DRN-3443546

The complaint

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

What happened

Mr M took out eight instalment loans from ELL. A summary of his borrowing follows.

loan	taken out	value, £	term in months	monthly repayment, £
1	26/05/2010	2,088	24	155.82
2	29/10/2010	1,588	24	153.55
3	14/09/2011	2,770	24	185.96
4	09/10/2013	1,680	18	158.04
5	27/06/2014	3,367	48	224.19
6	29/02/2016	6,806	48	372.83
7	06/07/2017	7,498	45	418.44
8	29/03/2019	4,100	36	313.01

Mr M says ELL's checks were not proportionate, and it did not assess signs of his over-indebtedness. This worsened his financial situation which was already poor.

Our investigator upheld Mr M's complaint. He said ELL had not made fair lending decisions for any of the loans.

ELL agreed with this assessment for loans 2, 3, 5, 6, 7 and 8. But not for loans 1 and 4 and so asked for an ombudsman's review. The complaint was therefore 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.

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 M 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 M. 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 M.

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

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

As there is no longer any dispute that loans 2,3,5,6,7 and 8 should not have been given to Mr M I will focus here on loans 1 and 4. I will include the other loans in any redress I set out.

Loans 1 and 4

I can see ELL asked for some information from Mr M before it approved the loans. It asked for details of his income and checked this on payslips. It asked for copies of recent bank statements. It estimated his living costs using a set percentage of his income that it says was widely regarded as the national average. It also checked Mr M's credit file to understand his existing monthly credit commitments and credit history each time. It asked about the purpose of both loans, Mr M said both were for car expenses. From these checks combined ELL concluded Mr M could afford to take on the loans.

I think the checks were proportionate for loan 1, but I am not wholly persuaded they were for loan 4 given the stage in the lending relationship by then. However I won't comment on this further as I don't think ELL made fair lending decisions - even based on the information it did have for loan 4. I'll explain why.

ELL's affordability assessment for loan 1 showed that Mr M would have disposable income of £69.59 each month after taking on the loan. As he had a relatively low income (£936.61) I think ELL ought to have realised that with so little disposable income there was a risk the loan would not sustainably affordably for Mr M over its 24-month term. And it needed to consider this to meet is regulatory obligations, not just the absolute pounds and pence affordability. ELL was aware that Mr M was already using short-term high-cost credit indicating he was most likely struggling to make ends meet. In the round, I think it was most likely Mr M would suffer some type of adverse financial consequence as a result of being giving this loan.

It follows I think ELL was wrong to give loan 1 to Mr M. ELL argues that loan 1 was not irresponsible as it was to repay payday loans. But this is inaccurate, the loan was for a car – as ELL's final response letter confirms. Its affordability assessment for loan 1 also shows there was no planned debt consolidation. So its point does not change my conclusion.

By the time Mr M applied for loan 4 he had been using borrowing from ELL for forty consecutive months. Loan 2 had in part repaid loan1, loan 3 had in part repaid loan 2 and loan 3 had only been repaid in full three weeks before the application for loan 4. ELL knew Mr M had taken out loans 2 and 3 for debt consolidation yet it could see when he applied for loan 4 he was still using payday loans. Giving loan 4 to Mr M meant he would need to spend over a third of his income (now £1,187.85) on his monthly credit commitments. I think at this level, and given his history of seemingly being trapped in a harmful cycle of using high-cost credit to repay other high-cost debts, I think ELL ought to have realised loan 4 was also most likely to cause adverse financial consequences for Mr M.

It follows I think ELL was wrong to give ELL loan 4. ELL argues that Mr M would have had £149.81 disposable income each month and so the loan was not irresponsibly lent. But for the reasons set out above this does not change my conclusion – ELL had to do more than check the pounds and pence affordability and I remain satisfied that there was enough information to show ELL it was most likely the loan was not sustainably affordable.

I haven't seen any evidence ELL acted unreasonably or unfairly towards Mr M in some other way.

Putting things right

This section relates to loans 1 to 8.

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

So ELL should:

- Add up the total amount of money Mr M received as a result of having been given loans 1 to 8. The repayments Mr M made should be deducted from this amount.
- If reworking Mr M's loan accounts 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 Mr M's accounts results in there still being any capital balance outstanding ELL should work with Mr M to agree an affordable repayment plan.
- Remove any adverse information recorded on Mr M's credit file in relation to the loans.

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

My final decision

I am upholding Mr M'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 M to accept or reject my decision before 24 June 2022.

Rebecca Connelley
Ombudsman