DRN-3210529

The complaint

Mrs H complains that the loan she had from Everyday Lending Limited (trading as Everyday Loans) was unaffordable to her.

What happened

Mrs H took out a loan with Everyday Loans on 29 January 2020. She borrowed £2,600 and was due to repay £212.29 monthly for 30 months, until 2 August 2022.

Mrs H says that Everyday Loans did not carry out adequate affordability checks before agreeing to lend to her. She says she struggled to make the repayments and had to borrow further to pay for everyday expenses.

Everyday Loans says it verified Mrs H's job and income, reviewed bank statements, obtained a payslip and conducted a credit search. It adds that it used a statistical average to estimate her other living expenses and the checks showed the loan was affordable with some of the money being used to repay existing credit. It says it believes its checks were proportionate and the repayments were sustainable over the term of the loan.

Our adjudicator recommended the complaint should be upheld. She found that Everyday Loans had enough information to see that Mrs H was already over-committed to credit repayments and refinancing some of her debts didn't make the new loan sustainable. She recommended that any payments made by Mrs H should be deducted from the principal and that Everyday Loans should refund any overpayments plus 8% statutory interest. She also said that any adverse information should be removed from her credit file.

Everyday Loans responded to say, in summary, that:

- It had used a year-to-date figure for income as her recent salary had been affected by Christmas and unpaid leave;
- Part of the loan had been used to consolidate existing credit so her repayments going forward were lower;
- A monthly tax payment was due to end in March 2020;
- Adverse information on her credit file was explained by her partner leaving without warning and a friend using a mail order account without paying.

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.

I need to take into account the relevant rules, guidance and good industry practice.

The Financial Conduct Authority (FCA) was the regulator when Loans 2 Go lent to Mrs H. Its rules and guidance obliged it to lend responsibly. As set out in the regulator's Consumer Credit Sourcebook (CONC), this meant that Loans 2 Go needed to take reasonable and proportionate steps to assess whether or not a borrower could afford to meet its loan repayments in a sustainable manner over the lifetime of the agreement.

CONC 5.2A.4R states that:

A firm must undertake a reasonable assessment of the creditworthiness of a customer before:

1. *entering into a regulated credit agreement; or*
2. *significantly increasing the amount of credit provided under a regulated credit agreement; or*
3. *significantly increasing a credit limit for running-account credit under a regulated credit agreement.*

Repaying debt in a sustainable manner was defined as being able to meet repayments out of normal income without the customer having to borrow to meet the repayments, without failing to make any other payment the customer has a contractual or statutory obligation to make and without the repayments having a significant adverse impact on the customer's financial situation (CONC 5.2A.12R).

In general, I'd expect a lender to require more assurance the greater the potential risk to the borrower of not being able to repay the credit in a sustainable way. So, for example, I'd expect a lender to seek more assurance, potentially by carrying out more detailed checks

- the *lower* a person'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 *longer* the term of the loan (reflecting the fact that the total cost of the credit is likely to be greater and the borrower is required to make payments for an extended period).

In addition, as per CONC 5.2A.16G (3): *For the purpose of considering the customer's income, it is not generally sufficient to rely solely on a statement of current income made by the customer without independent evidence (for example, in the form of information supplied by a credit reference agency or documentation of a third party supplied by the third party or by the customer).*

And CONC 5.2A.17R (2) says: *The firm must take reasonable steps to determine the amount, or make a reasonable estimate, of the customer's current non-discretionary expenditure.*

Bearing all of this in mind, in coming to a decision on Mrs H's case, I have considered the following questions:

- Did Everyday Loans complete reasonable and proportionate checks when assessing Mrs H's loan application to satisfy itself that she would be able to repay the loan in a sustainable way?
    - If not, what would reasonable and proportionate checks have shown?
- Did Everyday Loans make a fair lending decision?
- Did Everyday Loans act unfairly or unreasonably in some other way?

With regard to the first question, Everyday Loans has sent evidence that it obtained proof of Mrs H's income, checked her credit file and reviewed her bank statements. So I'm satisfied that Everyday Loans carried out proportionate checks which showed:

- Mrs H was using the loan for debt consolidation and a new oven;
- Her average monthly income was around £1,800, based on year-to-date figures, and she paid rent of £330;
- After the consolidation of two credit accounts, Mrs H had a monthly credit commitment of around £660;
- An estimated £567 for living expenses;
- The defaulted loan and credit card accounts were due to Mrs H's partner leaving unexpectedly;
- A mail order account was in dispute due to it being used by a friend without Mrs H's knowledge.

Everyday Loans calculated Mrs H would have £33 remaining each month after making the new loan payments and considered that it was affordable on that basis. I can't agree this made the loan sustainable for Mrs H because:

- The loan was over a term of 30 months and Everyday Loans needed to ensure the repayments were sustainable over that period;
    - Such a limited disposable income would have meant Mrs H had no money for unforeseen expenses;
- Mrs H was committed to using around half of her income for credit repayments going forwards – this is a significant proportion of her income and indicated she may struggle to manage her money;
- The estimate Everyday Loans used for other regular expenditure appears to be understated from what I've seen in her bank statements:
    - I could see regular payments of over £470 each month, before food and travel were taken into account;

So, whilst I'm satisfied that Everyday Loans carried out proportionate checks I can't agree that those checks showed the repayments on the loan were sustainable for its 30-month term even though I acknowledge Mrs H was making her repayments on time.

In summary, I find it was irresponsible to lend to Mrs H and Everyday Loans did not make a fair lending decision, although I don't find it acted unfairly or unreasonably in any other way.

My final decision

My decision is that I uphold this complaint. Everyday Lending Limited (trading as Everyday Loans) should:

- Add up the total amount of money Mrs H received as a result of having been given the loan. The repayments Mrs H made should be deducted from this amount.
    - If this results in Mrs H 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 and suitable payment plan with Mrs H;
- Remove any negative information recorded on Mrs H's credit file regarding the loan.

*HM Revenue & Customs requires Everyday Loans to deduct tax from this interest. Everyday Loans should give Mrs H a certificate showing how much tax it's deducted if she asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 12 April 2022.

Amanda Williams
Ombudsman