

## The complaint

Mr M complains Everyday Lending Limited trading as Trusttwo didn't complete reasonable and proportionate checks when approving him as a guarantor for a loan.

## What happened

In March 2019 Mr M was accepted as a guarantor on a loan for another party, *'the borrower'*. The loan was for £5,000 over a term of 24 months. The monthly repayments were around £286, and the total repayable value was around £6,870.

In December 2019 Mr M raised a complaint with Trusttwo as he felt it hadn't completed reasonable and proportionate checks when approving him as a guarantor. He said had it done so, it would have identified the loan repayments wouldn't have been affordable to him had he needed to step in where the borrower couldn't make them.

Mr M brought his complaint to our service when it couldn't be resolved by Trusttwo.

Our service reviewed Mr M's complaint twice. The most recent investigator concluded:

- The checks Trusttwo completed on the borrower were not proportionate;
- This was because the verified salary of the borrower fluctuated and as such the investigator was satisfied further checks should've been completed;
- Had further checks been completed it's likely Trusttwo would've realised the loan was unaffordable to the borrower as they were left with too little a disposable income each month – meaning the loan wasn't sustainable.

Trusttwo disagreed with these findings; and maintained it completed reasonable and proportionate checks on both the borrower and Mr M. It maintained it made a fair decision to lend to both parties.

## 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 complaints about irresponsible and unaffordable lending as well as the key rules, regulations and what we consider to be good industry practice on our website. I've used this approach to help me decide Mr M's complaint.

Bearing in mind the complaint before me, I think that there are a number of overarching questions I need to consider in order to fairly and reasonably determine Mr M's complaint. These are:

1. Did Trusttwo complete reasonable and proportionate checks to satisfy itself that the borrower would be able to repay the loan in a sustainable way?
  - If so, did it make a fair lending decision?

- If not, would those checks have shown that the borrower would have been able to do so?
2. Did Trusttwo obtain Mr M's properly informed consent before binding him to the guarantee and indemnity agreement?
  3. Did Trusttwo complete reasonable and proportionate checks on Mr M to satisfy itself that he was in a position repay the loan in the event the borrower did not?
    - If so, did it make a fair decision?
    - If not, would those checks have shown that Mr M would have been able to do so?
  4. Did Trusttwo act unfairly or unreasonably in some other way?

I've gone on to answer these questions in turn.

Did Trusttwo complete reasonable and proportionate checks to satisfy itself that the borrower would be able to repay the loan in a sustainable way?

The relevant rules, regulations and guidance at the time Trusttwo lent required it to carry out reasonable and proportionate checks. These checks needed to assess the borrower's ability to afford the loan and repay it sustainably over its term – without causing them financial difficulties.

There isn't a set list of checks a lender needs to carry out, but they should be proportionate, taking into account things like the type, amount, duration and total cost of the credit, as well as the borrower's individual circumstances.

And it isn't sufficient for Trusttwo to just complete proportionate checks – it must also consider the information it obtained from these checks to make a fair lending decision.

Trusttwo obtained the borrower's income and verified this with payslips. It also asked the borrower to declare their monthly rent and used Office of National Statistics data to calculate the borrower's monthly expenditure, based on the average person in the borrower's circumstances. It also completed a credit file check.

From all of this information Trusttwo assessed the loan to be affordable to the borrower and it approved the lending.

I've carefully considered Trusttwo's argument, but I don't agree it's checks were proportionate in this instance. I say this because it received four weeks of payslips from the borrower. And as part of its checks it appears to have calculated the borrower's weekly pay based on averaging the four payslips, and then calculating the equivalent pay over a monthly basis. But, two of the four payslips show holiday pay and the income the borrower received in these weeks is, comparatively, considerably less. It's therefore evidenced that the borrower's pay was subject to change based on their working hours and whether they took leave. They also appear to benefit from a weekly bonus that was paid at a reduced rate one week and wasn't paid in another week. So, this additional money by way of a bonus that Trusttwo used in its affordability calculations wasn't guaranteed.

The affordability calculations Trusttwo completed left the borrower with a very low monthly disposable income. This level of disposable income doesn't provide the borrower with what I would consider to be reasonable breathing space on a monthly basis to cover any unexpected expenses that could occur. And this disposable income is based on the higher salary calculations Trusttwo has used, which I don't consider do reasonably reflect the borrowers likely actual monthly income when averaged out across a larger period.

Trusttwo also saw the borrower had four active accounts on their credit file, two having limits which were being fully utilised. The borrower explained the main purpose of this loan was to repay their existing debt, both formal debt and informal debt with family members. And the remaining funds were to be used to carry out necessary repairs to their car and the property they were renting. So, Trusttwo were aware the borrower's total indebtedness was increasing; and that they couldn't afford to deal with the car and property repairs that had unexpectedly occurred without looking to borrow further money.

I therefore consider Trusttwo ought to have looked to verify the borrowers outgoings rather than use statistics based on the average person's circumstances.

Would further checks have shown the borrower would have been able to sustainably meet any repayments towards the loan?

Trusttwo has provided this service with the four weeks' payslips it obtained from the borrower when assessing their application. It has said it used Office of National Statistics to calculate the borrower's expenses and has provided the results of the credit file check it completed. It has also provided us with calls it had with the borrower at the application stage.

Having considered this evidence, I don't consider Trusttwo did make a fair lending decision when approving the borrower for this loan. And it therefore follows Mr M would not have been called upon to provide the guarantee and indemnity for this loan.

Trusttwo obtained four weeks' worth of payslips from the borrower to verify their income. It has said it averaged the income across these four weeks to determine the borrowers average weekly income. It used this figure to determine the borrowers monthly income and ultimately calculated they were left with a low disposable income per month after all deductions.

However, from the four payslips Trusttwo obtained the borrower's salary changed significantly based on their working hours. While they appear to receive holiday pay at the same rate as their working pay, they receive two additional payments when working, one of which appears to be an attendance bonus. I can see from the payslips that in one week where the borrower took leave, they didn't receive either of these extras payments – meaning in that week they received around 30% less gross pay. And in another week where they worked reduced hours, they received a reduced bonus.

So, it was clear to Trusttwo that these additional payments weren't guaranteed and were dependent on the hours the borrower worked. Given Trusttwo's own calculations detailed the borrower would be left with a nominal disposable figure each month, any further absence would considerably reduce this disposable figure, or could indeed leave the borrower with outgoings in excess of their monthly income. And I don't consider a period of two weeks absence within a month unlikely at some point over the full term of the loan. As such, the low disposable income gave the borrower no breathing space should their pay decrease in any given month due to absence.

I've also thought about the level of disposable income the borrower was left with on a monthly basis to cover any unexpected costs.

I've listened to the telephone calls Trusttwo has provided between itself and the borrower. In the first of the calls the borrower has said they were looking to consolidate two existing lines of credit as part of this loan, an overdraft and a credit card. Trusttwo saw this borrowing as it was evident on the credit file check it completed. The borrower also said they were looking to repay a family member money they'd borrowed from them, and to pay for necessary

repairs to their car and the property they were renting. So, Trusttwo knew it was increasing the borrower's total indebtedness by approving this loan. And based on what the borrower told it during the call, Trusttwo was also on notice that the borrower wasn't able to meet unexpected costs that had occurred from their disposable income without taking further borrowing.

So, I don't consider this loan was sustainably affordable to the borrower and it therefore follows I'm satisfied Trusttwo didn't make a fair lending decision when approving this loan.

As I've already determined that this loan shouldn't have been provided to the borrower, it therefore follows Mr M wouldn't have been called upon to provide the guarantee and indemnity for the loan. As such, I've not gone on to consider questions two and three as I set out above.

#### Did Trusttwo act unfairly or unreasonably in some other way?

I've not seen any information which suggests Trusttwo acted unfairly or unreasonably in any other way in relation to Mr M's complaint.

#### **Putting things right**

Everyday Lending Limited trading as Trusttwo should put Mr M back in the position he would be in had it not approved this loan. So, in order to settle Mr M's complaint, it should:

- Release Mr M from any obligations he has under the Guarantee and Indemnity agreement, and then terminate it;
- Refund any repayments Mr M has made towards this loan, together with 8% simple interest per year from the date of payment to the date of settlement; †
- Remove any information recorded on Mr M's credit file as a result of this loan.

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

#### **My final decision**

For the reasons set out above, my decision is that I'm upholding Mr M's complaint about Everyday Lending Limited trading as Trusttwo and direct it to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 15 February 2022.

Richard Turner  
**Ombudsman**