DRN-3290495

The complaint

Mr M, through his representative, complains that Everyday Lending Limited (Everyday) lent to him irresponsibly.

Mr M is currently in an Individual Insolvency Arrangement (IVA) and his Insolvency Practitioner (IP) has told the Financial Ombudsman he has in interest in the outcome of the complaint. The IVA commenced in December 2019.

What happened

Everyday approved one loan for Mr M in September 2016. It was for £8,725 over a 24 month term and the repayments were just over £544 a month.

Everyday has notes to show that it obtained copy bank statements from Mr M, and carried out a credit search, verified his identity and job (sub-contractor) and had seen a payslip. The reason for the loan was to repay another loan which had been costing Mr M £412 each month – and I can see that Everyday did that pay-off – plus a £5,000 cash loan which was to assist towards Mr M's wedding costs.

One of our adjudicators looked at the complaint and thought that Everyday had not lent responsibly and thought it should put things right for Mr M.

Everyday responded to explain that on its calculations carried out at the time of lending, Mr M's income was just under £6,884 each month, it used a reasonable household expenditure sum of £1,000 a month to be subtracted from that. It knew Mr M's credit commitments and it had calculated that his monthly costs to repay those amounted to around £3,487, which meant Mr M had just over £1,521 left with which to repay Everyday. As the loan was removing from Mr M the need to pay for one monthly loan repayment of £412, then that meant, after the Everyday loan repayment was deducted from Mr M's disposable income, it still left him with about £1,389 left over.

Everyday reiterated these calculations when it responded to our adjudicator's view and added that as it had been told Mr M was getting married then Everyday had implied he had taken that cash to go towards the wedding costs.

The complaint remained unresolved and was 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 general approach to complaints about unaffordable/irresponsible lending - including all the relevant rules, guidance and good industry practice - on our website.

Considering the relevant rules, guidance, and good industry practice, I think the questions I need to consider in deciding what's fair and reasonable in the circumstances of this complaint are:

- Did Everyday complete reasonable and proportionate checks to satisfy itself that Mr M would be able to repay the loan in a sustainable way?

- If not, would those checks have shown that Mr M would have been able to do so?

The rules and regulations in place required Everyday to carry out a reasonable and proportionate assessment of Mr M's ability to make the repayments under this agreement. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower-focused" – so Everyday had to think about whether repaying the loan would be sustainable. In practice this meant that the business had to ensure that making the repayments on the loan wouldn't cause Mr M undue difficulty or significant adverse consequences. That means he should have been able to meet repayments out of normal income without having to borrow to meet the repayments, without failing to make any other payment he had a contractual or statutory obligation to make and without the repayments having a significant adverse impact on his financial situation.

In other words, it wasn't enough for Everyday to simply think about the likelihood of it getting its money back - it had to consider the impact of the loan repayments on Mr M**.** 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.

I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- the *lower* a consumer'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 *greater* the number and frequency of loans, and the longer the period 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).

I've carefully considered all the arguments, evidence and information provided in this context and what this all means for Mr M's complaint.

I think Everyday's checks were carried out but it didn't react appropriately to the information it received. Everyday used a formula to get to a figure for Mr M's monthly outgoings - £1,000. I've seen from the documents that his rent alone plus his council tax and a water bill come to about £1,000. So, its likely Mr M spent more on monthly living costs. And it does not appear to me that Everyday factored that into its considerations.

The significant evidence in my view is that Everyday had carried out a credit search and results showed Mr M had about seven credit cards, at least four loans and two fixed term credit products. Everyday has said that these other credit commitments had a total monthly repayment of around £3,487, though after the consolidation of the one loan, it likely reduced to around £3,075 a month.

But it was clear to see, and Everyday knew, that Mr M had about £42,490 debt balance across all his credit cards. This was a high debt figure on credit cards. And part of the calculation to work out Mr M's monthly credit commitment cost appears to have included only the minimum repayment figures for all these cards. On credit card balances of that much – about £42,000 – then constantly repaying minimum sums, as that seems to have been what Everyday banked on, was not likely to be sustainable or sensible. And, in my view this was not a strong basis to assess Mr M's financial position before lending to him and leading Mr M into a further 24 months of debt.

Another indication of unsustainable debt is obtaining further credit to repay existing debt as Mr M's application to Everyday seemed to include. And Everyday's assumption that the £5,000 capital sum was for his wedding costs may have been mistaken. With that much credit card debt it was also feasible that the capital from the Everyday loan could well have been used to go towards those other debts which was another indication of unsustainability. And I don't think that this was checked.

I think there was a foreseeable risk here that Mr M wouldn't have been able to meet his repayments over 24 months without difficulty. It wouldn't have taken very much unexpected or seasonal expense (especially as Mr M was a sub-contractor) to leave Mr M in the position of having to borrow further to meet his loan repayments. I think Mr M would have needed a larger disposable income for the loan to be sustainable.

I uphold Mr M's complaint.

Putting things right

I understand that the loan has been paid off.

Mr M's IP needs to be consulted by Everyday about the redress payments.

But subject to that, to calculate the sums, I think Everyday should:

- remove all interest, fees and charges applied to the loan;
- treat any payments made by Mr M as payments towards the capital sum of £8,725;
- if Mr M has paid more than the capital, then any overpayments should, in principle, be refunded to him with interest* of 8% simple a year from the date they were paid to the date of settlement;
- remove any negative information about the loan from Mr M's credit file.

*HM Revenue & Customs requires Everyday to take off tax from this interest. Everyday must give Mr M a certificate showing how much tax it's taken off if he asks for one.

My final decision

My final decision is that I uphold Mr M's complaint and – subject to the IVA and the IP involvement – Everyday Lending Limited should do as I have outlined above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr M to accept or reject my decision before 1 April 2022.

Rachael Williams
Ombudsman