

The complaint

Mr S complains that Everyday Lending Limited irresponsibly provided him with an unaffordable loan.

What happened

Everyday Lending provided Mr S with a loan as follows:

Loan	Date taken	Loan status	Number of monthly instalments	Loan amount	Approximate monthly repayment*
1	March 2020	Outstanding	48	£5,100	£305.58

When Mr S complained to Everyday Lending it said it had completed reasonable and proportionate checks which showed that the loan was 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 and he set out the steps he said Everyday Lending should take to put things right.

Everyday Lending disagreed with our investigator's view. It mainly said that the purpose of the loan was debt consolidation and that it would be used to pay any outstanding payday loans, a mail order account and other creditors leaving Mr S with just one hire purchase agreement with a monthly credit payment of £269 as his main creditor. So it didn't agree that the loan was unaffordable and it asked for the case to be sent to an ombudsman to review.

The complaint came to me to decide. I issued a provisional decision.

What I said in my provisional decision

Here are some of the main things I said.

"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 things like 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.

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 around £2,039. After doing its own background checks and allowing for the amount it calculated that Mr S would be spending on credit and his other regular monthly outgoings, Everyday Lending worked out that Mr S should still have disposable income of approximately £321 after taking out this loan. So, it felt the loan was affordable for him.

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 looking at its credit checks and the bank statements that Mr S provided to Everyday Lending, it could see that Mr S didn't in reality appear to have the amount of disposable income its checks suggested he did. And it could've seen that Mr S had recently taken out five other expensive short term loans just in the month or so running up to him applying for this loan.

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.

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. The total amount payable under this loan agreement was £14,667.84 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.

Also, it seems to me that, even on the figures that Everyday Lending appears to have relied on, having to pay £269 for an ongoing hire purchase agreement plus the monthly repayments for this loan meant that Mr S would potentially be spending around 28% of his average take home pay on servicing this debt alone. He'd signed up to make the repayments on this loan for the next four years and the hire purchase agreement was due to run for all of this time. I think that this would have been such a significant proportion of his income committed to repaying debt that Everyday Lending ought to have realised that it would be unlikely that Mr S would be able to make the loan repayment in a sustainable way over the whole loan term.

And bearing in mind that the loan Everyday Lending provided wasn't enough to pay all the credit debt that Mr S had told Everyday Lending he planned to use the loan for, it seems clear that Mr S's ongoing credit spending each month would be more than Everyday Lending had calculated – and most likely unaffordable looking at the evidence of his bank statements.

I think what I've said is borne out by the payment problems Mr S has run into, despite what Everyday Lending said about him volunteering to overpay early on. The fact Mr S made overpayments at the start doesn't mean that the loan it provided was ultimately sustainable for Mr S.

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 four years that wasn't sustainably affordable for him.

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 been further indebted with a high amount of interest and possibly charges on a loan 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."

What the parties said in response to my provisional decision

Mr S is happy with my provisional decision.

Everyday Lending disagreed with what I said and the provisional decision I reached. In particular, it said:

- disposable income is calculated using income minus creditor repayments and living expenses and Mr S did have disposable income of approximately £321 after taking out this loan
- he wasn't reliant on new credit to manage his debt repayments - he enjoyed a lifestyle that his income and living arrangements allowed him and the payday loans that he took out also reflected this
- he expressed a very serious interest in sorting out his finances to be able to get back to high street lending. The successful repayment of our loan would have helped him towards this
- the main credit repayment he was left with after our loan had consolidated the debt he requested to consolidate would have been his car finance which we couldn't have consolidated as our maximum loan value is £15,000 and we wouldn't have consolidated as it wouldn't have made sense for us to
- whilst his debt repayment to income ratio was higher than average his personal circumstances were below average with no expenditure on housing or utilities so we do not believe this ratio being higher than average in a non-average case would be reason not to grant lending
- repayment history of the loan supports that it was more than sustainable over the term of the loan with Mr S making monthly overpayments of around 30% which also supports the disposable income we calculated was realistic.

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.

I'd like to thank both parties for all the information that has been provided about this matter and Everyday Lending for responding so promptly to my provisional decision.

I've taken carefully into account everything that's been said in response to my provisional decision. I'd like to assure Everyday Lending that I've thought carefully about everything again before coming to my final decision. And whilst I have highlighted above only what seem to me to be the main points of concern they've raised, I have read thoroughly and taken into account everything they have asked me to reconsider.

Everyday Lending hasn't provided me with any new information that changes what I think about this case. I'd already considered all the main points mentioned above when thinking about my provisional decision. And I have addressed in my provisional decision all the points which have a bearing on the outcome. I would just add that the fact Everyday Lending has acknowledged that Mr S's debt repayment to income ratio was higher than average *despite* his limited responsibility for all the usual living costs seems to me to be a further reason *not* to lend to him.

I appreciate that Everyday Lending takes a different view to me. But I still think it's fair to uphold this complaint for the reasons I explained more fully in my provisional decision.

Putting things right

I think it is fair and reasonable for Mr S to repay the principal amount that he borrowed, because he had the benefit of that lending. But he has been charged extra on a loan 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.

If Everyday Lending has sold any outstanding debt it should buy this back 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 this loan. 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 this loan when it is 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 to take the steps I've 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 13 September 2021.

Susan Webb
Ombudsman