DRN-3352136

The complaint

Mr J complained that Everyday Lending Limited trading as Everyday Loans lent to him irresponsibly and provided an unaffordable loan.

What happened

Mr J took out a loan with Everyday Loans as follows:

Date taken	Amount	Term	Monthly repayment	Total amount repayable	Date repaid
January 2019	£5,000	48 months	£230.74	£11,075.52	October 2019

When Mr J complained to Everyday Loans it didn't uphold the complaint so he brought his complaint to us. One of our adjudicators looked at the complaint and didn't think Everyday Loans should have provided the loan. Our adjudicator set out directions indicating what Everyday Loans should do to put things right.

Everyday Loans disagreed. It mainly said that Mr J was stuck in a payday loan cycle and persistently in overdraft as a result. Mr J had said he would use the loan for debt consolidation – in other words, to repay other debt and Everyday Loans said this would improve his financial situation and leave him with disposable income each month. Everyday Loans also said that the expenditure it saw on his bank statements was likely higher given the time of year.

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. Having thought about everything, I think agree with the conclusion our adjudicator came to. I'll explain why I say this.

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 Mr J about his income and expenses – including what he spent on his credit commitments. It also did its own credit check to understand his credit history and find out about his existing credit commitments and it reviewed bank statements provided by Mr J.

Everyday Loans recorded Mr J's average monthly take home pay was around £2,441. Everyday Loans allowed for Mr J's monthly rent costing £460 and also took into account nationally available statistics when thinking about Mr J's likely spending. In addition, it allowed for a 'buffer' to account for any change in circumstances or one-off additional expenses.

Based on this, Everyday Loans affordability assessment showed that Mr J likely needed to spend some £2,731 each month – which was more than his income. But it took into account that Mr J said he planned to use the loan provided by Everyday Loans to repay three named creditors. Everyday Loans worked out this should save him more than £800 each month and so put him in a position where he would have around £317 spare cash left after paying for everything instead of a monthly shortfall.

This led Everyday Loans to conclude that the loan would be sustainably affordable for Mr J.

Like our adjudicator, I think Everyday Loans' checks were broadly proportionate. But, despite its affordability calculation appearing to show that Mr J should have had enough disposable income each month to cover the loan repayments, I think Everyday Loans should've realised this was unlikely, given the picture painted overall by the other information it had gathered.

I think Everyday Loans saw that Mr J wasn't managing his money well and he was already struggling financially, stuck in overdraft and, at the time, £100 or so over his £1,200 agreed overdraft limit. It was clear that he was already over-reliant on credit he couldn't afford without borrowing further to pay for it.

I've taken carefully into account everything Everyday Loans has said in response to our adjudicator's assessment about the way it assessed affordability.

Everyday Loans didn't have control over how Mr J used the loan as it paid the loan balance direct to him. Having seen the extent of Mr J's money problems, I think it should've been apparent that there was a real risk he would use the loan to meet his immediate and most pressing financial demands.

And even if Mr J 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 his outstanding indebtedness overall and reliance on using credit. I think it's also fair to say that, even with the planned debt consolidation, Mr J would still need to pay such a significant portion of his income towards credit – by my reckoning, well over a third - Everyday Loans should've realised that Mr J would likely struggle to repay this loan sustainably over the loan term.

So all the indications were that he would most likely remain in serious financial trouble regardless. Thinking about all the information Everyday Loans had gathered, I can't reasonably say that it 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 Mr J. I believe that Everyday Loans ought reasonably to have been aware that this loan was likely to be detrimental to Mr J and recognised that it shouldn't have provided it. So Everyday Loans needs to put things right.

Putting things right

I think it is fair and reasonable for Mr J to repay the capital amount that he borrowed because he had the benefit of that lending - but he shouldn't repay any more than this. Everyday Loans should do the following:

- add up the total amount of money Mr J received as a result of having been given the loan. The repayments Mr J made should be deducted from this amount.
- If this results in Mr J 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).
- Whilst it's fair that Mr J's credit file is an accurate reflection of his financial history, it's unfair that he should be disadvantaged by the decision to lend a loan that was unfairly provided. So Everyday Loans should remove any negative information recorded on Mr J's credit file regarding the loan.

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

My final decision

I uphold Mr J's complaint and direct Everyday Lending Limited trading as Everyday Loans to take the steps I've set out above to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 8 April 2022.

Susan Webb
Ombudsman