DRN-3080818

The complaint

Mr E says Everyday Lending Limited (trading as Everyday Loans) irresponsibly lent to him.

What happened

In December 2016 Everyday Loans gave Mr E a loan for £5,000. The loan was to be repaid over 48 months at a monthly repayment of £348.50. The interest charged on the loan (if it ran to full term) was £11,728, making the total cost £16,728.

Mr E used the loan to consolidate two existing loans totalling £2,862.39. The remaining balance of £2,137.61 was advanced directly to Mr E. Everyday Loans has indicated that some of the funds advanced directly to Mr E were also intended for consolidation of other existing debts.

Mr E, together with his representatives, complains Everyday Loans failed to carry out effective affordability assessments. They argue that had Everyday Loans completed these checks it wouldn't have advanced Mr E any further funds.

In response to the complaint Everyday Loans disagreed it lent irresponsibly. It says that Mr E provided a copy of his latest payslips and bank statements. From this Everyday Loans established his income was £1,700 per month, he was also in receipt of a private pension for £577.56 per month and received child benefit. It argued that by consolidating existing debts Mr E's monthly outgoings were reduced improving his financial circumstances. Everyday Loans says it then calculated a percentage of his income for general living expenses leaving Mr E with disposable income of over £300. Everyday loans therefore argued that the loan was affordable for Mr E. It also argued that Mr E repaid the loan early in 23 months, so it feels this demonstrates the loan was affordable for him.

Unhappy with Everyday Loans' response, Mr E referred his complaint to our service. One of our investigators considered the complaint and upheld it. She concluded that from the information Everyday Loans held about Mr E it was clear there were signs he was having trouble managing his money. In particular, she highlighted that Everyday Loans' checks showed Mr E had taken out a number of payday loans and other high cost credit in the year prior to the loan in question. She felt that this suggested Mr E was in a cycle of lending and borrowing to cover his regular expenditure. So she argued that Mr E couldn't have sustainably afforded to repay the loan.

In response to the assessment Everyday Loans disagreed. It argued that Mr E had told Everyday Loans he was borrowing to pay for repairs to his car and this had placed him in a cycle of payday lending. It argued that by consolidating some of Mr E's existing debits his monthly credit repayments had reduced putting him in a much better financial position. Prior to this loan, Everyday Loans had calculated that he would've had no disposable income and this loan enabled him to get out of a payday loan cycle. In response the investigator disagreed. She didn't think this loan would've taken Mr E out of his pattern of payday lending. She also highlighted that the total cost of the loan was £16,728 and so she didn't agree that repaying such a substantial sum was going to improve his overall financial position. Everyday Loans didn't agree with the investigator and asked for an ombudsman to review the complaint. This complaint has therefore been passed to me to consider.

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.

Everyday Loans needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mr E could repay the loans in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure etc.

I've considered the information that Everyday Loans gathered as a result of the checks it completed, and I think that it had sufficient information to demonstrate that Mr E couldn't have afforded to sustainably repay this loan. From the results of Mr E's credit searches, it's clear he had a number of existing credit facilities/loans with balances outstanding. He had also been relying on short-term high cost credit for a substantial period of time (in excess of a year) which is not the purpose of this type of credit and in and of itself should have demonstrated that Mr E was having difficulty managing his finances.

I've also noted Everyday Loans has recorded that the purpose the short-term high cost credit was for car repairs. However, I don't think this is plausible given in 2016 alone 10 loans are detailed on his credit search results. And this pattern of regularly using short-term high cost credit was also evident in 2015. I think it's more likely Mr E was reliant on this type of credit to meet his regular expenditure and his borrowing was already unsustainable.

In addition, Mr E's credit results also revealed he had four existing credit cards of which three had balances which were around the credit limit. And he had gone slightly over his agreed limit on one of these credit cards accounts. Furthermore, looking at the bank statement Mr E provided to Everyday Loans I can see that he is almost consistently overdrawn, starting and finishing the month overdrawn. And he regularly exceeded his agreed overdraft limit of £500 by going into his emergency limit and being subject to additional fees. So again I think it should've been clear to Everyday Loans based on the information it had available, that Mr E was already experiencing problems managing money and that it wasn't sustainable to agree this loan.

I've considered Everyday Loans' argument that the loan in question improved Mr E's financial circumstances as it consolidated some of his existing debt and reduced his monthly expenditure. There was some debate between the investigator and Everyday Loans about what existing debt Mr E had that was consolidated into this loan. Everyday Loans argued that in addition to the two loans it provided cheques to repay, Mr E also consolidated a catalogue shopping account and an existing payday loan from the balance advanced to him. It's not clear however, if this was the intention, why Everyday Loans didn't provide cheques for the remaining balances in the same way as it did for the two loans.

But in any event, even if I accept the purpose of the loan in question was to consolidate the four accounts detailed, I still don't agree this improved Mr E's overall financial position or that it was responsible to lend. It was clear that even without the accounts which were consolidated (including the accounts Everyday Loans says was consolidated) Mr E had substantial debt outstanding. He was clearly overindebted and struggling to meet his credit repayments and monthly expenditure without needing to borrow further and I don't think consolidating a small number of debts would have materially changed this. Particularly as, in granting this loan, Everyday Loans charged Mr E over £11,000 in interest. So it seems unlikely that this materially improved his overall indebtedness.

Additionally, consolidating a debt that is due to be repaid in full in the following month (like a payday loan) will inevitably decrease someone's outstanding payments for the following month. But looking at the longer-term impact of this loan, the monthly repayments were £348.50 and the combined monthly repayments for the two loans and catalogue accounts were £344.65. So I don't agree with Everyday Loans argument that this loan would have improved Mr E's regular monthly credit expenditure, as after the first month he would have been paying practically the same amount per month.

I've noted Everyday Loan's argument that Mr E was able to repay the loan and this suggests it was affordable. However, repaying a loan doesn't demonstrate that Mr E was able to do so sustainably, without further financial difficulties. And for the reasons explained above, I think it should've been clear to Everyday Loans at the time of agreeing this loan that Mr E couldn't have sustainably afforded to repay it. So I don't think Everyday Loans should have agreed this loan.

I have noted that Mr E's representatives have made a number of other arguments which I have considered. However, as I'm already upholding this complaint and directing Everyday Loans to put things right as I've described below, I don't need to address them further.

Putting things right

When I find that a business has done something wrong, I'd normally direct it – as far as it's reasonably practicable – to put the complainant in the position they *would be in now* if the mistakes it made hadn't happened.

In this case, that would mean putting Mr E in the position he would now be in if he hadn't been given the loan in question.

However, this isn't straightforward when the complaint is about unaffordable lending. Mr E *was* given the loan which have since been used and, in these circumstances, I can't undo what's already been done. So, it isn't possible to put Mr E back in the position he would be in if he hadn't been given the loan in the first place. But equally I don't think it appropriate for Everyday Loans to benefit from an unfair lending decision.

Bearing this in mind, Everyday Loans needs to do the following:

1. Refund all the interest, fees and charges Mr E paid towards the loan.

2. If the borrowing is still in place, reduce any outstanding capital balance by the amount calculated at step 1.

3. If, after Step 2, any outstanding capital balance remains, ensure that it isn't subject to any historic or future interest and/or charges. And arrange an affordable repayment plan with Mr E. But if Step 2 leads to a positive balance, the amount in question should be given back to Mr E and 8% simple interest should be added to the surplus†.

4. Remove any adverse information recorded on Mr E's credit file as a result of the interest and charges on this loan.

† HM Revenue & Customs requires the business to take off tax from this interest. The business must give the consumer a certificate showing how much tax it's taken off if they ask for one.

My final decision

I uphold this 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 E to accept or reject my decision before 15 June 2022.

Claire Lisle
Ombudsman