DRN-3170430

## The complaint

Ms M complained that Everyday Lending Limited trading as Everyday Loans lent to her irresponsibly and provided her with an unaffordable loan.

## What happened

Ms M was given a loan by Everyday Loans as follows:

| Date taken | Loan amount | Number of monthly instalments | Monthly repayment* |
|---|---|---|---|
| 29 November 2017 | £2,000 | 24 | £208.52 |

Ms M said that she was already in financial difficulty when Everyday Loans provided this loan and that she struggled to meet the monthly repayments.

One of our adjudicators reviewed Ms M's complaint. He felt that Everyday Loans was able to see that Ms M already had money problems and he didn't think it looked like Ms M would have a reasonable level of disposable income left once her credit commitments and likely regular monthly outgoings were taken into account even after using this loan for some debt consolidation. So he felt that the loan was unaffordable for Ms M and he didn't think that Everyday Loans should've provided it. Our adjudicator set out the steps that he felt Everyday Loans needed to take to put things right.

Everyday Loans disagreed with our adjudicator's view. In summary, it mainly said it had discussed defaults seen on her credit file with Ms M and she'd had her credit cards for some years and seemed to be managing the accounts perfectly well. It took the view that she had a less than average amount of unsecured debt and her bank statements showed that she was in control of her finances, with no evidence of bank charges or overdraft use.

As the complaint hasn't been resolved informally, it comes to me to decide.

## 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. I have also taken into consideration regulatory rules and good industry practice at the time.

I'd like to reassure Everyday Loans that I've looked at the complaint afresh – and I've independently reached the same conclusions as our adjudicator and I am upholding Ms M's complaint for broadly the same reasons. I'll explain in more detail why I say this.

There are some general principles I will keep in mind and questions I need to think about when deciding whether to uphold Ms M'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 affordability, 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 only 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.

If reasonable and proportionate checks weren't carried out, I need to consider if a loan would've been approved if the checks had been done. If proportionate checks were done and a loan looked affordable, a lender still needed to think about whether there was any other reason why it would be irresponsible or unfair to lend. For example, if the lender should've realised that the loan was likely to lead to more money problems for a borrower already struggling with debt that can't be repaid in a sustainable way.

In light of this, I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- the *lower* a customer's income (reflecting that it could be more difficult to make any repayments to credit from a lower level of income)
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet higher repayments from a particular level of income)
- the *longer* the period of time a borrower will be indebted (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make repayments for an extended period).

I've kept all these things in mind when thinking about this complaint.

Everyday Loans asked Ms M about her income and expenses, it carried out credit checks and looked at her bank statements. It saw a pay slip and evidence of her other regular monthly payments into her bank account before verifying her monthly income. It also relied on statistical information to assess Ms M's likely monthly expenditure using national data showing typical spending for someone in similar circumstances.

Everyday Loans recorded a figure of around £1,673 net income per month and after doing its own background checks, an amount of £1,639 for Ms M's reasonably likely expenditure. Ms M told Everyday Loans that she intended to use the loan to repay two named debts.

After taking into account that this should reduce her monthly credit spending overall, Everyday Loans felt that the monthly repayments for this loan were affordable for Ms M.

But I don't think Everyday Loans thought carefully enough about what the information it had gathered showed about Ms M's overall financial situation and the realistic likelihood of her being able to pay its loan in a sustainable manner. And I don't think Everyday Loans made a fair lending decision when it lent to Ms M based on the information it had gathered.

I say this because Everyday Loans had information showing that Ms M was already in some financial difficulty. She had at least five active credit cards, and whilst Everyday Loans has said the amount of credit overall was below average, I think it is noteworthy that all the cards were close to or approaching their credit limit. As Everyday Loans has mentioned, she'd had some of these cards for a number of years. So I think this painted a picture of someone who was significantly reliant on using expensive credit cards to supplement monthly spending as there was no sign that Ms M was making any meaningful inroads into repaying this debt. And that wasn't surprising since, according to its affordability calculations, it looked unlikely that Ms M would have any or any significant monthly surplus after meeting all the costs she had to pay.

Bearing in mind that Ms M had been in regular paid work for some years and she said the other adult in the household had the tenancy in their name and Ms M contributed just £300 per month towards housekeeping/food/bills I think Everyday Loans should have realised that there was no obvious explanation why someone with the level of income it had established that Ms M received should need to rely to this extent on using expensive credit and be unable to repay it. I think Everyday Loans ought to have realised that at least some of the information it had gathered didn't appear to reflect what it saw regarding Ms M's actual financial situation. So it should've understood that this called into question the information it was relying on.

As well as this, Everyday Loans saw evidence of reliance on other expensive credit to fund the purchase of household goods and appliances and defaults on Ms M's record - including one incurred earlier that same year.

Like our adjudicator, I think this credit history strongly suggested that Ms M's finances were, in actual fact, already under significant stress and that the reality of her situation was that her debt was already unmanageable for her. I don't think that anything Ms M told Everyday Loans in support of her application was sufficient to explain her evident reliance on using high cost credit. And whilst I've carefully taken into account what Everyday Loans has said in response to our adjudicator's view, this doesn't affect my overall view. Her credit history suggested a reliance on borrowed money to support day to day spending.

Everyday Loans was aware from its credit checks that the other adult in the household was also using expensive credit, so it didn't look like there was likely to be much flexibility in the household finances that might've enabled Ms M to make savings elsewhere.

I think Everyday Loans should've realised that it looked like Ms M was supplementing her income with credit to fund her day to day spending and all the signs were that this loan looked like part of that ongoing pattern.

I think our adjudicator was right to think that the affordability assessment that Everyday Loans carried out didn't leave a sufficient safety margin.

Everyday Loans' affordability calculation meant Ms M would have around £78 left each month after paying for this loan on top of everything else she was paying. And I think 24 months was a long enough loan term to go beyond what would be a reasonably foreseeable period to expect complete stability in her finances. Having so little surplus income meant that Ms M was at real and immediate risk of money problems if her income went down or her expenses increased. I don't think Everyday Loans was reasonably able to be satisfied that Ms M would be able to make the loan repayments in a sustainable way over the whole loan term.

The overall picture was of someone persistently reliant on expensive credit and unable to afford the cost of her debt given that the surplus income she had available each month after paying her outgoings and scheduled debts was insufficient to allow for any unexpected costs arising or emergency spending.

I've taken into account that Ms M had told Everyday Loans she intended to use this loan for 'debt consolidation' – in other words, to pay off other debt. But the loan was paid to Ms M which meant that the lender wasn't in control of making sure the loan was applied for the stated purpose. So, Everyday Loans couldn't have been sure it wasn't putting Ms M in a worse position by increasing her overall debts. In the event, it looks like the debts she said she intended to repay weren't in fact cleared until some months later which makes me think Ms M felt that she had other more pressing needs for this money. Given her financial situation I think that was reasonably foreseeable.

And in any event, even if some other credit was to be repaid using the loan, I think the amount of her credit card debt that would be left outstanding (as it was never part of the planned debt consolidation) would suggest that Ms M would remain in serious financial trouble regardless with an unsustainably low amount of disposable income left over each month.

So for all these reasons, I can't reasonably say that Everyday Loans made a fair lending decision based on the information in front of it and I don't think it should have agreed to provide this loan to Ms M.

In coming to my decision I've thought carefully about everything Everyday Loans has said, including its detailed responses to our adjudicator's view. I appreciate the time Everyday Loans has spent setting out its position in some detail and I understand it takes a different view to me. I hope that setting things out as I've done helps to explain how I've reached my conclusions.

As Ms M has been further indebted with a high amount of interest and charges on a loan that she shouldn't have been provided with, I'm satisfied that she has lost out as a result of what Everyday Loans did wrong. So, I think Everyday Loans needs to put things right.

**Putting things right**

Our adjudicator didn't recommend that Everyday Loans should pay any additional redress. Ms M hasn't commented on that and I haven't seen anything which makes me think Everyday Loans acted unfairly towards Ms M in any other way. So I'm not awarding any additional redress.

And I think it is fair and reasonable for Ms M to repay the principal amount that she borrowed, because she had the benefit of that lending. But she has been charged extra for a loan that should not have been provided to her.

In line with this Service's approach, Ms M shouldn't repay more than the capital amount she borrowed.

Everyday Loans should do the following:

- add up the total amount of money Ms M received as a result of having been given the loan. The repayments Ms M made should be deducted from this amount.
- If this results in Ms M having paid more than she 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 Ms M.
- Whilst it's fair that Ms M's credit file is an accurate reflection of her financial history, it's unfair that she should be disadvantaged by any adverse information recorded about a loan that was unfairly provided. So Everyday Loans should remove any negative information recorded on Ms M's credit file regarding the loan.

*HM Revenue & Customs requires Everyday Loans to deduct tax from this interest. Everyday Loans should give Ms M a certificate showing how much tax has been deducted if she asks for one.

**My final decision**

I uphold Ms M's complaint and direct Everyday Lending Limited trading as Everyday Loans to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 11 February 2022.

Susan Webb
**Ombudsman**