DRN-3274376

The complaint

Mr B complained that Everyday Lending Limited (trading as Everyday Loans) lent to him irresponsibly and provided him with loans that were unaffordable.

What happened

Everyday Loans provided loans to Mr B as follows:

Loan	Date loan taken	Date paid	Capital loan amount	Loan term	Monthly Repayment
1	15/02/2015	Dec 2015	£2,000	24 months	£204.21
2	08/12/2016	21/08/2019	£6,000	36 months	£334.09
3	21/08/2019	Outstanding	£6,077.31	48 months	£316.20

Mr B brought his complaint to us when he wasn't able to resolve it directly with Everyday Loans. During the course of our investigation, Everyday Loans confirmed it agreed to uphold Mr B's complaint about loan 1 and take the steps to put things right that we would expect a lender to do.

So our adjudicator concentrated on looking into Mr B's complaint about loans 2 and 3. He didn't think Everyday Loans should have provided Mr B with any of the loans.

Everyday Loans responded by telling us that it would review the case but this was some time ago and despite reminders it has not responded to our adjudicator's view letter in any detail.

As the complaint hasn't been settled, it has been passed 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 considering unaffordable and irresponsible lending complaints on our website - including the key relevant rules, guidance, good industry practice and law. I've kept all this in mind when deciding Mr B's complaint.

Our adjudicator set a deadline for getting back to us with any comments and this has now expired. So despite not having heard back from Everyday Loans. I think it is fair and reasonable for me to proceed. And as Everyday Loans has already agreed to uphold loan 1, I don't think I need to say more about this loan, except to include it in the redress part of my decision.

I've independently reviewed the complaint and having done so, I am upholding Mr B's complaint for broadly the same reasons as our adjudicator. I'll explain my reasons.

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.

loan 2

Everyday Loans gathered information from Mr B by asking his about his income and expenses. It's not clear whether in fact it also looked at some of his recent bank statements before it agreed to lend to him as it told us these aren't on its lending file – nor can it now see a payslip. But it looks like it relied on statistical information which indicated what the likely living expenses would be for someone in Mr B's particular circumstances based on national UK averages. It also checked Mr B's credit file to understand his existing monthly credit commitments and credit history. Everyday Loans said that based on these checks it was satisfied that the loan was affordable for Mr B. It worked out that he should have around £69 spare cash after making the repayment for this loan on top of all his other monthly outgoings.

But I don't think that Everyday Loans made a fair lending decision when it provided this loan.

As the term and the cost of the loan was relatively high, and Everyday Loans was aware that Mr B didn't appear to have very much spare cash left after paying the loan, I think reasonable and proportionate checks would've involved Everyday Loans obtaining a thorough knowledge of Mr B's financial circumstances, including evidence. I say this because the monthly cost presented a high risk of becoming unaffordable or unsustainable over the term of the loan. Everyday Loans checks needed to be borrower focused, so they needed a thorough understanding of Mr B's financial circumstances to be satisfied he could afford the loan.

So, I've looked at what I think proportionate checks would likely have shown around the time Mr B applied for this loan.

Everyday Loans could, of course, decide for itself how to undertake proportionate checking. But Mr B has provided his bank statements from around the time of this loan and, in the absence of other evidence, I think these give a reasonable guide to Mr B's finances at the time. So I've looked through these to see what Everyday Loans was likely to have found out about his overall financial situation had it carried out more in-depth checks.

And had Everyday Loans done what I consider would've been a proportionate check in these circumstances, it would likely have seen that Mr B was facing serious problems managing his money. I think it would have learnt that Mr B was regularly spending significant amounts on what appear to be gambling transactions.

There was also evidence apparent on his bank statements showing that Mr B was financially over-stretched, typically overdrawn on his current account by a four figure amount and paying overdraft fees. Overall, I don't think Everyday Loans could reasonably have satisfied itself that providing this loan to Mr B wouldn't put him in a worse position given the evidence it saw which suggested there was a real risk that he might use this loan for gambling purposes.

And if it did see an up to date bank statement at the time as part of the loan application process, then it's likely it would've seen this information.

Even allowing for the fact that the loan purpose was understood to be for debt consolidation, this makes no difference to my decision. It's unclear what debts were to be consolidated – and whilst I can see from the credit checks Everyday Loans obtained that the loan could have been helpful if it had been put towards clearing Mr B's credit card and overdraft, I think Everyday Loans should have recognised the clear risk, given the evidence of Mr B's spending, that the loan would more likely go towards funding gambling.

As far as I can see, Everyday Loans took no steps to keep control over how the loan was used as it paid the money direct to Mr B's bank account.

So, for all these reasons, I don't think Everyday Loans should've provided loan 2.

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loan 3

Everyday Loans carried out similar checks when Mr B applied for his third loan which Mr B used to repay the outstanding balance on loan 2 and provide him with some extra money.

But even though it felt its affordability assessment showed the repayments for this loan should be affordable for Mr B, I don't think Everyday Loans properly took into account the information on its up to date credit checks.

I think that Everyday Loans should've realised that Mr B's credit history showed that managing his debt had got beyond his control. Everyday Loans saw that he had very substantially increased the amount of credit he was using – its credit check showed he had multiple unsecured and payday loans, thousands of pounds owing on credit cards and there was clear evidence of money problems as there was a debt collection agency listed.

Given what Everyday Loans should've known about Mr B's gambling spending (and possibly it had seen this information) I think it ought reasonably to have recognised that this was the most likely reason for Mr B's escalating and over-reliance on expensive credit.

And it should've realised that it was irresponsible to lend further to him.

The fact that Mr B said this loan was also intended for debt consolidation isn't a reason for me not to uphold this complaint.

Even if Mr B had used this loan to repay some existing debt, I don't think Everyday Loans had sufficient reason to think this would've improved his overall position sufficiently to achieve a significant and sustainable improvement in his financial situation – given the loan amount and his outstanding indebtedness overall.

So, for all these reasons, I don't think Everyday Loans was reasonably able to say that the loan was likely to be sustainably affordable for Mr B. So I am upholding Mr B's complaint that he should not have been given this loan.

Mr B has been further indebted with a high amount of interest on loans that he shouldn't have been provided with so he has lost out as a result of what Everyday Loans did wrong. I think Everyday Loans needs to take the following steps to put things right.

Putting things right

Our adjudicator didn't recommend that Everyday Loans should pay any additional redress. Mr B hasn't commented on that and I haven't seen anything which makes me think Everyday Loans acted unfairly towards him in any other way.

So I'm not awarding any additional redress.

And I think it is fair and reasonable for Mr B to repay the capital amount that he borrowed, because he had the benefit of that lending.

But he has paid extra for lending that should not have been provided to him. In line with this Service's approach, Mr B shouldn't repay more than the capital amount he borrowed.

If Everyday Loans has sold any outstanding debt it should buy this back before doing what I have outlined below or otherwise, liaise with the new debt owner to do the following:

- add up the total amount of money Mr B received as a result of having been given loans 1,2 and 3. The repayments Mr B made should be deducted from this amount.
- If this results in Mr B 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 B bearing in mind the need to treat him positively and sympathetically
- whilst it's fair that Mr B's credit file is an accurate reflection of his financial history, it's unfair that he 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 Mr B's credit file regarding these loans.

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

My final decision

For the reasons set out above, I uphold Mr B's complaint and direct Everyday Lending Limited (trading as Everyday Loans) to take the steps set out above to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 18 March 2022.

Susan Webb
Ombudsman