DRN-3223249

Complaint

Ms A has complained that Everyday Lending Limited ("Everyday Lending") irresponsibly provided her with unaffordable loans.

Background

Everyday Lending provided Ms A with two loans. The first loan for £2,000.00 was provided in July 2018. It had an APR of 106.8% and was due to be paid in 24 monthly instalments of £159.34, which meant that the total amount repayable was £3,824.16. Ms A repaid this loan early in January 2019.

Ms A was then provided with a second loan for £5,000.00 in August 2019. This loan had an APR of 81.1% and was due to be repaid in 48 monthly instalments of £281.33, which meant the total amount to be repaid was £13,503.84.

One of our adjudicators considered Ms A's complaint. She told Everyday Lending that reasonable and proportionate checks would have shown that Ms A wasn't in a position to sustainably make the repayments to these loans. So she thought that Everyday Lending shouldn't have provided Ms A with these loans and upheld the complaint. Everyday Lending didn't think it did anything wrong and asked for an ombudsman's decision.

My findings

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 the key rules, guidance and good industry practice - on our website. And I've referred to this when deciding Ms A's complaint.

Having carefully thought about everything, I think that there are two overarching questions that I need to answer in order to fairly and reasonably decide Ms A's complaint.

These two overarching questions are:

- Did Everyday Lending complete reasonable and proportionate checks to satisfy itself that Ms A would be able to repay her loan in a sustainable way?
  - If so, did it make fair lending decisions?
  - If not, would those checks have shown that Ms A would've been able to do so?
- Did Everyday Lending act unfairly or unreasonably in some other way?

Did Everyday Lending complete reasonable and proportionate checks to satisfy itself that Ms A would be able to repay her loans in a sustainable way?

The rules and regulations in place when Everyday Lending lent to Ms A required it to carry out a reasonable and proportionate assessment of whether she could afford to repay her loan in a sustainable manner. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower" focused – so Everyday Lending had to think about whether repaying the loan sustainably would cause difficulties or adverse consequences *for Ms A*. In practice this meant that Everyday Lending had to ensure that making the payments to the loans wouldn't cause Ms A undue difficulty or adverse consequences. In other words, it wasn't enough for Everyday Lending to simply think about the likelihood of it getting its money back, it had to consider the impact of loan repayments on Ms A.

Checks also had to be "proportionate" to the specific circumstances of the loan application. In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different applications.

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 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 customer is required to make payments for an extended period); and

- the *greater* the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

There may also be other factors which could influence how detailed a proportionate check should've been for a given loan application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances.

I've carefully thought about all of the relevant factors in this case.

Were Everyday Lending' checks reasonable and proportionate?

Everyday Lending says that it carried out income and expenditure assessments with Ms A prior to providing her with both her loans. This information was validated credit checks and bank statements which Ms A provided.

So bearing in mind Everyday Lending says and has evidenced that it obtained a significant amount of information on Ms A's circumstances, I'm prepared to accept that it did carry out proportionate checks – at least in terms of the information requested – before providing these loans to Ms A.

Did Everyday Lending make fair lending decisions?

It isn't enough for a lender to simply request information from a consumer before deciding to lend to them. So even if a lender may have requested a proportionate amount of information, it may still be the case that it will not have acted fairly and reasonably towards that consumer if it didn't carry out a fair and reasonable evaluation of the information it obtained.

I say this because a lender is required to carry out an assessment of the borrower's ability to repay any credit advanced. And any assessment requires an evaluation, judgement, appraisal and scrutiny of any information obtained. Everyday Lending says its assessment of the information obtained led it to conclude that Ms A's loans were affordable for her as she'd be able to sustainably make her repayments.

Everyday Lending was required to establish whether Ms A could make her loan repayments without borrowing further or experiencing significant adverse consequences – not just whether the loan payments were technically affordable on a strict pounds and pence calculation.

I've carefully considered the information provided in light of this. Having done so, it's worth noting that Everyday Lending's checks showed that Ms A had missed payments on loans and credit cards and had a history of payday lending. And while Ms A didn't have an overdraft she was nonetheless regularly incurring unarranged overdraft fees.

By the time of loan 2, the position was arguably worse as while most of the factors present at the time loan 1 was agreed were still present in August 2019, Ms A actually owed more. Furthermore, it's also worth noting that Ms A repaid what she owed on loan 1 as a result of borrowing from another lender. So Everyday Lending ought to have been on notice that Ms A was repaying previous debts by borrowing further by this stage too.

In my view, while Everyday Lending believed that the monthly payments were pounds and pence affordable for Ms A, the information available suggested Ms A was always unlikely to be able to make the payments she was being asked to commit to without borrowing further or suffering significant adverse consequences.

Bearing this in mind, and what exactly it was Everyday Lending was required to consider, I'm satisfied that Everyday Lending's decision to provide these loans to Ms A wasn't fair and reasonable in the circumstances.

Did Everyday Lending act unfairly or unreasonably towards Ms A in some other way?

I've carefully thought about everything provided. Having done so, I've not seen anything here that leads me to conclude Everyday Lending acted unfairly or unreasonably towards Ms A in some other way.

So I find that Everyday Lending didn't act unfairly or unreasonably towards Ms A in some other way.

Did Ms A lose out as a result of Everyday Lending unfairly and unreasonably providing her with these loans?

I think that these loans had the effect of unfairly increasing Ms A's indebtedness. This loan wasn't cheap especially when compared to mainstream providers and she ended up paying interest and charges on loans which she shouldn't have been provided with in the first place.

So I find that Ms A lost out because Everyday Lending unfairly provided her with these loans.

Fair compensation what Everyday Lending needs to do to put things right for Ms A

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Ms A's complaint for Everyday Lending to put things right by:

- refunding all interest, fees and charges Ms A paid on these loans;

- adding interest at 8% per year simple on the refunded interest, fees and charges Ms A paid from the date they were made to the date of settlement†;

- removing all adverse information on Ms A's credit file as a result

† HM Revenue & Customs requires Everyday Lending to take off tax from this interest. Everyday Lending must give Ms A a certificate showing how much tax it has taken off if she asks for one.

My final decision

For the reasons I've explained, I'm upholding Ms A's complaint. Everyday Lending Limited should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 4 April 2022.

Jeshen Narayanan
Ombudsman