complaint

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

background

In December 2017 ELL gave Mr T a loan for £3,000 repayable over three years. It was a high interest loan with an interest rate of 149.3% APR. The total charge for the credit was £5,924.76, which meant the total amount repayable by Mr T for the £3,000 he was borrowing, was £8,924.76. The monthly repayments were £247.91. Mr T's net salary was approximately £1,300 a month. He had several pay day loans.

In its response to Mr T'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 went on to say that his salary was evidenced on his bank statement.

When calculating the affordability of the loan, it said it used 34% of Mr T's monthly income as his living expenses, but a minimum of £500. It also said that the bank statements between 1 November and 30 November 2017 were reviewed, and that there were no returns or unauthorised charges. But there was a one-off bet for £100 and signs of various payday loan activity. It went on to say it had found no evidence to suggest that any necessary checks hadn't been carried out. It was satisfied the loan was affordable.

Mr T's concerns were investigated by one of our adjudicators. He thought ELL should have realised Mr T was unlikely to have been able to sustainably repay the loan. This was because his 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 respond to the adjudicator's view. So, the case has been passed to me for review. I wrote to the parties on 16 February 2021 with my provisional decision. I explained why I was intending to uphold Mr T's complaint and asked for responses by 16 March 2021. Our investigator sent chaser e-mails to both parties asking for their responses. Mr T and ELL didn't provide any further evidence or arguments for me to consider.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As ELL and Mr T have not provided any further evidence or arguments for me to consider, I see no reason to depart from the conclusions I reached in my provisional decision. I've set out my reasoning again below.
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 T's complaint.

Having done so, I've decided to uphold Mr T's complaint. I'll explain why.

There are several questions that I've thought about when deciding if ELL treated Mr T fairly and reasonably when it provided him with the loan.

1) Did ELL complete reasonable and proportionate checks to satisfy itself that Mr T 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 T 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 T 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 they 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 to be carried as part of ELL's affordability assessment, needed to be "borrower focussed". What I mean by this is that the checks needed to consider whether paying the loan back would cause Mr T 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 T 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 T'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 T would be able to repay his loan in a sustainable way.

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

- Mr T was applying for a high-cost credit product which had an APR of 149.3%
- Mr T was on a relatively low income
- The monthly repayment was relatively high, particularly when viewed as a percentage of Mr T's monthly income (around 19%); and even more so considering that he would need to allocate this proportion of his income towards his loan repayments for three years

- The total cost of the loan was very high, particularly when viewed as a percentage of what Mr T borrowed. He was using the loan to repay other debts, which suggests he was already struggling with existing credit.

Individually and taken together, there are several risk indicators here. So, I think that it was important for ELL to have conducted checks which gave it a thorough understanding of Mr T's financial position and to scrutinise the information it gathered carefully, asking follow-up questions where necessary, before agreeing to lend.

ELL has said it did carry out some checks before it agreed to provide Mr T with the loan. And this seems to be on the basis of carrying out a credit search and checking his bank statement for the last few days of October, and the bank statement for all of November 2017. It says it carried out an affordability assessment based on this information.

But ELL also says it made a deduction of 34% of Mr T's monthly income for living expenses, or a minimum of £500. It's not clear to me how it has reached these figures, or why it felt it necessary or appropriate to apply what appears to be a standard deduction from Mr T's income for living expenses. And it hasn't explained why this was a more reliable and borrower focussed assessment of Mr T's living expenses, than scrutinising the information it did collect about Mr T.

This is particularly puzzling when it has said it did review Mr T's bank statements to evidence his income. And it seems to me that it would have been more logical to have made an actual assessment of Mr T's income and expenses, taking into account the information it did have, rather than making assumptions which weren't necessarily accurate, appropriate or borrower focussed.

If it had done that, I think it would have realised that Mr T's finances were not in a good position. I say this because if it had carried out a simple assessment of his November 2017 bank statement, it would have seen that Mr T had more money going out of his account than was going in. In the copies of the November bank statement supplied to the service and ELL, there was evidence of payday loan payments going out and payday loan funds being credited to the account. There was also evidence of gambling.

Based on its assessment, ELL says that it thought Mr T's loan was affordable for him as he had surplus income of just over £100 a month, after the loan repayments for this loan were taken into account; together with the deduction for living expenses that it had allowed for. But it hasn't explained why it believes the information it reviewed supports that assessment and decision.

Taking into account what I've summarised above, I can't see objectively how on even a cursory analysis of the copy of Mr T's bank statement it had, that ELL could have concluded that the loan was affordable for him.

And if it had delved a little deeper into the information it had, it should have realised that the picture was even bleaker. I say this because the direct debits and standing orders Mr T had every month were in excess of £500 a month. And this doesn't take into account any other expenses for food and entertainment which are clearly identifiable on his statement. On top of this Mr T made payments for payday loans in excess of £600 that month.

From what I've seen therefore, I don't think ELL's checks were reasonable or proportionate in this case. And I'm not persuaded that the loan was affordable for him. I say this because as I’ve set out above, I think even the information ELL obtained from Mr T posed real questions about his ability to sustainably repay the loan.

At the very least, the information ELL had should have put it on notice to make further enquiries about Mr T’s finances. In the first instance, the purpose of the loan (to consolidate pay day loans) should in my opinion have flagged to ELL that Mr T might well already be in an unsustainable debt position and therefore may well have some difficulties in repaying the loan. His background of having taken out pay day loans, which ELL recorded being told by Mr T that these had “spiralled”; suggests to me that he was already having difficulties in managing his finances when he sought a loan from ELL.

Secondly, ELL only seems to have assessed Mr T’s financial position based on his bank statement from the end of October to the end of November 2017 and his credit file. Notwithstanding the difficulties that I think that bank statement reveals, there is a general risk that a single month may not have been representative of Mr T’s routine financial position.

And given the history of pay day borrowing, his relatively low income and evidence of gambling on the bank statement it did have, I think all this information should either have prompted ELL to decline the application or – at least – have alerted it to make further enquiries of Mr T’s finances and assess the affordability of the loan for him.

What would reasonable and proportionate checks have shown at the time?

I think ELL should have ensured that the scope and extent of its checks were adapted to the circumstances of Mr T’s application. This was a high cost loan being taken out by an individual with a low income. And the repayments would form a significant proportion of his monthly outgoings for 36 months. Given the information contained on the bank statement that ELL was in possession of, further checks would need to establish that his position was generally much better than that.

So, we have also asked Mr T for additional information about his finances to better understand his circumstances and the potential impact on him of taking out this loan. He has provided us with copies of his bank statements for October, November and December 2017. These statements show that in October 2017, Mr T had gambling losses of around £529. In November he had a gambling loss of £900 and in December before the loan was taken out, a gambling loss of £580.

So even if ELL had carried out these additional checks on Mr T’s finances in this way, it would have confirmed that the picture emerging from Mr T’s November statement, appears to have been part of a broader pattern.

He had used a significant amount of his income on gambling over the previous 3 months prior to taking out the loan, and it seems to me that this habit was placing a significant pressure on Mr T’s wider position which was relevant to ELL’s affordability assessment. And he also appears to have been in a cycle of taking out pay day loans, which should also have alerted ELL to question whether the loan was affordable for him.

I don’t intend to make a finding about whether the extent of Mr T’s gambling (either in absolute terms or as a proportion of his income) had become a habit or addiction which, in and of itself, made it irresponsible for ELL to have lent to him. Whilst that is clearly a risk, I believe a range of other indicators that ELL saw (or ought to have seen) that I’ve outlined above, should have made it realise that it was unlikely Mr T would have been able to repay his loan, and that it wasn't appropriate to lend to him.

Putting things right

I think it is fair and reasonable for Mr T to repay the principal amount that he borrowed, because he had the benefit of that lending. But he has paid interest and charges on a loan that shouldn't have been provided to him. So, I think Mr T has lost out and ELL should put things right for him. ELL should:

a) Remove all interest, fees and charges applied to the loan from the outset. Any payments made by Mr T should then be deducted from the new starting balance. If the payments Mr T has made total more than the amount he was originally lent, then any surplus should be treated as overpayments and refunded to him with 8% simple interest* calculated on any overpayments made, from the date they were paid by Mr T to the date the complaint is settled.

b) If there is still an outstanding balance, then ELL should agree an affordable repayment plan with Mr T, bearing in mind the need to treat him positively and sympathetically in those discussions; and taking into account his current ability to repay the loan from his present disposable income.

c) Remove any adverse information recorded on Mr T's credit file as a result of this loan.

*HM Revenue & Customs requires ELL to deduct tax from this interest. ELL should give Mr T a certificate showing how much tax it's deducted, if he asks for one.

my final decision

For the reasons I've set out above, my decision is to uphold Mr T's complaint about Everyday Lending Limited. It needs to calculate and pay Mr T compensation using the methodology I've 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 26 April 2021.

Simon Dibble
ombudsman