DRN-3213018

The complaint

Mr C complained that Everyday Lending Limited trading as Everyday Loans lent to him irresponsibly and provided lending that was unaffordable.

What happened

Mr C took out loans with Everyday Loans as follows:

Loan	Date taken	Amount	Term	Monthly repayment	Total amount repayable	Date repaid
1	18/12/18	£1,000	24 months	£91.43	£2,194.32	29/04/19 using loan 2
2	29/04/19	£2,100	24 months	£201.07	£4,825.68	20/12/19
3	20/12/19	£4,000	36 months	£288.34	£10,380.24	1/5/20

When Mr C complained to Everyday Loans it didn't uphold his complaint so he brought his complaint to us. One of our adjudicators looked at the complaint and thought that Everyday Loans hadn't done anything wrong when it provided loan 1 but didn't think it should have provided loan 2 or loan 3. Our adjudicator set out directions indicating what Everyday Loans should do to put things right.

Everyday Loans agreed with what our adjudicator had recommended in respect of loan 1 and loan 3 but disagreed that it had done anything wrong when it provided loan 2.

Everyday Loans' offer to put things right in respect of loan 3 falls short of what our adjudicator recommended and Mr C doesn't want to settle on the terms proposed by Everyday Loans. So, as the complaint hasn't been resolved, it comes to me for a decision.

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 general approach to complaints about unaffordable/irresponsible lending - including all of the relevant rules, guidance and good industry practice - on our website. Having thought about everything, I agree with our adjudicator that it's fair and reasonable to uphold loan 2 as well as loan 3.

As far as I can see, Mr C hasn't objected to what our adjudicator said with respect to not upholding his complaint about loan 1. So I don't think I need to say more about loan 1 except that I've reviewed this loan and independently reached the same conclusion as our adjudicator. I haven't seen enough to say that Everyday Loans shouldn't have provided this loan – so I'm not upholding this part of Mr C's complaint.

And as Everyday Loans has agreed to uphold Mr C's complaint about loan 3, I don't need to consider this loan further save to include it in the redress.

So in my decision, I'm concentrating on loan 2.

The rules don't say what a lender should look at before agreeing to lend. But reasonable and proportionate checks should be carried out. Lenders must work out if a borrower can sustainably 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 – a proportionate check might also require the lender to 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 looks affordable, a lender still needs to think about whether there's 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 significant adverse consequences or more money problems for a borrower who is already struggling with debt that can't be repaid in a sustainable way.

Everyday Loans asked Mr C about his income and expenses – including what he spent on his credit commitments. It also did its own credit check to understand Mr C's credit history. Everyday Loans recorded Mr C's average monthly take home pay was around £1,117 based on the lowest take home pay it saw on two payslips. Everyday Loans also took into account nationally available statistics when thinking about Mr C's likely spending and allowed for a 'buffer' to account for any change in circumstances or one-off additional expenses. Based on this, Everyday Loans said Mr C should've been able to afford the monthly repayment on this loan as he should still have had around £279 spare cash left after paying for this loan.

Like our adjudicator I think Everyday Loans' checks were broadly proportionate. But, despite its affordability calculation appearing to show that Mr C had enough disposable income each month to cover the loan monthly repayments, I think Everyday Loans should've realised this was contradicted by what it saw in the other information it had gathered.

Everyday Loans could see from its credit checks that there was some adverse credit history – a number of defaults were shown and Mr C was reported over his £2,000 overdraft limit on a current account.

From the bank statements he provided Everyday Loans was aware that he paid around £70 in unarranged overdraft fees on one account in both March and April 2019, he was also paying overdraft fees on another bank account and he was very often overdrawn by more than the amount of his monthly pay.

Whilst having an impaired credit history or other outstanding lending wouldn't be unusual for a borrower applying for this type of expensive borrowing, and it wouldn't necessarily be a bar to lending, I don't think Everyday Loans thought carefully enough about what the information it had gathered showed about Mr C's overall financial situation and the likelihood of him being able to pay its loan in a sustainable manner.

I've taken carefully into account everything Everyday Loans has said in response to our adjudicator's assessment about the way it assessed affordability. And I've thought carefully about what I think a responsible lender should have made of all this information and in particular whether it was enough for Everyday Loans to make a fair decision to lend, particularly as it knew that Mr C intended to use most of the money to cover a large one-off expense – so it would be adding to his overall indebtedness and extending the time he would be repaying expensive borrowing of this type.

I think our adjudicator was right to say that all the indications were that Mr C wasn't managing his money well and he was already struggling financially. To my mind, it should've been apparent that Mr C didn't have the amount of disposable income that Everyday Loans calculated - or indeed any spare cash, given that Mr C was stuck in overdraft and he hadn't been able to pay what he already owed to creditors. All the signs were that his finances were, in reality, under significant stress and his debt had become unmanageable. I don't think Everyday Loans was reasonably able to be satisfied in these circumstances that Mr C would be able to make its loan repayments in a sustainable way.

Also, bearing in mind the repayment of this loan on top of the debt Everyday Loans saw Mr C was already responsible for paying, I think it's fair to say that Mr C needed to pay a significant portion of his income towards credit. And in my opinion, as a responsible lender, Everyday Loans should've realised that Mr C would likely struggle to repay this loan – especially bearing in mind the 24 month loan term.

Thinking about all the information Everyday Loans had gathered, I can't reasonably say that it made a fair lending decision based on the information in front of it. I don't think Everyday Loans was able to safely conclude that its loan would be sustainably affordable for Mr C. So it shouldn't have provided it and Everyday Loans needs to put things right.

Putting things right

I think it is fair and reasonable for Mr C to repay the capital amount that he borrowed when he took out loans 2 and 3 because he had the benefit of that lending - but he shouldn't repay any more than this in respect of these loans.

If Everyday Loans 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 C received as a result of having been given loans 2 and 3. The repayments Mr C made towards loans 2 and 3 should be deducted from this amount.
- If this results in Mr C 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 C bearing in mind the need to treat him positively and sympathetically if he still needs further time to pay what he owes.
- Whilst it's fair that Mr C's credit file is an accurate reflection of his financial history, it's unfair that he should be disadvantaged by the decision to lend loans 2 and 3. So Everyday Loans should remove any negative information recorded on Mr C's credit file regarding loans 2 and 3.

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

My final decision

I uphold Mr C's complaint about loans 2 and 3 and direct Everyday Lending Limited trading as Everyday Loans to take the steps I've set out above to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 21 March 2022.

Susan Webb
Ombudsman