DRN-2896462

Financial Ombudsman Service

Complaint

Miss P has complained that Everyday Lending Limited ("Everyday Lending") irresponsibly provided her with an unaffordable loan.

Background

Everyday Lending provided Miss P with a loan for £3,000.00 in September 2018. It had an APR of 106.8% and was due to be paid in 30 monthly instalments of £228.18, which meant that the total amount repayable, including interest of £3,845.40, was £6,845.40.

One of our investigators considered Miss P's complaint. She told Everyday Lending that reasonable and proportionate checks would have shown that Miss P wasn't in a position to sustainably make the repayments to this loan. So she thought that Everyday Lending shouldn't have provided Miss P with this loan and upheld the complaint. Everyday Lending disagreed so the complaint was passed to an ombudsman.

My findings

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 the key rules, guidance and good industry practice - on our website. And I've referred to this when deciding Miss P's complaint.

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 Miss P's complaint.

These two overarching questions are:

- Did Everyday Lending complete reasonable and proportionate checks to satisfy itself that Miss P would be able to repay her loan in a sustainable way?
    - If so, did it make fair lending decisions?
    - If not, would those checks have shown that Miss P would've been able to do so?
- Did Everyday Lending act unfairly or unreasonably in some other way?

Did Everyday Lending complete reasonable and proportionate checks to satisfy itself that Miss P would be able to repay her loan in a sustainable way?

The rules and regulations in place when Everyday Lending lent to Miss P required it to carry out a reasonable and proportionate assessment of whether she could afford to repay her loan 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 Everyday Lending had to think about whether repaying the loan sustainably would cause difficulties or adverse consequences *for Miss P*. In practice this meant that Everyday Lending had to ensure that making the payments to the loans wouldn't cause Miss P undue difficulty or adverse consequences. In other words, it wasn't enough for Everyday Lending to simply think about the likelihood of it getting its money back, it had to consider the impact of loan repayments on Miss P.

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 customer'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 is likely to be greater and the customer is required to make payments for an extended period); and

- 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).

There may also be other factors which could influence how detailed a proportionate check should've been for a given loan application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances.

I've carefully thought about all of the relevant factors in this case.

Were Everyday Lending' checks reasonable and proportionate?

Everyday Lending has said that it completed an income and expenditure assessment with Miss P. It says Miss P's monthly income was recorded as £2,237.98 which was verified by bank statements and a payslip. Miss P was recorded as having mortgage payments of £322 a month and her living expenses were estimated using data and figures from the Office of National Statistics ("ONS"). Once monthly repayment amounts for Miss P's remaining credit commitments were added to her repayments for this loan, she was left with approaching £300 each month in disposable income.

I've carefully thought about what Everyday Lending has said. But simply requesting information from a borrower doesn't, on its own, mean that a lender will have carried out a borrower focused assessment of the borrower's ability to sustainably repay a loan.
I'm concerned that Everyday Lending appears to have proceeded with this application in circumstances where a large proportion of Miss P's expenditure was estimated.

Indeed I'm not sure that Everyday Loans numbers even add up here. Everyday Lending says Miss P's income was calculated as being £2,237.98 each month. But this appears to be the amount it recorded as joint income. Everyday Lending's checks on Miss P's income appear to suggest that she was only earning close to £1,500.00 a month. While the regulations do allow a firm to take into account joint income, it is only fair and reasonable to do so in circumstances where joint expenditure is also taken into account. And I can't see anything to suggest that Miss P was asked for details for her husband's expenditure. And when this income discrepancy is accounted for, Miss P's loan repayments become pounds and pence unaffordable.

Furthermore, I've also seen that monthly creditor repayment amount Everyday Lending arrived at included minimum payments for Miss P's credit cards. So I think that the monthly creditor repayment amount arrived at wasn't particularly accurate here and bearing in mind the defaults that showed up in Miss P's credit search as well as the other existing high-cost lending, which suggested Miss P fell outside the portfolio of the average customer covered by ONS data, I would have expected Everyday Lending to have carried out further checks before concluding the repayments to this loan were affordable.

So as well as asking Miss P about the details of her income and expenditure and carrying out credit checks, I think that Everyday Lending needed to verify what Miss P said. It could have done this by applying closer scrutiny to the bank statements it had or could have asked for other information such as copies of bills. And when it obtained this information it needed to properly scrutinise it and ensure that Miss P did have enough funds to be able to make the payments.

As there's no evidence that Everyday Lending did properly scrutinise the information provided, or that it verified, rather than estimated Miss P's expenditure, I find that it didn't complete fair, reasonable and proportionate affordability checks before providing Miss P with this loan.

Would reasonable and proportionate checks have indicated to Everyday Lending that Miss P would have been unable to sustainably repay this loan?

As reasonable and proportionate checks weren't carried out before this loan was provided, I can't say for sure what they would've shown. So I need to decide whether it is more likely than not that proportionate checks would have told Everyday Lending that Miss P would've been unable to sustainably repay this loan.

Miss P has now provided us with evidence of her financial circumstances at the time she applied for this loan. Of course, I accept different checks might show different things. And just because something shows up in the information Miss P has provided, it doesn't mean it would've shown up in any checks Everyday Lending might've carried out.

But in the absence of anything else from Everyday Lending showing what this information would have shown, I think it's perfectly fair, reasonable and proportionate to place considerable weight on it as an indication of what Miss P's financial circumstances were more likely than not to have been at the time.

As I've already explained, Everyday Lending was required to establish whether Miss P could sustainably make her loan repayments – not just whether the loan payments were technically affordable on a strict pounds and pence calculation (even though Everyday Lending's own checks suggested this was unlikely). And as a borrower shouldn't have to borrow further in order to make their payments, it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower won't be able to sustainably make their repayments if it is on notice that they are unlikely to be able to make their repayments without borrowing further.

I've carefully considered the information Miss P has provided in light of all of this.

The information provided shows that Miss P's was already struggling to manage the quite considerable credit commitments she already had. She was borrowing from multiple sources in order to meet her commitments to her existing creditors. I don't think the limited amount of discretionary purchases that Everyday Lending has referred to changes this. And, in my view, the information provided demonstrates that Miss P was in no position to have been able to sustainably repay this loan.

Bearing this in mind, I'm satisfied reasonable and proportionate checks would more likely than not have demonstrated that Miss P would not have been able to make the repayments to this loan.

Did Everyday Lending act unfairly or unreasonably towards Miss P in some other way?

I've carefully thought about everything provided. Having done so, I've not seen anything here that leads me to conclude Everyday Lending acted unfairly or unreasonably towards Miss P in some other way.

So I find that Everyday Lending didn't act unfairly or unreasonably towards Miss P in some other way.

Did Miss P lose out as a result of Everyday Lending unfairly and unreasonably providing her with her loan?

I think that this loan had the effect of unfairly increasing Miss P's indebtedness. This loan wasn't cheap especially when compared to mainstream providers and she ended up paying interest and charges on a loan that she shouldn't have been given in the first place.

So I find that Miss P lost out because Everyday Lending unfairly provided her with this loan.

Fair compensation – what Everyday Lending needs to do to put things right for Miss P

Having carefully thought about everything, I think that it would be fair and reasonable in all the circumstances of Miss P's complaint for Everyday Lending to put things right by:

- refunding all interest, fees and charges Miss P paid on her loan;
- adding interest at 8% per year simple on the refunded interest, fees and charges Miss P paid from the date they were made to the date of settlement†;
- removing all adverse information about this loan recorded on Miss P's credit file;

† HM Revenue & Customs requires Everyday Lending to take off tax from this interest. Everyday Lending must give Miss P a certificate showing how much tax it has taken off if she asks for one.

My final decision

For the reasons I've explained, I'm upholding Miss P's complaint. Everyday Lending Limited should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 28 March 2022.

Jeshen Narayanan
Ombudsman