DRN-3169857

The complaint

Mr W complained that Everyday Lending Limited (trading as Everyday Loans) lent to him irresponsibly and provided him with loans that were unaffordable.

What happened

Everyday Loans provided loans to Mr W as follows:

Loan	Date taken	Amount	Term	Monthly repayment	Total amount repayable	Loan status
1	23/07/19	£1,000	18 months	£122.23	£2,200.14	Settled by loan 2 on 27/07/20
2	27/07/20	£1436.34	18 months	£168.29	£3029.22	Active

One of our adjudicators looked into the complaint. She didn't think Everyday Loans should have provided Mr W with the loans and she asked Everyday Loans to pay redress for this.

Everyday Loans didn't agree with the adjudicator's assessment. It mainly said:

- it had questioned Mr W about his adverse credit history before granting loan 1 and he had provided a reasonable explanation about this
- Everyday Loans didn't agree that the outstanding balance Mr W owed on a number of county court judgements was 'considerably high' as our adjudicator had suggested
- it asked for more information about why our adjudicator had felt that Mr W's spending on credit was too high a proportion of his income
- it said its affordability calculations showed that his creditor repayments were affordable for his individual circumstances.

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 W'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. And it's important to keep in mind that when working out if a loan looks likely to be affordable a lender must take a 'borrower focussed' approach and think carefully about the impact of the lending on the customer. The lending decision shouldn't just be about the business risk to the lender of not getting its money back.

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 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.

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.

For loan 1, Everyday Loans gathered information that showed Mr W's take home pay would be around £2,626 and verified his employment and pay by checking his bank statements. It carried out credit checks to see what he was paying to service his existing debts and noted his creditor repayments were around £957. Everyday Loans relied on statistical information to assess what someone in Mr W's particular situation would be likely to spend each month and allowed a figure of £680 for his spending on general living costs — which seems reasonable to me.

Everyday Loans allowed for the fact that Mr W said he planned to use the loan to repay a £700 loan he had recently taken out with another lender. Everyday Loans worked out that this would save him having to pay £218 per month for the next 6 months towards that loan. So it didn't include this amount when doing its own affordability calculations. On this basis, Everyday Loans calculated that Mr W would most likely have around £584 spare cash each month *after* taking out the loan with Everyday Loans.

But, whilst I've thought carefully about what Everyday Loans has said, I don't think that Everyday Loans made a fair lending decision on this occasion.

I don't think Everyday Loans thought carefully enough about what Mr W's credit history revealed about his overall financial situation. Despite the explanations he had told Everyday Loans, I think its own credit checks painted a picture of someone struggling to manage money problems effectively and it included clear warning signs that Mr W was likely experiencing financial difficulty.

It isn't unusual for applicants for this type of high cost loan to have a credit history showing other borrowing or an impaired credit record – and these things wouldn't necessarily be reasons to prompt a responsible lender to decline a loan application.

But I think Everyday Loans should have been concerned to see that Mr W had a number of outstanding county court judgements shown on his record. I can understand why Everyday Loans might not have been put off lending on the strength of just a couple of judgement debts dating back to 2014 – one of which had been satisfied in 2017.

But Everyday Loans could also see that Mr W had another outstanding county court judgement dating back to 2017 as well as two more recent judgement debts within the previous 12 months dating from July and August 2018. The debt outstanding on these three cases alone was more than £1,700. I see this as part of a bigger picture that showed all the hallmarks of a person still in serious financial difficulty.

And I think that's borne out by the fact that Everyday Loans gathered information showing that Mr W was spending approximately one third of his take home pay on servicing debt. I think it's reasonable to think that if Mr W had really had the amount of disposable income Everyday Loans had calculated he wouldn't have needed to rely to this extent on credit. And even if his credit history covered a period when his circumstances were different, it didn't appear that he had made any meaningful inroads into clearing more of this debt in the way that Everyday Loans might reasonably have expected if it had correctly understood his financial situation.

To my mind, all this should've alerted Everyday Loans to the risk that it couldn't safely rely on what Mr W had told it about how he spent his money as he clearly had unexplained levels of problematic debt.

And even after allowing for the fact that Mr W planned to use this loan to repay other debt, this still left him needing to spend around a third or so of his take home pay on paying creditors. I think our adjudicator was right to suggest that this was such a significant proportion of Mr W's disposable income that Everyday Loans couldn't reasonably say that it was likely that Mr W would be able to repay its loan in a sustainable way – especially bearing in mind the 18 months loan term.

All the signs were that Mr W couldn't afford the debt he was already responsible for paying and he was relying on taking out new credit to supplement his income in order to be able to make the monthly repayments he owed. So it's hard to understand why Everyday Loans thought Mr W would be able to sustainably afford its loan.

And so I don't think Everyday Loans made a fair lending decision on this occasion when it agreed to provide this loan to Mr W based on the information it had in front of it.

It follows that I don't think Everyday Loans made a fair and reasonable lending decision when it set up loan 2 for him.

I think it should've been apparent that topping up his loan with Everyday Loans and borrowing extra at the same time was simply a continuation of the pattern of reliance on expensive payday and unsecured loans that Everyday Loans could see on its credit checks.

There were clear signs that Mr W was still struggling to manage his money – Everyday Loans saw that he had a number of returned unpaid direct debts shown on his bank statements and some other new credit accounts. Yet by taking out loan 2, Mr W was signing up to make increased monthly repayments to Everyday Loans. And he would still be committed to making monthly repayments to creditors of more than a third of his net monthly pay – which I don't think was a sustainable position for Mr W.

So, for all these reasons, to my mind, it was reasonably foreseeable that both these loans wouldn't be sustainably affordable for Mr W and Everyday Loans ought reasonably to have been aware that taking further, costly lending was unlikely to help Mr W and serve only to increase his indebtedness over the longer term. This is why I am planning on upholding Mr W's complaint that he should not have been given the loans.

I haven't seen anything to make me think that Everyday Loans acted unfairly or unreasonably some other way. So I'm not planning to award any additional redress over and above what I've set out below. But as Mr W has been further indebted with expensive lending that he shouldn't have been provided with, I'm satisfied that he has lost out as a result of what Everyday Loans did wrong. So, as things stand, I think Everyday Loans needs to put things right as follows."

What the parties said in response to my provisional decision

Everyday Loans has acknowledged safe receipt of my provisional decision.

The deadline for responses has now passed so I think it's reasonable for me to proceed with my review of this complaint.

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.

Having done so, and as no further comments have been received in response to my provisional decision that change what I think about this case, I still think it's fair to uphold this complaint for the reasons I explained in my provisional decision.

Putting things right

I think it is fair and reasonable for Mr W to repay the capital amount that he borrowed, because he had the benefit of that lending.

But he has paid extra for lending that should not have been provided to him. In line with this Service's approach, Mr W shouldn't repay more than the capital amount he borrowed.

If Everyday Loans has sold any outstanding debt it should buy this back if able to do so and then take the following steps. Otherwise, Everyday Loans 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 W received as a result of having been given the loan. The repayments Mr W made should be deducted from this amount.
- If this results in Mr W 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 Loans should attempt to arrange an affordable/suitable payment plan with Mr W keeping in mind its obligation to treat him positively and sympathetically in those discussions.
- Remove any negative information recorded on Mr W's credit file regarding the loan.

*HM Revenue & Customs requires Everyday Loans to deduct tax from this interest. Everyday Loans should give Mr W 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 (trading as Everyday Loans) to take the steps set out above to put things right for Mr W.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 28 December 2021.

Susan Webb
Ombudsman