DRN-3262803

The complaint

Miss C says Everyday Lending Limited (ELL) lent to her irresponsibly.

What happened

Miss C took out two instalment loans from ELL. A summary of her borrowing follows. Loan 2 was used in part to settle loan 1.

loan	taken out	value, £	term in months	monthly repayment, £	total repayable, £
1	14/12/2018	2,000	18	212.86	3,831.48
2	06/02/2020	2,000	18	212.32	3,821.76

Miss C says ELL failed to carry out proportionate checks and the loans were not affordable for her.

Our investigator said Miss C's complaint should be upheld. He said the checks were proportionate but based on the information it gathered ELL was wrong to give both loans 1 and 2 to Miss C.

ELL disagreed that it was wrong to give loan 1. It said, in summary, Miss C's credit checks showed she was managing her credit reasonably well; it was unfair to base an analysis of her finances on pre-Christmas spend; and its affordability assessment showed Miss C would be left with a good level of disposable income after taking on loan 1. It agreed that it was wrong to give loan 2 to Miss C and said it would put this right in line with the direction our investigator set out.

Miss C rejected ELL's offer to solely uphold her complaint in relation to loan 2 and asked for an ombudsman's review. So the complaint was passed to me. As an agreement was reached on loan 2, and both parties now agree it shouldn't have been given, I will focus on loan 1. But I will consider both loans when I set out what ELL needs to do next.

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.

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 Miss C required it to carry out a reasonable and proportionate assessment of whether she could afford to repay what she 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 Miss C. 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 Miss C.

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

- did ELL complete reasonable and proportionate checks when assessing Miss C's first loan application to satisfy itself that she 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 Miss C before it approved loan 1. It asked for details of her income and checked this on recent bank statements. It estimated her living costs using national statistics. It also checked Miss C's credit file to understand her existing monthly credit commitments and credit history. And finally it asked about the purpose of the loan which was for home improvements.

From these checks combined ELL concluded Miss C would have monthly disposable income of £811.74 after taking on the loan and so it was affordable.

I think these checks were proportionate, but I am not persuaded ELL made a fair lending decision based on the information it gathered. I'll explain why.

From its credit check and what ELL saw on Miss C's bank statements it calculated that she was spending around £485 each month on her existing credit commitments. Giving this loan meant Miss C would be increasing that commitment to over £700 each month – a significant proportion of her income. I think ELL ought to have been concerned that increasing the amount she needed to spend each month to service her debt to such a level created a risk that she would be unable to sustainably repay the loan over its 18-month term.

It could see on her bank statements she was already incurring frequent daily overdraft fees and direct debits were at times failing. And from its credit check it could see that she was over her limit and in arrears on a mail order account; almost at her limit on two credit cards account and there were a couple of recent missed payments on a home credit account. So already, even with the £485 of monthly credit commitments, it seemed Miss C was struggling to maintain financial stability. And ELL needed to consider this - i.e. the sustainability of the repayments, not just the pounds and pence affordability - to meet its regulatory commitments. I think, on balance, there is sufficient evidence to conclude that increasing Miss C's borrowings and monthly credit commitments was most likely to be financially harmful to her.

It follows I think ELL was wrong to give loan 1 to Miss C, in addition to loan 2 as agreed by the parties.

I haven't seen any evidence that ELL acted unfairly or unreasonably in some other way towards Miss C.

Putting things right

I think it's fair and reasonable for Miss C to repay the capital that she borrowed, because she had the benefit of that money. But she has paid interest and charges on loans that shouldn't have been provided to her.

I understand ELL has sold the outstanding balance of loan 2. It should first buy this back if it is able to. If not, it should work with the new owner to achieve the same outcome as the steps set out below.

ELL should:

- Add up the total amount of money Miss C received as a result of being given loans 1 and 2. The repayments Miss C made should be deducted from this amount.
- If this results in her having effectively made over payments 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 there is any capital balance outstanding ELL must try to agree an affordable payment plan with Miss C.
- Remove any adverse information recorded on Miss C's credit file in relation to the loans.

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

My final decision

I am upholding Miss C's complaint. Everyday Lending Limited (ELL) must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 29 April 2022.

Rebecca Connelley
Ombudsman