The complaint

Mr C, through a representative, says Everyday Lending Limited (ELL) trading as Everyday Loans lent to him irresponsibly.

What happened

Mr C took out an 18-month instalment loan for £2,000 from ELL on 14 November 2018. The monthly repayments were £248.21 and the total repayable was £4,467.78. I understand there is an outstanding balance.

Mr C says he wasn't given enough information about the loan so didn't know the true costs. He had to take out another loan to consolidate his debts after getting this one and his personal circumstances were not properly considered.

Our adjudicator said Mr C's complaint should be upheld. She found the lender's checks were proportionate but that it did not make a fair lending decision based on the information it gathered.

ELL disagreed. It said, in summary, it asked Mr C about the recent adverse information on his credit report; his credit card balance was low and within its limit; it was clear which payday loans Mr C was going to settle and its loan increased Mr C's monthly disposable income significantly.

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

- did ELL complete reasonable and proportionate checks when assessing Mr C's loan application 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 C before it approved the loan. It asked for details of his income and checked this on a recent payslip and bank statements. It estimated his living costs using national statistics. It also checked Mr C's credit file to understand his credit history and existing monthly credit commitments. It added in the additional credit commitments it could see from the relevant transactions on Mr C's bank statements. And finally it asked about the purpose of the loan which was debt consolidation. From these checks combined ELL concluded Mr C would have monthly disposable income of around £400 after repaying his outstanding payday loans and making this loan repayment, and so could afford to take on the loan.

I think these checks were proportionate, but I am not satisfied ELL responded appropriately to the information it gathered.

I think there were indications of financial instability on Mr C's credit check. ELL says it asked about the recent adverse data and Mr C explained it was triggered by an operation in April followed by some time out of the UK to see a family member who was unwell. But I am not wholly persuaded this response adequately explains everything ELL could see from its credit check.

Mr C had a County Court Judgment (CCJ) registered against him; two accounts that had defaulted many years ago but that had balances he was still repaying; and an active account that had just fallen into arrears. In addition the check showed around 20 loans and home credit accounts that had been settled, in addition to a number that were still active. I think this ought to have concerned ELL that Mr C's problem managing his money were not just short-term. And that he had been reliant on high-cost credit to make ends meet for some time and was most likely in a harmful cycle of borrowing to repay. I think by agreeing to lend to Mr C ELL was prolonging this use of high-cost credit which would most likely cause adverse financial consequences. And it needed to consider this, not just the monthly pounds and pence affordability, to meet its regulatory commitments.

It follows I think ELL was wrong to give the loan to Mr C.

Did ELL act unfairly or unreasonably in some other way?

I don't find that it did. Mr C says he wasn't given enough information about the loan, particularly the costs. But the Fixed Sum Loan Agreement Mr C signed clearly set out the terms of the loan, including the interest payable and the total amount payable. So I think he would have known what he was agreeing to pay. However, as I am upholding Mr C's complaint the interest and charges will anyway be refunded.

Putting things right

I think it's fair and reasonable for Mr C 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.

ELL should:

- Refund all the interest and charges Mr C paid, so add up the total amount repaid and deduct that sum from the capital amount borrowed.
- If this results in him 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 Mr C.
- Remove any adverse information recorded on Mr C's credit file in relation to the loan.

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

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 2 May 2022.

Rebecca Connelley
Ombudsman