

The complaint

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

What happened

In April 2019 Everyday Loans gave Mr H a loan for £2,000 to be repaid over 24 months. The monthly repayment was £234.43 and the total amount to be repaid (including interest) was £5,626.32 if the loan ran to full term.

Mr H, together with his representatives, complain that the loan was unaffordable for him and as such shouldn't have been lent. Mr H says that if Everyday Loans had looked at his bank statements it would have seen from the way he was handling his money that he wasn't in a position to afford the loan. Mr H has also said that he subsequently needed to consolidate the loan into a further loan with lower monthly repayments.

In response to the complaint Everyday Loans disagreed it lent irresponsibly. It says Mr H provided copies of two months bank statements and a payslip. In addition, it completed a credit search and estimated Mr H's expenditure using ONS data. From this it calculated that Mr H's monthly income (including child benefit) was £2,630.70 and it estimated Mr H had a monthly disposable income of £998.10 after repaying the loan in question. So it didn't agree that Mr H couldn't afford to repay the loan.

Unhappy with Everyday Loans' response, Mr H referred his complaint to our service. One of our investigators considered the complaint and upheld it. She concluded that Everyday Loans had enough information to show Mr H was experiencing problems managing his money. She highlighted that the credit search results completed by Everyday Loans show an active default to a communications provider from August 2018 for £499 and at the time of lending the balance outstanding was £429. In addition, the results showed another default for £62 around two weeks prior to this loan being agreed and a credit card with a balance of £191 which was close to the £200 limit on the account. She also highlighted that Mr H's bank statements show he was making several monthly payments to a debt management company.

Everyday Loans disagreed with the investigator's assessment and in the following email exchange it made a number of points. Everyday Loans said that Mr H provided a reasonable explanation for his credit history saying that he had gotten into difficulty after a car accident and being out of work. It also argued that his bank statements showed Mr H was paying back his debts to a debt management company. With regards to the credit card, it argued that being close to the limit on such a small limit isn't a reason not to lend and given the balance was under the limit this shows the credit card account was well managed. Finally it also didn't agree that a default of £62 showed Mr H was having sufficient issues in managing his money.

The investigator argued that, given the £62 default was recent and Mr H hadn't made payments towards this debt for several years prior to default, Everyday Loans should have questioned this further. In particular, she thought it should've caused Everyday Loans to question whether Mr H really had over £900 monthly disposable income that it calculated

after the repayment for the loan in question. In addition, she argued that as the loan didn't consolidate debt, it increased Mr H's indebtedness at a time when he was clearly experiencing problems.

As an agreement couldn't be reached Everyday Loans asked for an ombudsman to consider the complaint, so the complaint has been passed to me.

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 lent responsibly. In practice this means that it should have carried out proportionate checks to make sure Mr H 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 (detailed above), and I think that it had sufficient information to demonstrate that Mr H couldn't afford to sustainably repay this loan.

Looking at the credit search results which Everyday Loans gathered, I can see Mr H had a default from a communications supplier in August 2018. Whilst the loan wasn't until April 2019, the default was still active and only £70 of the outstanding balance had been repaid in the intervening months. In addition, Mr H had a default for £62 from another communications supplier around two weeks prior to taking out this loan and he hadn't made payments towards this debt for a substantial period of time. These are clear indications that Mr H was having difficulties managing his money leading up to the loan in question and suggest that Mr H was unlikely to be able to sustainably afford the lending in question. I appreciate Everyday Loans has argued it spoke to Mr H about his financial circumstances and Mr H told it his financial difficulties were in the past. However, I don't think it was reasonable to rely on this when Mr H's credit search results gave Everyday Loans clear reasons to doubt Mr H's comments.

I've also considered Everyday Loans' argument that the £62 was a relatively low amount and because of this it didn't agree with the investigator that this was a sign Mr H was having significant problems managing his money. However, I think failing to pay an existing debt resulting in the account being placed in default is clearly a sign of someone having current financial difficulties. I also think the fact that it's such a low amount poses additional concerns which Everyday Loans should have considered. This account defaulted just prior to Mr H wanting additional credit to purchase another car (from the records Everyday Loans made at the time). I fail to see why someone who was seeking additional credit would allow an existing account for £62 to go into default just prior to this application if they weren't struggling to repay it.

In addition, like the investigator, I also don't think it was reasonable for Everyday Loans to rely on an estimated monthly disposable income of almost £1,000 given what it could see from Mr H's credit search results. Mr H had defaulted accounts with £62 and (at the time of application) £429 outstanding, so I think it's clear Mr H was unlikely to have anywhere near this level of disposable income available and was struggling to repay his commitments. Furthermore, I think Everyday Loans should have also questioned why, if Mr H had almost £1,000 in disposable income per month, he wanted a loan for £2,000 (which if it ran to full term would have cost an additional £3,626.32 in interest).

Turning to the bank statements Mr H provided to Everyday Loans as part of his application, it's clear from these that Mr H was regularly moving money back and forth between accounts. This is an indicator that someone is struggling to manage their monthly outgoings. I can also see Mr H was incurring arranged and unarranged overdraft fees and was making multiple separate payments to a debt management company. These are additional signs that an individual is struggling financially and that giving someone additional borrowing in these circumstances was not sustainable.

There's been some debate between the investigator and Everyday Loans about whether or not Mr H's credit card also indicated Mr H was struggling financially. Whilst the account was almost at its limit, this was a relatively low limit and the account wasn't in default so I'm not sure in and of itself being close to a £200 limit alone shows Mr H was struggling financially. However, I think by taking a broader look at Mr H's credit search results and bank statements, Everyday Loans had sufficient information to demonstrate it wasn't sustainable to lend.

I've noted Everyday Loans has said Mr H was able to repay his loan early, however this doesn't demonstrate that he was able to repay it sustainably. And Mr H has said he refinanced this loan into another to reduce the repayments (and interest charged on the account) as he couldn't afford to repay it. So I don't agree that this demonstrates the loan was affordable for him.

Taking everything into consideration, I think it's clear Mr H was having current challenges meeting his regular expenditure, including his existing financial commitments and that he was unlikely to be able to sustainably repay this loan. So I don't think Everyday Loans should have agreed this loan.

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 H 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 H was given the loan which has since been used and, in these circumstances, I can't undo what's already been done. So, it isn't possible to put Mr H 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 H 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 H. But if Step 2 leads to a positive balance, the amount in question should be given back to Mr H and 8% simple interest should be added to the surplus†.

4. Remove any adverse information recorded on Mr H'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 H to accept or reject my decision before 21 June 2022.



Claire Lisle
Ombudsman