DRN-2829394

The complaint

Mr S complains that Everyday Lending Limited trading as Everyday Loans irresponsibly provided him with unaffordable loans.

What happened

Everyday Lending provided Mr S with loans as follows:

	Date	Amount	Term	Monthly repayment
Loan one	26/10/2018	£3,500	36 Months	£251.43
Loan two	31/07/2019	£4,000	36 Months	£307.62

When Mr S complained to Everyday Lending it said it had completed reasonable and proportionate checks which showed that the loans were affordable for him and didn't uphold his complaint. So Mr S brought his complaint to us.

Our investigator assessed the complaint and recommended that it be upheld as she didn't think that Everyday Lending should've provided either of these loans.

Everyday Lending didn't agree with everything in our investigator's view but it made an offer to uphold Mr S's complaint about loan 2 and said it would take the steps needed to put things right in line with what we'd expect a lender to do in these circumstances.

Mr S doesn't feel this offer goes far enough to settle his complaint – he'd like the complaint to settle in the way our investigator suggested. So the complaint comes 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.

We've set out our approach to unaffordable/irresponsible lending complaints on our website and I've kept this in mind while deciding this complaint. And having looked at the complaint afresh, I've come to the same overall outcome as our investigator. I'll explain why I say this.

There are some general principles I will keep in mind and questions I need to think about when deciding whether to uphold Mr S's complaint.

Before agreeing to lend, lenders must work out if a borrower can afford the loan repayments alongside other reasonable expenses the borrower also has to pay.

This should include more than just checking that the loan payments look affordable on a strict pounds and pence calculation. A lender must take reasonable steps to satisfy itself that the borrower can sustainably repay the loan – in other words, without needing to borrow elsewhere.

The rules don't say what a lender should look at before agreeing to lend. But reasonable and proportionate checks should be carried out. For example, when thinking about what a borrower has left to spend on a new loan after paying other expenses, as well as taking into account the loan amount, the cost of the repayments and how long the loan is for, a proportionate check might mean a lender should also find out the borrower's credit history and/or take further steps to verify the borrower's overall financial situation.

If reasonable and proportionate checks weren't carried out, I need to consider if a loan would've been approved if the checks had been done. If proportionate checks were done and a loan looked affordable, a lender still needed to think about whether there was any other reason why it would be irresponsible or unfair to lend.

For example, if the lender should've realised that the loan was likely to lead to more money problems for a borrower who is already struggling with debt that can't be repaid in a sustainable way.

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 (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).

I've kept all of this in mind when thinking about Mr S's complaint.

As Everyday Lending has agreed to uphold Mr S's complaint about loan 2 and do what is needed to put things right in line with our investigator's recommendation, then I don't need to consider this loan further save to include it in the redress.

I'll be concentrating in my decision on loan 1.

Everyday Lending asked Mr S about his income and expenditure. Everyday Lending checked Mr S's bank statements to verify his income and was satisfied that it could rely on him receiving an average monthly income of at least £2,067.91. After doing its own credit checks and allowing for the amount it calculated that someone in Mr S's situation typically spent on everyday living costs, and taking into account his rent each month, Everyday Lending worked out that Mr S should still have disposable income of approximately £404 *after* taking out this loan.

So, it felt the loan was affordable for him.

I agree with our investigator that Everyday Lending's checks were reasonable and proportionate in the particular circumstances of this loan application. But, like the investigator, I don't think Everyday Lending made a fair lending decision when it lent to Mr S based on the information it had gathered.

I say this because I don't think Everyday Lending thought carefully enough about what all the information it had gathered showed about Mr S's overall financial situation. Looking at its credit checks and the bank statements that Mr S provided to Everyday Lending, it could see that Mr S appeared to be in serious financial difficulty and that it didn't look like he was in control of his finances.

I think it should have been clear from the information it had gathered that Mr S wasn't managing to repay his debt and he appeared to be relying on new credit more recently obtained in order to manage his finances. It could've seen from the bank statements it obtained from Mr S that he had taken out loans with other providers of high cost credit worth in excess of £4,000 throughout August and September 2018. The credit checks Everyday Lending obtained indicated that Mr S owed £3,093 on revolving credit accounts and that he had outstanding loan balances totalling £2,458. And Everyday Lending recorded information showing that Mr S had at least 13 expensive credit accounts and a total balance owing on those accounts of more than £8,500. He was often overdrawn on his current account and incurring daily overdraft fees. All this information painted a picture of someone whose use of credit had spiralled out of control and Mr S showed all the hallmarks of a borrower stuck in a cycle of high cost debt.

I think Everyday Lending ought to have realised that Mr S's loan application reflected his reliance on this sort of expensive credit and it was unlikely that Mr S could repay further credit sustainably without experiencing more adverse consequences. I don't think, based on what Everyday Lending had in front of it, I can fairly say that Everyday Lending saw enough to reasonably be satisfied that Mr S was going to be able to make the loan repayments in a sustainable way – particularly bearing in mind that the loan amount was insufficient for Mr S to be able to make any meaningful impact on his overall outstanding credit debt within a reasonably foreseeable period of time, even after some debt consolidation.

I've thought carefully about what Everyday Lending said in response to our investigator's view. I don't think the fact alone that this expensive loan was taken out to repay other expensive credit means it was fairly provided. I think the scale of his debts, compared to the much smaller value of the loan, would suggest that he would likely remain in serious financial trouble regardless. The total amount payable under this loan agreement was £9,051.48 if it ran to term. Even if Mr S had used this loan to repay some existing debt, I don't think Everyday Lending was able to safely say this would've benefitted his overall position sufficiently to achieve a significant and sustainable improvement in his financial situation.

And given his recent borrowing, there was a real risk that Mr S might use this loan to help him meet his immediate need to make loan repayments with the result this loan would simply add to his existing debt.

For all these reasons, I don't think Everyday Lending could reasonably have satisfied itself that providing this loan to Mr S wouldn't put him in a worse position by increasing his overall debts and tying him into a high cost credit deal for the next 3 years that wasn't sustainably affordable for him.

I think what I've said is borne out by the fact that when he applied for loan 2, Mr S's credit position had worsened – and it looks like he still owed significant amounts to many of the same creditors.

So I don't think Everyday Lending should've provided this loan.

I haven't identified any other reasons that mean it would be fair for me to make any award, over and above the proposed redress which I've set out below. But as Mr S has paid extra on loans that he shouldn't have been provided with, I'm satisfied that he has lost out as a result of what Everyday Lending did wrong. So, I think Everyday Lending needs to put things right.

Putting things right

I think it is fair and reasonable for Mr S to repay the principal amounts that he borrowed, because he had the benefit of that lending. But he has been charged extra for loans that should not have been provided to him. In line with this Service's approach, Mr S shouldn't repay more than the capital amount he borrowed.

Everyday Lending should buy back outstanding debt it has sold if able to do so and then take the following steps. Otherwise, Everyday Lending should liaise with the new debt owner to achieve the results outlined below and do the following:

- add up the total amount of money Mr S received as a result of having been given loans 1 and 2. The repayments Mr S made should be deducted from this amount.
- If this results in Mr S having paid more than he received, then any overpayments should be refunded along with 8% simple interest* (calculated from the date the overpayments were made until the date of settlement).
- If any capital balance remains outstanding, then Everyday Lending should attempt to arrange an affordable payment plan with Mr S, bearing in mind the need to treat him positively and sympathetically in those discussions.
- Remove any negative information recorded on Mr S's credit file regarding these loans when paid.

*HM Revenue & Customs requires Everyday Lending to deduct tax from this interest. Everyday Lending should give Mr S a certificate showing how much tax has been deducted if he asks for one.

My final decision

I uphold this complaint and direct Everyday Lending Limited trading as Everyday Loans to take the steps set out above to put things right for Mr S.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 16 September 2021.

Susan Webb
Ombudsman