DRN-3479503

The complaint

Mr F complains that Everyday Lending Limited trading as Everyday Loans ("ELL") lent to him in an irresponsible manner.

What happened

Mr F was given two loans by ELL, in July 2017 and in April 2019. He first borrowed £1,000 that he agreed to repay in 24 monthly instalments. As he neared the end of that loan, Mr F refinanced his borrowing by taking a new loan of £1,500. He agreed to repay that loan in 18 monthly instalments. Mr F repaid the loan in June 2020.

Mr F's complaint has been assessed by one of our adjudicators. He thought that the results of ELL's checks should have led the lender to conclude that Mr F would be unlikely to be able to repay any new borrowing in a sustainable manner. So he didn't think either loan should have been agreed and he asked ELL to put things right for Mr F.

ELL didn't agree with that assessment. So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process. If Mr F accepts my decision it is legally binding on both parties.

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 approach to unaffordable/irresponsible lending complaints on our website and I've kept this in mind while deciding Mr F's complaint.

The rules and regulations at the time ELL gave these loans to Mr F 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 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 credit sustainably would cause difficulties or adverse consequences for Mr F. In practice this meant that ELL had to ensure that making the repayments wouldn't cause Mr F 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 any repayments on Mr F.

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.

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 F.

ELL gathered some information from Mr F before it agreed each loan. It asked him for details of his income, and his housing costs. It then used some industry statistical data to estimate the remainder of Mr F's normal expenditure. It checked Mr F's credit file to assess how much he was repaying to other creditors and how he had managed credit in the past. And it reviewed copies of Mr F's bank statements to validate what he had said about his finances

Each time, Mr F was entering into a significant commitment with ELL. He would need to make monthly repayments for periods of between 12 and 18 months. So I think it was right that ELL wanted to gather, and independently check, some detailed information about Mr F's financial circumstances before it agreed to lend to him. I think that the checks I've described above were sufficient to achieve that aim – I think that ELL's checks were proportionate.

But simply performing proportionate checks isn't always enough. A lender also needs to react appropriately to the information shown by those checks. Those results might sometimes lead a lender to undertake further enquiries into a consumer's financial situation. Or, in some cases, the results might lead a lender to decline a loan application outright. And that is what I think should have happened in this case.

The credit check results that ELL received before it agreed the first loan showed that Mr F had faced serious problems managing his money in the past. And those problems had continued to be present relatively recently. Mr F had defaulted on at least three accounts the previous year. And ELL's checks also showed that he had three county court judgements against him for unpaid debts – the most recent of which had been issued less than six months before.

So I think ELL should have had some very strong concerns about Mr F's ability to meet any new loan repayments in a sustainable manner. And I think those concerns should have been amplified when ELL looked at Mr F's bank statements.

It is true that Mr F's bank statements didn't show any signs of uncontrolled expenditure such as excessive amounts of gambling. But they did show the chaotic nature of Mr F's finances. He was borrowing, and repaying, significant sums to and from friends on a regular basis. And they showed that a number of previous repayments to other lenders had been returned unpaid.

I appreciate that Mr F explained that many of the financial problems he'd faced were as a result of a period of unemployment – and that he was now started in a new job. But I think that period of employment was too short for ELL to have any confidence that the problems Mr F had faced in managing his finances were now behind him. I don't think it was reasonable for ELL to conclude that it would be likely Mr F would be able to repay this loan in a sustainable manner.

It seems that Mr F had faced some problems repaying his first loan in line with his credit agreement. But, by the start of 2019 he seems to have got his repayments largely back on track. That might have given ELL some confidence that his finances had returned to a more stable footing. So it might not have been of concern that Mr F asked to borrow again shortly before he'd finished repaying the first loan (and so used some of the proceeds of the second loan to complete that repayment.)

But the credit check results showed that Mr F had continued to face additional problems managing his money during the term of the first loan. The results showed that Mr F had defaulted on two loan accounts around a year before – at the same time he was facing problems making his repayments to ELL. And the county court judgement that he'd received in early 2017 remained unsatisfied. So I don't think that ELL could reasonably conclude that Mr F would be able to repay the second loan in a sustainable manner either.

So, in summary, I don't think the results of the checks that ELL did should have led to the lender agreeing to give either loan to Mr F. It follows that I think the complaint should be upheld and that ELL needs to pay Mr F some compensation.

Putting things right

I don't think ELL should have agreed to lend to Mr F in July 2017 or April 2019. So ELL should;

- refund all the interest and charges Mr F paid on the loans
- pay interest of 8% simple a year on any refunded interest and charges from the date they were paid (if they were) to the date of settlement†
- remove any adverse information recorded on Mr F's credit file in relation to the loans

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

My final decision

My final decision is that I uphold Mr F's complaint and direct Everyday Lending Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 6 July 2022.

Paul Reilly
Ombudsman