The complaint

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

What happened

This complaint is about an 18-month instalment loan for £3,000 that ELL provided to Mr C on 26 June 2018. The monthly repayments were £256.64 and the total repayable was £4,619.52.

Mr C says the loan was unaffordable and he got into further debt and suffered financial hardship as a result.

Our adjudicator upheld Mr C's complaint and thought ELL shouldn't have given the loan. ELL didn't respond to the assessment, and so the complaint was passed to me to make a final decision.

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.

We've set out our general approach to complaints about unaffordable/irresponsible lending - including all of the relevant rules, guidance and good industry practice - on our website.

Having carefully thought about everything, I think that there are two overarching questions that I need to answer in order to fairly and reasonably decide Mr C's complaint. These two questions are:

1. Did ELL complete reasonable and proportionate checks to satisfy itself that Mr C would be able to repay the loan without experiencing significant adverse consequences?

   - If so, did it make a fair lending decision?
   - If not, would those checks have shown that Mr C would've been able to do so?

2. Did ELL act unfairly or unreasonably in some other way?

The rules and regulations in place required ELL to carry out a reasonable and proportionate assessment of Mr C's ability to make the repayments under this agreement. 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 loan would cause significant adverse consequences *for Mr C*. In practice this meant that business had to ensure that making the payments to the loan wouldn't cause Mr C undue difficulty or significant 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 the loan repayments on Mr C. 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. Even for the same customer, a proportionate check could look different for different applications.

In light of this, I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- the *lower* a consumer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- the *greater* the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Mr C's complaint.

ELL has provided evidence to show that before lending it asked for some information from Mr C. It asked for his monthly income, his employment status and his residential status. It reviewed copies of recent bank statements to verify his salary and to understand the extent of his payday loan use. It used national statistics to estimate his living expenses. It carried out a credit check to understand his credit history and his existing credit commitments. It asked about the purpose of the loan which was debt consolidation. Based on these checks ELL thought it was fair to lend.

I think these checks were proportionate, but I don't think the lender made a fair lending decision based on the information it gathered. I'll explain why.

Mr C applied for this loan to break his reliance on payday loans. He planned to repay 10 loans at a cost of £2,893.91 which would leave him with just one outstanding payday loan. He would still have other credit card and loan debt, as well as an overdraft. ELL calculated this meant he would be left with monthly credit commitments of £399.42. I think was slightly understated as it assumed only a minimum monthly repayment of 3% on his credit card, rather than allowing for a sustainable repayment of 5%. It also did not allow for any repayment of his overdraft facility which was over its limit at the time.

But that aside, by giving this loan, even after settling the 10 payday loans, ELL was placing Mr C in the position where he would need to spend over 40% of his monthly income on servicing his debt. At this level I think it ought to have realised there was a risk Mr C would not be able to repay this loan without suffering adverse financial consequences. And to meet its regulatory obligations it needed to consider this, not just the pounds and pence affordability.

ELL could see from Mr C's bank statements that he was persistently reliant on his £3,000 overdraft facility. This loan was not being used to repay that and so ELL was aware Mr C would most likely be using that debt to make its loan repayments.

Whilst I acknowledge Mr C was trying to break the payday loan cycle he had become trapped in, I am not persuaded his broader financial situation allowed him to take on this loan without there being a significant risk of him being unable to sustainably repay it. And ELL ought to have realised this from the checks it carried out. Indeed, I can see from ELL's contact notes that Mr C asked about a top-up loan just a few months later explaining he was still stuck in a payday loan cycle.

It follows I think ELL was wrong to give this loan to Mr C and ELL needs to put things right.

I've also thought about whether ELL acted unfairly in some other way and I haven't seen any evidence that it did.

Putting things right

I think it is fair and reasonable for Mr C to repay the capital amount that he borrowed, because he had the benefit of that lending. But he has paid extra for lending that should not have been provided to him so ELL needs to put that right.

It should:

- refund all interest and charges Mr C paid on the loan;
- pay interest of 8% simple a year on any refunded interest and charges from the date they were paid to the date of settlement†; and
- remove any negative information about the loan from Mr C's credit file.

† HM Revenue & Customs requires ELL to take off tax from this interest. ELL must give Mr C a certificate showing how much tax it's taken off 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 27 May 2022.

Rebecca Connelley
Ombudsman