded interest and charges from the date they were paid (if they were) to the date of settlement†

- remove any interest and charges still outstanding on the second loan and treat any payments Mr G made towards this loan as payments towards the capital

- if reworking Mr G's loan account as I've directed results in Mr G effectively having made payments above the original capital borrowed, then ELL should refund these overpayments with 8% simple interest calculated on the overpayments, from the date the overpayments would have arisen, to the date of settlement†.

- If reworking Mr G's loan account leaves an amount of capital still to be paid, then ELL can use the total refund for the first loan (after the deduction of tax) to offset this. And if there is still an outstanding capital balance then I remind ELL that it should take a sympathetic view when seeking to agree an affordable repayment plan with Mr G

- remove any adverse information recorded on Mr G's credit file in relation to the loans.

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

my final decision

My final decision is that I uphold Mr G’s complaint and direct Everyday Lending Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr G to accept or reject my decision before 2 March 2021.

Paul Reilly
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