

The complaint

Miss J complains about a loan given to her by Everyday Lending Limited.

What happened

In October 2010, Miss J applied for – and was given – a loan of £1,000 with Everyday. It was to be repaid in 12 monthly instalments of £132.12. She's complained to Everyday that the loan was unaffordable for her at the time, so shouldn't have been agreed.

Everyday looked into Miss J's complaint. It initially said the complaint had been brought too late for us to consider but, after our involvement, it accepted that we could look at it. Everyday provided a response setting out the checks it had carried out and explained that it felt the loan had been affordable. It rejected Miss J's complaint.

Miss J didn't agree and referred her complaint to us. One of our investigators looked into it. She said that while Everyday had carried out proportionate checks, it hadn't considered the information it had gathered properly, so hadn't reached a fair decision when it agreed to lend to Miss J.

Our investigator felt the income Everyday had used for Miss J was over estimated and the credit report obtained, showed she was struggling to maintain her commitments. Our investigator noted that the bank statement Miss J had provided showed she was reliant on payday loans and the amount she'd applied for was insufficient to clear her debts, so it didn't improve her position. She upheld the complaint and asked Everyday to put things right.

Miss J accepted what our investigator said, but Everyday didn't. It said (in summary):

- It had averaged Miss J's income on a 'year to date' basis rather than the last two months.
- The missed payments recorded on Miss J's credit file which were highlighted by our investigator were from over two years before the application. It had discussed Miss J's credit report with her.
- Miss J had made 11 of the 12 repayments on time but told Everyday she had 'short term financial problems' when the final payment was due. The loan was repaid in full in February 2012.

As there was no agreement, Miss J's complaint was passed 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.

Having done so, I agree with our investigator that Miss J's complaint should be upheld, but for different reasons. I issued a provisional decision saying:

"We've set out our approach to complaints about unaffordable lending on our website –

including the key relevant rules, guidance, good industry practice and law. I've considered this approach when deciding this complaint.

Everyday needed to carry out reasonable and proportionate checks to ensure that it didn't lend to Miss J irresponsibly. It's not about Everyday assessing the likelihood of being repaid, but it had to consider the impact of the loan repayments on Miss J. There is no set list of checks that Everyday had to do, but it could take into account several different things such as the amount and length of the loan, the amount of the monthly repayments and the overall circumstances of the borrower.

I think our investigator correctly identified that Everyday carried out reasonable and proportionate checks when assessing Miss J's application and that it didn't reach a fair decision to lend. I've summarised how she reached that conclusion above. As I've said, I've reached the same conclusion as our investigator, but for different reasons.

I acknowledge Everyday's response to our investigator. I agree with much of what it's said in that the calculation of Miss J's income was reasonable, and the missed payments on the credit card were from some time prior to this application. I acknowledge too that Miss J met most of the payments to the loan on time, but I don't think successful repayment of a loan shows it was ultimately affordable for the customer; we don't know what lengths Miss J had to go to in order to ensure it was paid.

But I believe the decision to lend to her was ultimately unfair because I think it ought to have been evident to Everyday that Miss J was in financial difficulties at the time, and this loan wouldn't have resolved the situation for her. Let me explain why.

The Lending Code from November 2009 set out minimum standards of good practice for businesses lending money to consumers at the time this loan was drawn. Paragraph 139 said "financial difficulties may become evident...from one or more of the following events:

- Items repeatedly being returned unpaid due to lack of available funds;...*
- Failing to meet loan repayments or other commitments;...*
- Regular requests for increased borrowing or repeated rescheduling of debts;...*
- Repeatedly exceeding a credit card or overdraft limit without agreement."*

The bank statement Everyday obtained from Miss J in support of her application showed a repeatedly returned direct debit to a communications provider due to a lack of funds. It also showed that she'd had five unpaid items in the previous month as well as charges for "guaranteed transactions" (usually applied for spending using a debit card which takes a current account overdrawn or over its overdraft limit without agreement). It shows too that she had numerous payday loans and she was struggling to make repayments to them. It appears she was repeatedly rescheduling them.

Furthermore, her credit file shows a default for a communications account was registered just two months before this application and that one of her credit cards was, at the time, in excess of it's limit. She had an outstanding County Court Judgement for over £900.

All things considered, it seems to me that Miss J was reliant on credit to make ends meet. While the purpose of this loan was to repay existing debts, it doesn't appear to have been sufficient to restructure all her debts and resolve her problem.

Putting things right

Overall, as I've said, I don't think Everyday made a fair decision to lend to Miss J, so I think

Everyday should put things right for Miss J. When I find that a business has done something wrong, I'd normally direct that business to put the complainant in the position they would be in now if the mistake it made hadn't happened, as far as is reasonably practical.

In this case, that would mean putting Miss J in the position she would be in now if she hadn't been given the loan. But Miss J was given the loan, used the money and has already repaid the entire amount including interest due under the agreement.

To put matters right, Everyday should:

- *Calculate the total amount Miss J received from Everyday and deduct from that figure the repayments she's made to the loan.*
 - *If this results in Miss J having repaid more than she received, any overpayments should be refunded to her. Interest at a rate of 8% simple per year should be added to any overpayments from the date they were made until the date of settlement*.*
 - *If the calculation means there's still a balance for Miss J to pay, Everyday should let Miss J know how much is outstanding and reach a suitable, affordable payment plan with her. I remind Everyday of its obligation to treat customers fairly.*
- *Remove any negative information recorded on Miss J's credit file regarding the loan.*

** If Everyday considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Miss J how much it's taken off. It should also give her a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate."*

Miss J accepted my provisional decision but Everyday didn't respond, so I see no reason to depart from what I've said.

My final decision

My final decision is that I uphold this complaint and Everyday Lending Limited should put matters right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 29 March 2022.

Richard Hale
Ombudsman