Financial Ombudsman Service

complaint

Mr E says Everyday Lending Limited (ELL) didn't complete proper checks to make sure the loan he applied for was affordable and it failed to give him important information about the loan.

background

Mr E took out a 36-month instalment loan from ELL on 27 October 2015. It was for £2,500 and the monthly repayments were £186.40. The total repayable was £4210.40. I understand the loan remains outstanding.

Mr E said ELL didn't carry out sufficient checks before lending to him. It didn't adequately explain the terms of the loan; how the continuous payment authority would work or how to complain. And when he couldn't make his repayments it didn't deal with him sympathetically.

ELL says it looked at Mr E's income, estimated his expenditure and reviewed his existing credit commitments on his credit file. It asked for copies of Mr E's bank statements and payslips. These checks showed the loan was affordable for Mr E. It said the loan agreement Mr E signed clearly set out the terms of the loan and a continuous payment authority was never set up on his account. Its complaints process is set out on its website, and it could find no evidence Mr E had notified it that he was having financial difficulties.

Mr E brought his complaint to this service, saying he remained unhappy with how the loan was sold and the checks that were done.

Our adjudicator found that the loan should not have been given. He said from the information ELL gathered it should have seen that Mr E was having problems managing his money, as he'd spent a significant amount on gambling in the months prior to his loan application. So there was a risk the loan was not sustainably affordable for Mr E.

ELL disagreed saying the gambling transactions don't appear to be greater than Mr E's disposable income and based on its calculations he would have been left with over £500 each month. So the complaint was passed to me for a final decision.

my findings

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

Our approach to unaffordable/irresponsible lending complaints is set out on our website and I've followed it here.

The rules and regulations when ELL lent to Mr E 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 is sometimes referred to as an affordability assessment or an affordability check.

The checks also had to be borrower-focused. So ELL had to think about whether repaying the credit sustainably would cause any difficulties or adverse consequences for Mr E. 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 the loan repayments on Mr E.

Checks also had to be proportionate to the specific circumstances of each loan application. In general, what makes up 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 and cost of credit they have applied for.

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 E. So to reach my conclusion I have considered the following questions:

- did ELL complete reasonable and proportionate checks when assessing Mr E's loan applications to satisfy itself that he would be able to repay the loan in a sustainable way?
- if not, what would reasonable and proportionate checks have shown?
- did ELL make a fair lending decision?
- did ELL act unfairly or unreasonably in some other way?

I can see ELL asked for some information from Mr E before it approved the loan. It asked for details of his income, how many dependents he had, copies of payslips and bank statements. It estimated his living costs using a percentage of his income. It also checked Mr E's credit file to understand his existing monthly credit commitments and credit history. And finally it asked about the purpose of the loan which was to repay Mr E's wife's credit card and for home improvements. From these checks combined ELL concluded Mr E had enough monthly disposable income to afford to repay the loan.

I'm not wholly persuaded the checks were proportionate. But I won't comment further on this as even based on the information it gathered, I don't think ELL made a fair lending decision. As the adjudicator said, the bank statements showed frequent gambling transactions, suggesting Mr E was having problems managing his money. Further supporting this, the statements also showed he was using a revolving line of credit to support his current account and was borrowing from other short-term high cost lenders - suggesting he was borrowing to fund his gambling.

ELL argues that Mr E's bank statements showed £245 of gambling transactions in September 2015 and £240 in October 2015 leaving him with considerable disposable income. But I don't think this is a fair analysis. From what I have seen the bank statements it relied on covered just the periods 22 September 2015 to 1 October 2015 and 19 to 23 October 2015.

From this I would draw two conclusions – the gambling transactions ELL has identified need to be at the very least totalled, rather than split by calendar month, for a truer picture of how much Mr E was spending on gambling in a month. Arguably, as there are no transactions outside the dates I set out above, I think it's likely the bank statements ELL received are not complete so even then Mr E's monthly spend on gambling is likely to be understated.

But even without investigating this further, and just using the information ELL had, I think the percentage of income that Mr E was spending on gambling was such that ELL ought to have realised it was unlikely Mr E would be able to repay his loan sustainably – even if it seemed affordable on a pounds and pence basis. And this was what ELL needed to check to meet its regulatory obligations as CONC 5.3.1(G) stated:

1. In making the creditworthiness assessment or the assessment required …, a firm should take into account more than assessing the customer's ability to repay the credit.

2. The creditworthiness assessment and the assessment required … should include the firm taking reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.

So, in summary, I don't think ELL made a fair lending decision using the information it had gathered when it gave Mr E his loan. He went on to have problems making his repayments within six months of the loan starting. It follows I think he has lost out as result of ELL's decision.

Did ELL act unfairly or unreasonably towards Mr E in some other way?

I don't find that it did, I'll explain why. Mr E says ELL failed to provide him with information on the repayment terms of his loan. The loan was sold on a call and ELL has no recording of that call, so I can't know what was said during the sale. But I can see from the loan agreement Mr E signed that the monthly repayment, the loan term and total cost for credit were set out clearly, alongside the APR and the interest rate. He says he wasn't told how to complain but ELL's complaints process is set out on its website, and I can't see any evidence that Mr E faced any barriers when he raised his complaint.

Mr E also said that ELL did not treat him sympathetically when he experienced difficulties repaying his loan. ELL's records show it tried to contact him many times but Mr E frequently didn't respond. And I've found no evidence he notified ELL that he was having financial difficulties, rather when he did make contact he said was out of the UK but would bring his account up to date on his return.

However, as I've said I don't that Mr E should have been provided with the loan, so ELL should put things right for him.

Putting things right

I think it's fair and reasonable for Mr E to repay the capital that he borrowed, because he had the benefit of that money. But he has paid interest and charges on a loan that shouldn't have been provided to him.

It seems ELL has sold the outstanding debt. If this is the case it should buy it back if it is able to do so and then take the following steps. If ELL is not able to buy the debt back, then it should liaise with the new debt owner to achieve the results outlined below.

It should:

- Remove all interest, fees and charges from the loan and treat all the payments Mr E made as payments towards the capital.
- If reworking Mr E's loan account results in him having effectively 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 the account leaves an amount of capital still to be paid, then ELL should work to agree an affordable repayment plan with Mr E, bearing in mind its obligation to treat him positively and sympathetically in these discussions.
- Remove any adverse information recorded on Mr E's credit file in relation to the loan, once the capital has been repaid.

*HM Revenue & Customs requires ELL to deduct tax from this interest. ELL should give Mr E a certificate showing how much tax it's deducted, if he asks for one.

my final decision

I am upholding Mr E's complaint. Everyday Lending Limited must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 5 March 2021.

Rebecca Connelley
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