DRN-3452141

The complaint

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

What happened

This complaint is about a 36-month instalment loan for £5,000 that ELL provided to Mr M on 8 July 2021. The monthly repayments were £308.34 and the total repayable was £11,118.60.

Mr M says the lender pressured him into taking a loan he didn't want and manipulated his data. This led him into financial difficulties and impacted his mental health.

Our adjudicator upheld Mr M's complaint and thought ELL shouldn't have given the loan. ELL disagreed and so the complaint was passed to me.

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 M's complaint. These two questions are:

1. Did ELL complete reasonable and proportionate checks to satisfy itself that Mr M would be able to repay the loan in a sustainable way without experiencing significant adverse consequences?
    - If so, did it make a fair lending decision?
    - If not, would those checks have shown that Mr M 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 M'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 M*. In practice this meant that business had to ensure that making the payments to the loan wouldn't cause Mr M 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 M. 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 M's complaint.

ELL has provided evidence to show that before lending it asked for some information from Mr M. It asked for his monthly income and estimated his living costs using national averages. It asked about his rent and obtained a copy of his tenancy agreement. It carried out a credit check to understand his credit history and his existing credit commitments. It reviewed recent bank statements to verify his salary and some outgoings. Based on these checks ELL thought it was fair to lend.

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

ELL's affordability assessment showed Mr M would have £125.88 disposable income each month. This was based on an income of £1,477.57, living expenses of £585.34, a contribution to rent of £250 and ongoing credit commitments of £516.34. Our adjudicator said ELL ought to have included the full rent of £500 and this meant the loan was unaffordable for Mr M.

ELL argued that Mr M was co-habiting and his partner contributed to the rent. Mr M's testimony does not support this: he says he lived in a shared house and paid £500 rent - his partner lived with her parents, but ELL told him to submit that they co-habited and that she paid £250. I cannot know what was discussed between the parties at the time of the application, so I have looked at the available documentation to decide what I think is most likely. Mr M's bank statements show he paid a monthly rent payment of £500, there was no corresponding payment into his account for £250. And he is the sole named person on the tenancy agreement. So I think as he was both contractually responsible for the full £500, and also seems to have been paying it in full, ELL ought to have used £500 for his rent cost. This means the affordability assessment would have shown the loan to be unaffordable for Mr M.

ELL also argues that it understated Mr M's income in its assessment. So even if the full £500 for rent is taken into account, the additional income shown on Mr M's bank statements means the loan was still affordable. But I don't think this is a reasonable position. At the time of lending it opted not to include this second income stream in its assessment. As it seems to have been variable - and not certain given its nature - I think this was the right decision. And I don't accept it should now be included.

In its final response letter ELL replied to Mr M's comment that it manipulated the data he provided by saying he signed to confirm that the figures were a true and accurate representation of his circumstances. And I accept he did this, but this doesn't change the lender's obligation to make a fair decision based on the checks it completed. And for the reasons set out above I don't think it did that here.

It follows I think ELL was wrong to give this loan to Mr M.

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

Mr M told us he wanted to use the loan to repay another loan, but the lender persuaded him to use it to repay two credit cards and a mail order account. I don't doubt this is his honest recollection, but the lender's notes from the time of the sale indicate the initial plan changed as they read *'we are not paying off 'loan x' as we have received the settlement figure and it is higher than the guessed settlement amount, so we are now paying off 'credit card a' and 'credit card b' leaving £2k to pay off a large amount of 'loan x', customer has agreed to this'*. So I think it's most likely Mr M accepted which debts this loan was going to settle directly, and that he was going to arrange the part-settlement of his other loan.

Putting things right – what ELL needs to do

I think it is fair and reasonable for Mr M 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 M paid on the loan;
- if reworking Mr M'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 Mr M's account results in there still be a capital balance outstanding ELL should work with Mr M to agree an affordable repayment plan; and
- remove any negative information about the loan from Mr M's credit file.

† HM Revenue & Customs requires ELL to take off tax from this interest. ELL must give Mr M a certificate showing how much tax it's taken off 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 2 June 2022.

Rebecca Connelley
Ombudsman