DRN-3223707

The complaint

Miss G complained that Everyday Lending Limited trading as Everyday Loans lent to her irresponsibly and provided a loan that was unaffordable.

What happened

Miss G took out a loan with Everyday Loans as follows:

Loan	Date taken	Loan amount	Term	Monthly repayment	Amount payable
1	01/02/2018	£2,000	24 months	£205.91	£4,941.84

The loan purpose was recorded as debt consolidation – in other words, Miss G said she would use the loan to repay other debt.

When Miss G complained to Everyday Loans it didn't uphold her complaint so she brought her complaint to us. One of our adjudicators looked at the complaint and thought that Everyday Loans shouldn't have provided the loan. Our adjudicator recommended that the complaint should be upheld and set out directions indicating what Everyday Loans should do to put things right.

Everyday Loans disagreed with our adjudicator's view. It mainly said Miss G's total monthly income was more than it had allowed for in its affordability assessment and so her disposable income would have increased significantly. In addition, she had very small overheads given that she lived in another household and did not pay rent. Also, the loan was to clear loans with four identified pay day lenders.

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.

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 Miss G about her income and expenses – including what she spent on her credit commitments. It also did its own credit check to understand Miss G's credit history. Everyday Loans verified that Miss G's minimum monthly income was around £1,337. It also took into account nationally available statistics when thinking about Miss G's likely spending and based on this, Everyday Loans said Miss G should've been able to afford the monthly repayment on this loan. It worked out that after using this loan for the planned debt consolidation it had discussed with her, Miss G should still have more than £100 spare cash each month.

Like our adjudicator I think those checks were broadly proportionate. But despite recording information that appeared to show that Miss G had enough spare cash each month to cover the loan monthly repayments, I think Everyday Loans should've realised that it couldn't rely on this information. That's because what Miss G had declared was significantly at odds with what Everyday Loans saw in the information it had gathered during the loan application process.

I say this because Everyday Loans could see from its credit checks that Miss G had some money problems showing on her credit file – she was four payments behind on an account that now reported as delinquent, she had a defaulted account within the last 12 months and along with the fact that she had used 95% of her available credit, this all suggested that Miss G was potentially having some financial difficulties. I think that concern was borne out by other information Everyday Loans could see on the bank statements it looked at during the loan application process. These showed that Miss G was typically overdrawn on her current bank account by a substantial three figure amount, she was incurring daily overdraft fees and some direct debits were being returned due to lack of funds – despite the evidence Everyday Loans saw of other lending having been taken.

I think our adjudicator was right to say that all the indications were that Miss G wasn't managing her money well and she was already struggling financially. To my mind, it should've been apparent that Miss G probably didn't have the amount of disposable income that Everyday Loans calculated - or indeed any spare cash, given that Miss G was having difficulty maintaining payments she already owed to creditors. All the signs were that her finances were, in reality, under significant stress and her debt was already unmanageable.

I don't think Everyday Loans was reasonably able to be satisfied in these circumstances that Miss G would be able to make its loan repayments in a sustainable way.

I've taken into account that Everyday Loans understood that the loan was intended for debt consolidation. But Everyday Loans didn't have control over how Miss G used the loan as it paid the loan balance to her. Having seen the extent of her evident reliance on taking out expensive credit, I think it was apparent that there was a real risk Miss G would use the loan to meet her immediate financial demands. So all the indications were that she would most likely remain in serious financial trouble regardless.

I also think it was unreasonable to expect her to be able to commit to paying around half her income towards debt repayments over the loan term. I think this was such a significant level of her income Everyday Loans should've realised it was unlikely that she would be able to maintain the loan repayments at this level. I'm also mindful that despite the evidence Everyday Loans had gathered which showed the extent of Miss G's financial difficulty, its loan would increase the amount Miss G would need to pay each month - even if she had used the loan to consolidate the debt Everyday Loans understood she would clear. All in all, it's hard to understand how this loan wasn't going to be detrimental to Miss G.

In coming to my decision I've taken carefully into account everything Everyday Loans has said, including its response to our adjudicator's view – but this doesn't change the outcome. The extra income apparent on the bank statements Everyday Loans could see wasn't necessarily dependable, it was specifically intended to cover other costs and it wasn't enough to make the loan affordable for Miss G. She would still need to pay a disproportionate amount of income towards debt servicing costs and Everyday Loans should've recognised this wasn't a sustainable position for her to be in.

Looked at overall, I can't reasonably say that Everyday Loans 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 Miss G. And 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 Miss G to repay the capital amount that she borrowed because she had the benefit of that lending - but she shouldn't repay more than this.

Everyday Loans should do the following:

- add up the total amount of money Miss G received as a result of having been given this loan. The repayments Miss G made should be deducted from this amount.
- If this results in Miss G 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 Miss G bearing in mind the need to treat her positively and sympathetically if she still needs further time to pay what she owes.
- Whilst it's fair that Miss G's credit file is an accurate reflection of her financial history, it's unfair that she should be disadvantaged by the decision to lend this loan. So Everyday Loans should remove any negative information recorded on Miss G's credit file regarding this loan.

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

My final decision

I uphold this complaint and direct Everyday Lending Limited trading as Everyday Loans to take the steps I've set out above to put things right for Miss G.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 28 March 2022.

Susan Webb
Ombudsman