

The complaint

Mr W complains that Everyday Lending Limited lent to him irresponsibly.

What happened

Mr W took one loan with Everyday Lending. It was approved for him on 22 May 2019 for £3,100 repayable over 36 months at £247.09 each month. The total charge for credit was £5,795.24 which meant that the total amount to repay was £8,895.25.

Everyday Lending responded to Mr W's complaint and said that it used an average monthly income of £2,924.66 and had calculated, using Office of National Statistics (ONS) data, Mr W's living expenses. It added a *'buffer'* figure to that as well which it describes as a sum to *'accommodate unexpected minor changes'* to those costs. Everyday Lending described Mr W's *'approximate monthly expenditure'* as £1,687.49 and so it had calculated Mr W had a disposable income of £990.08.

Everyday Lending said it carried out a credit search and looked at a payslip and reviewed *'up to two months bank statements from a customer's primary bank account'*. It also says that it knew Mr W was going to use the capital of the loan to consolidate some of his payday loans and other credit.

Mr W has said that he did not appreciate the interest to be paid; he thinks that Everyday Lending used his salary plus overtime income rather than his basic salary; and Mr W has referred to his addiction problems and has said this was overlooked despite being apparent in the bank statements he submitted to Everyday Lending when applying for the loan. Mr W also says he felt pressured into taking the loan.

One of our adjudicators looked at the complaint and wrote to Everyday Lending twice to explain why she considered that the loan had been lent to Mr W irresponsibly. Everyday Lending disagreed and sent reasons why, all of which I have reviewed.

The unresolved complaint 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.

Taking into account the relevant rules, guidance and good industry practice, what I need to consider in deciding what's fair and reasonable in the circumstances of this complaint are whether Everyday Lending completed reasonable and proportionate checks to satisfy itself that Mr W would be able to repay in a sustainable way? And, if not, would those checks have shown that Mr W would've been able to do so?

If I determine that Everyday Lending did not act fairly and reasonably in its dealings with

Mr W and that he has lost out as a result, I will go on to consider what is fair compensation.

The rules and regulations in place required Everyday Lending to carry out a reasonable and proportionate assessment of Mr W'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 Lending had to think about whether repaying the loan would be sustainable and/or cause significant adverse consequences for Mr W. In practice this meant that Everyday Lending had to ensure that making the payments to the loan wouldn't cause Mr W undue difficulty or significant adverse consequences.

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

Mr W's loan application was for a relatively large amount of £3,100 and as Everyday Lending would have known, the full amount to repay was just under £8,900 and Mr W's indebtedness was to be spread over three years. So, I'd consider that a full financial review of Mr W's finances was the proportionate level of checks I'd expect to see.

In relation to Mr W's income, I know that Everyday Lending had copies of Mr W's bank statements and his April 2019 salary was around £2,500 and the May 2019 payslip – a copy of which I have seen (partially legible) - does show a basic salary plus separate amounts for at least three lots of overtime. So, I do think that Mr W's overtime was known by Everyday Lending at the time the loan was approved.

I've seen recent and earlier submissions from Everyday Lending which suggest the checks it did were proportionate but I disagree when it used ONS data to calculate the living expenses when it had two months of bank statements from Mr W giving it the opportunity to do a detailed 'income and expenditure' analysis.

And I do not consider it fair or reasonable that Everyday Lending thinks that asking for two months' worth of statements from Mr W and then reviewing a shorter period was right, which is what Everyday Lending has suggested to our adjudicator.

It was clear from Mr W's situation that he had multiple loans from high cost lenders as well as a history of taking those loans which was information Everyday Lending had from its credit search results. He had current debt commitments and he was requiring more debt.

The bank statements made it clear that Mr W was a gambler (accepted by Mr W) and the bank statement evidence which showed that Mr W regularly took loans from other high-cost lenders likely meant that these loans were feeding his gambling. And I'd expect a professional lender to have appreciated that likelihood. Even if Everyday Lending disagrees with this, I do know that it had enough information to consider it an issue to investigate. I have seen an email exchange between Mr W and Everyday Lending in which it accepted that it knew of his gambling at the time he applied and its response to Mr W was: *'...however the total amount of the gambling does not exceed your disposable income.'*

I have demonstrated from the information I gained from Everyday Lending and which I have set out in the 'what happened' section of this decision, combined with the facts gathered from the bank statements, that the *'disposable income'* Everyday Lending used was based on ONS data and not on the actual information it had on its own files during Mr W's application process. And so, I do not consider that Everyday Lending did carry out a full financial review for what was, in effect, an £8,900 repayment obligation.

And for Everyday Lending then to use the same *'disposable income'* figure against which to judge whether the gambling transactions were acceptable to it or not seems illogical and not thorough enough when it had the clear information before it at the time it was approving the loan from which it could calculate everything with precision.

As for the loan consolidation point raised by Everyday Lending – I have not seen enough to show me that it advanced the capital funds to Mr W knowing that he was going to repay the other loans and/or I have not seen any evidence to show that it had planned to make arrangements to pay down those other loans before advancing the capital to Mr W. And so without that important element in place, I do not think it satisfied itself that Mr W was going to do that debt consolidation and so I do not think that Everyday Lending should have lent to Mr W with that element absent.

And I have enough information from Mr W's financial details to recognise that Mr W was not going to be able to repay this loan easily and potentially without having to obtain further credit to do so. I'd consider that to have been contrary to the regulations relating to responsible lending and so I uphold Mr W's complaint in relation to the irresponsible lending.

On Mr W's point about the interest being high – that is a commercial element of the lending business and I am not able to make any findings relating to how a financial business comes to make those commercial decisions. So, I make no finding on this point.

As for Mr W's point that he felt pressurised into taking the loan, I've no evidence that Everyday Lending exerted any pressure. And so, I do not uphold this part of Mr W's complaint.

Putting things right

Mr W has received the £3,100 capital and its right that he repays that sum. I think Everyday Lending should:

- remove all interest, fees and charges applied to the loan;
- treat any payments made by Mr W as payments towards the capital sum of £3,100;
- if Mr W has paid more than the capital, then any overpayments should be refunded to him with interest* of 8% simple a year from the date they were paid to the date of settlement;
- but if there's still an outstanding balance, Everyday Lending should come to a reasonable arrangement for the balance to be paid to it by Mr W. In these circumstances it seems that Mr W has paid more than the £3,100 capital and so I doubt this is required;
- remove any negative payment information about the loan from Mr W's credit file.

*HM Revenue & Customs requires Everyday Lending to take off tax from this interest. It must give Mr W 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 W's complaint and I direct that Everyday Lending Limited does as I have set out in the 'putting things right' part of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 23 May 2022.

Rachael Williams
Ombudsman