DRN-3472726

The complaint

Mr S complains about a loan provided to him by Everyday Lending Limited, trading as Everyday Loans, ("ELL"), which he says was unaffordable. Mr S's complaint has been brought to this service on his behalf by a claims' management company. But for ease, I shall refer below to all actions being taken by Mr S.

What happened

ELL entered into an agreement for a loan for Mr S on 13 July 2017. The loan was for £3,000 and was repayable by 24 monthly payments of £239.01. The interest rate was 74.9%, (106.8% APR). If Mr S made each repayment when it was due, the total amount payable was £5,736.24. Mr S said that the loan was for debt consolidation. The loan has been repaid.

Mr S says that he had other debts at the time of taking out the loan He does not believe ELL could have suitably assessed his application. As a result of this borrowing Mr S had experienced a breakdown in the relationship with his partner. He also said that the loan information wasn't given to him in a concise manner that he understood and that the fees which were applied when he hit financial difficulty during the repayment of the loan were not explained properly to him.

In its final response letter ELL said, in summary, that it believed the checks completed were reasonable and proportionate and that the loan was sustainable over the term of the loan as Mr S had disposable income.

Our investigator's view

Our investigator recommended that Mr S's complaint should be upheld. He said that there were signs in ELL's credit checks (including a recent default on a credit card) that Mr S was struggling financially to sustain his current credit commitments He thought that the checks ELL carried out demonstrated that Mr S would have been unlikely to be able to make his repayments sustainably.

ELL disagreed and responded to the investigator's view by saying:-

- It couldn't see that Mr S has defaulted on a credit card. But there was a default on a credit card belonging to his ex-wife.
- It could see that Mr S had taken several loans in March, April, and May 2017 which he advised he had taken to pay for home improvements and had got stuck in a cycle. The proceeds of its loan were to consolidate these payday loans and to partially clear Mr S's credit card and overall help him.
- It could see that Mr S had a remaining disposable income of £409.35.
- Whilst there were historical loans showing on its checks, it didn't consider these loans suggested a pattern.

The investigator accepted that the defaulted credit card didn't belong to Mr S.

As this complaint wasn't resolved informally, it was passed to me, as an ombudsman, to review and resolve.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr S and to ELL on 8 April 2022. I summarise my findings:

I'd noted that when ELL lent to Mr S, the regulator was the Financial Conduct Authority ("FCA") and relevant regulations and guidance included its Consumer Credit Sourcebook ("CONC"). Its rules and guidance obliged ELL to lend responsibly. As set out in CONC, this meant that ELL needed to take reasonable and proportionate steps to assess whether or not a borrower could afford to meet its loan repayments in a sustainable manner over the lifetime of the loan agreement.

Repaying debt in a sustainable manner meant being able to meet repayments out of normal income while meeting normal outgoings and not having to borrow further to meet these repayments.

The lender was required to carry out a borrower focussed assessment each time - sometimes referred to as an "affordability assessment" or "affordability check". Neither the law nor the FCA specified what level of detail was needed to carry out an appropriate assessment or how such an assessment was to be carried out in practice. The FCA said that the level of detail would depend on the type of product, the amount of credit being considered, the associated cost and risk to the borrower relative to the borrower's financial situation, amongst other factors.

The checks had to be "borrower" focussed – so ELL had to think about whether Mr S could sustainably repay his loan. In practice, this meant that the lender had to ensure that making the payments to the loan wouldn't cause Mr S undue difficulty or 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 loan repayments on Mr S.

In general, I'd expect a lender to require more assurance the greater the potential risk to the borrower of not being able to repay the credit in a sustainable way. So, for example, I'd expect a lender to seek more assurance, potentially by carrying out more detailed checks

- the lower a person'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 longer the term of the loan (reflecting the fact that the total cost of the credit was likely to be greater and the borrower was required to make payments for an extended period);

I'd noted that ELL had gathered some information from Mr S about his net income and mortgage before it agreed the loan. It also carried out a credit check and obtained bank statements from Mr S. It also estimated Mr S's expenditure as 35% of his income.

ELL used the lowest monthly income it had seen on Mr S's bank statements of around £2,285 in its affordability calculations. Mr S told ELL that he was a homeowner and paid a monthly mortgage repayment of around £441. Although Mr S's application form showed he had no dependents, ELL was aware that he had a former partner and a child and that he paid his former partner £190 each month. ELL said that Mr S's monthly credit commitments were £476. But in calculating this amount, ELL used a minimum repayment amount to calculate Mr S's monthly credit card repayment. I didn't think this was reasonable. As ELL would be aware, making minimum repayments effectively extends credit card debt potentially for years and it adds very significantly to the long term cost of that credit. Repayments at that level are insufficient to make any meaningful inroads into card balances.

ELL had calculated that Mr S's total expenditure including estimated living costs, mortgage and credit commitments was £2,196.81. ELL had calculated that Mr S would have a monthly disposable income of £409.35 after consolidating his debts and after its loan repayment. But Mr S was entering into a significant commitment with ELL. He would need to make monthly repayments of around £240 for 24 months. I thought in Mr S's circumstances, it needed to tailor its assessment to Mr S's actual financial situation rather than rely on an estimate of Mr S's expenditure.

ELL's contact notes showed that Mr S had told it that he had arrears on a credit card and had overcommitted himself with payday loans used for home improvements and they had left him struggling and stuck in a cycle of using them. Mr S said that he'd intended to clear the payday loans with £1,138 from the proceeds of the loan. ELL would give Mr S a cheque for £1,000 to pay to his credit card provider. Mr S would be left with £862 to get back on track.

The lender provided this Service with its credit checks which I'd reviewed. Mr S had four active loan accounts and one active credit card account. The loans balance was £450, and the credit card balance was £2,663. Mr S also had a mortgage with a balance of around £100,000. And he had three current accounts which didn't have an overdrawn balance.

The credit checks showed that there were two defaulted accounts from late 2012 and 2013, but both had been settled.

The credit checks also showed that Mr S had taken out six payday loans in around the year prior to his loan application. Two of these for £300 each had been taken out in July 2016 and August 2016 and had both been repaid in September 2016. The other four payday loans totalling £750, which were still outstanding, were taken out from March 2017 to May 2017. In addition, Mr S had a credit card with a relatively large balance of £2,663 which had exceeded its credit limit of £2,500. Mr S had missed the last monthly payment on the card as well as payments ten and eleven months prior to the credit check. He'd also missed two mortgage payments around nine and ten months prior to the credit check and a communications account payment around eleven months prior to the credit check.

ELL had also made a list of Mr S's financial commitments. I'd noted that the list showed three payday loans Mr S received between 16 June 2017 and 6 July 2017 which weren't on its credit checks and which it had seen on Mr S's bank statements. So, ELL was aware that its credit checks might not provide a complete picture of Mr S's credit commitments. The information wasn't necessarily up to date. A lender might only see a small portion of a borrower's credit file, or some data might be missing or anonymised. Also, not all lenders reported to the same credit reference agencies.

I'd said that simply performing credit checks wasn't enough. A lender needed to react appropriately to the information that any checks showed. Altogether, I thought ELL ought to have been concerned about Mr S's regular use of payday loans. He'd taken out at least nine payday loans in the 12 months prior to the loan application. And as some of these had been taken out in the summer of 2016 and each month between March 2017 and July 2017, I thought it was likely that not all the payday loans were linked to carrying out home improvements as Mr S had told ELL. I also thought ELL might have been concerned about Mr S's large and overlimit credit card balance and his recent missed payment on that account as well as the missed payments in the autumn of 2016 on three accounts including Mr S's mortgage. I thought all this might have suggested that Mr S's finances were under pressure and he was having difficulties managing his finances.

I thought it would have been reasonable for ELL to conclude from its credit checks that it was likely that Mr S was experiencing financial difficulties. So, I thought ELL needed to carefully scrutinise the bank statements it received from Mr S to check that he would be able to repay the loan sustainably over the term of 24 months.

Mr S had told ELL he would be using part of the loan proceeds to consolidate his payday loans. I noted that ELL had provided Mr S with a cheque to repay £1,000 from his credit card balance, although a relatively large balance of £1,663 would be left to repay. But I couldn't see from the information received from ELL that it had made consolidation of the payday loans a condition of the loan. So, ELL wasn't in control of making sure Mr S's payday loans were repaid. And it couldn't have been sure it wasn't putting Mr S in a worse position by increasing his overall debt. And he would be using part of the loan of £3,000 to repay those debts, but he would need around £5,700 to repay that loan over the loan term.

I'd noted that ELL had said in its final response letter that the loan was sustainable over the term of the loan as Mr S had disposable income. But this assumed Mr S's need for credit wasn't an ongoing one. I'd noted from the bank statements I'd seen that Mr S had other short term loans which weren't shown in ELL's credit checks and its credit list. It appeared he'd borrowed payday loans totalling £500 in May 2017 and payday loans totalling £750 in June 2017 and he'd borrowed another payday loan for £250 a week before he applied for ELL's loan.

I'd also reviewed the bank statements ELL saw for two of Mr S's current accounts. Some of these were incomplete in that they didn't show the running account balances. It didn't seem that ELL had used the bank statements to verify its estimate of Mr S's expenditure. But I'd noted from ELL's contact notes that it did see that Mr S was taking out short term loans and that he'd made gambling transactions totalling £280 which it didn't think was excessive.

In addition to reviewing the account statements ELL saw, I'd also asked the investigator to ask Mr S to provide us with earlier statements for those accounts and also for Mr S's bank statements for his third current account to get a more thorough understanding of Mr S's financial position. In view of Mr S's use of short term loans and his gambling transactions, I thought ELL might have asked more about these and his other spending.

I'd reviewed the bank statements for May 2017 and June 2017. In May 2017, Mr S's spending on living costs and financial commitments to creditors and family exceeded the income he'd received at the end of April 2017. In addition, he'd spent around £400 on gambling and borrowed £500 in short term loans. His spending on financial commitments didn't include any payments to his overlimit credit card. In June 2017, Mr S had borrowed £750 in short term loans and spent around £240 on gambling transactions. His spending on his credit commitments again didn't include any repayments to his credit card. It also wasn't clear whether Mr S was able to meet his living costs. The joint account which had been used to pay some of these wasn't fully funded and many payments for living costs were returned unpaid.

Even though the loan was for debt consolidation, I thought the relatively high amount of short term borrowing and not insignificant gambling would have suggested that Mr S was having serious problems managing his finances that a debt consolidation wouldn't have solved. As Mr S was borrowing a significant amount of short term loans each month just to fund his existing expenditure and credit commitments, I thought there was a very real prospect that Mr S would need to borrow again in order to repay his new loan and that would likely have an adverse effect on his financial situation. Mr S's finances weren't stable and I thought if ELL had considered fully the information it had received and enquired further into Mr S's financial situation, I thought it reasonably ought to have suspected that the loan was likely to be unsustainable. It appeared that Mr S was spending beyond his means and had been for some time, and further credit was likely to add to his indebtedness.

I also noted that Mr S continued to borrow from short term lenders in the months following ELL's loan, and I thought this was foreseeable. I'd noted that within three weeks of taking out ELL's loan he had taken out another payday loan for £250 and another short term loan for £390 the following month.

So, for the reasons set out above I intended to say that ELL didn't make a fair lending decision when it provided the loan to Mr S and subject to any further representations by Mr S or ELL, I intended to uphold Mr S's complaint and say that ELL should put things right as follows:-

Putting things right – what ELL needs to do

I understand that the loan has been repaid. As I intend to conclude that ELL was irresponsible to have lent to Mr S, he shouldn't have to pay any interest, fees, or charges on the loan.

So, ELL should:

- Refund any interest and charges paid by Mr S on the loan;
- Add simple interest at a rate of 8% per annum to each of these amounts from the date they were paid to the date of settlement*; and
- Remove any adverse information recorded on Mr S's credit file in relation to the loan.

* HM Revenue & Customs requires ELL to take off tax from this interest. ELL must give Mr S a certificate showing how much tax it's taken off if he asks for one.

Mr S hasn't responded to my provisional decision.

ELL hasn't responded to my provisional 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.

I have also taken into account the law, any relevant regulatory rules and good industry practice at the time.

Given that Mr S and ELL have given me nothing further to consider, I see no reason to depart from the conclusions I reached in my provisional decision. It follows that I uphold this complaint and require ELL to take the steps set out above under the heading "Putting things right - what ELL needs to do".

My final decision

My decision is that I uphold this complaint. In full and final settlement of this complaint, I order Everyday Lending Limited, trading as Everyday Loans, to put things right as I've set out above under the heading "Putting things right – what ELL needs to do".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 7 June 2022.

Roslyn Rawson
Ombudsman