DRN-3112842

The complaint

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

What happened

This complaint is about one loan Everyday provided to Mr W in July 2016. Mr W borrowed £1,500 and he was due to make 24 repayments of £154.43. The total he would repay would be £3,702.32 over the term of the loan.

I understand that Mr W had problems making the loan repayments and he has been able to repay £1,431.01. The loan payments are now being collected by a third-party collection agency.

Our adjudicator upheld Mr W's complaint. She though that Everyday shouldn't have given the loan. This was because Mr W had a significant amount of other debt which it knew about. And this would mean that Mr W wouldn't be able to sustainably repay this loan.

Everyday disagreed. It said that whilst it was aware that Mr W had other short term and high cost loans, it was recorded that this new loan was for debt consolidation and a computer. And so, his other debt wouldn't mean that the new loan was unsustainable as his other debt would be repaid.

As no agreement has been reached the complaint has been passed to me, an ombudsman.

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 general approach to complaints about unaffordable/irresponsible lending - including all of the relevant rules, guidance and good industry practice - on our website.

Taking into account the relevant rules, guidance and good industry practice, I think the overarching questions I need to consider in deciding what's fair and reasonable in the circumstances of this complaint are:

- Did Everyday Loans, each time it lent, complete reasonable and proportionate checks to satisfy itself that Mr W would be able to repay in a sustainable way? If not, would those checks have shown that Mr W would've been able to do so?
- Did Everyday Loans act unfairly or unreasonably in some other way?

If I determine that Everyday did not act fairly and reasonably in its dealings with Mr W, and that as a result he has lost out, I will go on to consider what is fair compensation.

The rules and regulations in place required Everyday to carry out a reasonable and proportionate assessment of Mr W's ability to make the repayments under this agreement. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower" focused – so Everyday had to think about whether repaying the loan would be sustainable and/or cause significant adverse consequences *for* Mr W. In practice this meant that business had to ensure that making the payments to the loan wouldn't cause Mr W undue difficulty or significant adverse consequences.

In other words, it wasn't enough for Everyday to simply think about the likelihood of it getting its money back, it had to consider the impact of the loan repayments on Mr W. 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 consumer'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 *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).

I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Mr W's complaint.

Did Everyday complete reasonable and proportionate checks to satisfy itself that Mr W would be able to repay the loan without experiencing significant adverse consequences?

Everyday has provided evidence to show that before approving the loan it obtained some information about Mr W's income and employment. It also looked at some credit reference agency information. It used a proportion of his income to estimate his expenditure using national averages. Based on those checks, Everyday thought it was reasonable to lend. It thought the checks showed that Mr W had enough disposable income to be able to repay the lending sustainably.

As I mentioned above, our adjudicator thought that the checks Everyday did showed that Mr W wasn't in a position to borrow. This is because the bank statements he provided, and that Everyday saw, showed that he was borrowing and repaying a significant amount to short-term lenders, and other creditors, each month. He was also struggling to pay his ordinary expenses, some direct debits were routinely being returned and there was evidence of payments to a debt recovery organisations. So, he wouldn't be able to sustainably repay this lending.

In its response to the opinion Everyday didn't dispute that Mr W had taken 13 short term loans over the four months running up to the loan. And at least two were taken very recently. But it says that the new loan was to help him repay this lending and purchase a computer.

I've looked to see if what Everyday says is reasonable. There is only a passing reference to debt consolidation in the point of sale information. And it's not unreasonable to say that Mr W was borrowing and repaying significant amounts to other creditors including short term lenders before he took this loan. The total amounts were not far short of, or above, the new loan amount itself.

And Mr W was clearly struggling to repay his other bills and payments. And this had been going on for some time given the entries showing payments to a third-party debt collection organisation. This would be on top of the amounts he owed to the short term lenders.

I don't think it's reasonable to say that the information Everyday had showed that this new loan would be enough to repay his other lending in full. And I don't think it was reasonable to assume Mr W would be able to repay enough of his existing debts for this loan to have made a difference to what he would pay towards other creditors going forwards.

So, I don't think that Everyday could say with any degree of confidence that taking new loan would allow Mr W to make the loan repayments sustainably. As he wouldn't be able to afford to do so given his other commitments and financial problems. And so, I don't think it was responsible to lend.

And this was borne out going forward. Mr W has provided his bank statement for August 2016, the month after he took the loan. This shows that he borrowed just over £1,600 from other short term lenders. So, its clear that his loan wasn't going towards debt consolidation and wasn't used as such.

Given all of the above, I think Everyday needs to put things right. It shouldn't have approved this loan as I don't think Mr W could sustainably repay it.

Did Everyday act unfairly or unreasonably in some other way?

I've also thought about whether Everyday acted unfairly in some other way and I haven't seen any evidence that it did.

Putting things right

Everyday shouldn't have given Mr W this loan. So it should:

- Remove all interest, fees and charges applied to the loan,
- Treat any payments made by Mr W as payments towards the capital amount of £1,500,
- If Mr W has paid more than the capital then any overpayments should be refunded to with 8%* simple interest from the date they were paid to the date of settlement,
- But if there's still an outstanding balance, Everyday should come to a reasonable repayment plan with Mr W.
- Remove any adverse information about this loan from Mr W's credit file.

† HM Revenue & Customs requires Everyday to take off tax from this interest. Everyday must give Mr W a certificate showing how much tax it's taken off if he asks for one.

My final decision

For the reasons given above, I’m partially upholding Mr W’s complaint. Everyday Lending Limited should put things right for Mr W as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr W to accept or reject my decision before 17 March 2022.

Andy Burlinson
Ombudsman