

The complaint

Mrs D says Everyday Lending Limited, trading as Everyday Loans, irresponsibly lent to her.

What happened

Mrs D took out a loan for £3,500 over 36 months on 7 July 2021. The monthly repayments were £227.52 and the total repayable was £8,190.72. There remains an outstanding balance.

Mrs D says she had unsettled defaults and other adverse information on her credit file when she applied. The loan should never have been given to her. ELL says its checks were reasonable and proportionate and showed Mrs D could sustainably afford its loan.

Our investigator upheld Mrs D's complaint. She said if ELL had appropriately considered Mrs D's unsettled default balances it ought to have realised she could not afford this loan.

ELL disagreed and asked for an ombudsman's review. It said it assumed Mrs D was repaying 1% (not 5% as the investigator said) of her defaulted balances. This was fair as there was no evidence she was paying more. And customers typically only make nominal payments towards historic defaults. Also, it had included Mrs D's mobile handset costs in her living expenses and therefore not also as a creditor payment.

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.

The rules and regulations when ELL lent to Mrs D required it to carry out a reasonable and proportionate assessment of whether she could afford to repay what she 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 Mrs D. 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 Mrs D.

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

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

I can see ELL asked for some information from Mrs D before it approved the loan. It asked for details of her income and checked this. It asked for copies of recent bank statements and a payslip. It asked about her housing costs and estimated her living costs using national statistics, adding a buffer to cover unexpected costs. It also checked Mrs D's credit file to understand her existing monthly credit commitments and credit history. It asked about the purpose of the loan which was home improvements.

From these checks combined ELL concluded Mrs D would have £251.22 of disposable income each month after taking on the loan and so it was affordable.

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

The remaining dispute in this complaint that is material to the outcome is about what value ELL should have assigned for the repayment of defaulted debt. ELL could see from its credit check that Mrs D had six defaults in 2017 and 2018. Four had been settled, but there remained a high level of historic debt of £12,875 that was not yet settled. Relative to Mrs D's income this was not insignificant. ELL argues as it was most likely Mrs D was only making nominal payments at around 1% of balance that is what it considered in its affordability assessment. It adds Mrs D's bank statements do not show she was paying any more than this, and definitely not the 5% of balance the investigator said should be considered.

But I agree with the investigator – I think a fair affordability assessment has to consider this loan in the context of Mrs D – even if only theoretically - making a higher repayment to her debt collectors. I say this based on the regulatory requirements set out below from CONC 5.2A.12 (R) that state:

The firm must consider the customer's ability to make repayments under the agreement ...

4) without failing to make any other payment the customer has a contractual or statutory obligation to make;

and 5) without the repayments having a significant adverse impact on the customer's

financial situation.

I would argue ELL did not do this as it can only defend the loan as affordable if it ignores that Mrs D was already in breach of other contractual obligations i.e.. those of her credit agreements that had defaulted. And to assume she would only ever make nominal repayments to allow her to prioritise meeting the contractual repayments of this new credit agreement means she would not be repaying her defaulted debt as quickly as otherwise possible. This does not seem fair and reasonable to Mrs D in the context of the requirement for ELL's checks to be borrower-focused, and to not just consider the likelihood of ELL getting its money back, but also the impact on Mrs D.

It follows I agree with the investigator's findings that this loan ought not to have been assessed as affordable for Mrs D. Had ELL allocated a higher value to the repayment of defaulted debts, Mrs D would not have had the necessary disposable income to sustainably afford this loan.

In the round I think ELL was wrong to give this loan to Mrs D.

I have not found any evidence ELL acted unfairly towards Mrs D in some other way.

Putting things right

To settle Mrs D's complaint, ELL must:

- 1) Add up the total amount of money Mrs D received as a result of having been given this loan. The repayments Mrs D made should be deducted from this amount.
 - a) If this results in Mrs D having paid more than they received, any overpayments should be refunded along with 8% simple interest (calculated from the date the overpayments were made until the date of settlement). †
 - b) If any capital balance remains outstanding, then ELL should attempt to arrange an affordable and suitable payment plan with Mrs D.
- 2) To remove any negative information recorded on Mrs D's credit file relating to this loan once any outstanding capital balance has been repaid.

† HM Revenue & Customs requires ELL to take off tax from this interest. ELL must give Mrs D a certificate showing how much tax it's taken off if she asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

My final decision

I am upholding Mrs D's complaint. Everyday Lending Limited, 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 Mrs D to accept or reject my decision before 19 January 2024.

Rebecca Connelley
Ombudsman