

## The complaint

Mr M, through his representative, complains that Everyday Lending Limited, trading as Everyday Loans, lent to him irresponsibly.

## What happened

From what I've seen, Mr M was given the following loans by Everyday Lending:

	<b>Date taken</b>	<b>Amount</b>	<b>Term</b>	<b>Monthly repayment</b>
<b>Loan 1</b>	30/03/2012	£2,000	13months	£243.46
<b>Secondary loan to loan 1</b>	30/03/2012	£270	13 months	£32.87
<b>Loan 2</b>	07/01/2013	£4,000	48 monthly payments	£199.88
<b>Secondary loan to loan 2</b>	7/01/2013	£442	48 monthly payments	£22.09

Mr M was sold insurance as well and the premiums were added as secondary loans to each of these two loans. So, the total monthly repayment for Mr M on loan 1 was £276.33 and on loan 2 was £221.97.

Documentation fees were charged as well.

At first, Everyday Lending responded to Mr M's complaint by saying that the complaint had been brought out of time. But a colleague ombudsman has issued a decision on that point in which she said the Financial Ombudsman can look at these two loans.

One of our adjudicators assessed the complaint and thought that Everyday Lending had completed proportionate checks and that Mr M was able to afford these loans.

Mr M disagreed and asked that the unresolved complaint be passed to an ombudsman and so it was passed to me to decide. I issued a provisional decision on 25 April 2022 in which I gave reasons as to why I considered that Mr M's complaint should be upheld. I gave each party time to reply.

A duplicate of the provisional findings is set out in smaller type in the next section of this 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 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 the complainant would be able to repay in a sustainable way? And, if not, would those checks have shown that they would've been able to do so?

If I determine that Everyday Lending did not act fairly and reasonably in its dealings with Mr M and that he have lost out as a result, I will go on to consider what is fair compensation for each.

The rules and regulations in place required Everyday Lending 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".

These creditworthiness checks needed to be undertaken from the borrower's perspective – so Everyday Lending 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 each 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 each had a contractual or statutory obligation to make and without the repayments having a significant adverse impact on their financial situation.

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 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).

### ***duplicated provisional findings dated 25 April 2022***

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

Everyday Lending carried out some checks before it lent to Mr M. This included asking for details of his income and expenditure, carrying out a credit check, requesting proof of income and/or payslips and bank statements. It calculated Mr M's regular living expenses using statistical data and assessed his monthly credit commitments. I've seen a summary of the information gathered by Everyday Lending, including the credit report and bank statements provided to it at the time. And I've been provided with account contact notes some of which are revealing and all of which Everyday Lending would have known about.

Before approving loan 1, Mr M told Everyday Lending – which has noted – that he had six payday loans already. It saw on his bank statements that Mr M was regularly making payments towards those payday loans, and still obtaining credit from those same lenders – sometimes on the same day that loans were being repaid.

It's clear to me that the information available to Everyday Lending from its own standard checks was enough for it to have realised that Mr M had a debt problem with so many outstanding payday loans. Further debt with Everyday Lending would have increased Mr M's overall indebtedness. I am planning to uphold loan 1.

About £890 of loan 1 was paid off from capital taken from loan 2 which was approved in January 2013. I have reviewed the payment history Mr M had built up with Everyday Lending on loan 1 and in July, August and November 2012. There were arrears and/or missed payments with a series of contact notes in which Mr M gave reasons as to why he was not able to pay.

I have reviewed the bank statements Mr M gave to Everyday Lending when applying for Loan 2 and he had two sets of bank accounts. There are large withdrawals of cash taken out a day or so after each Mr M's salary from work credited his account. And although Mr M explains it on one occasion, this seemed to be a regular thing. I have looked to see how it was that Mr M was able to live and pay any bills or credit commitments when so much cash was removed each month immediately after his salary was paid to him. And I cannot find the answer. This was clearly not investigated by Everyday Lending at the time but still it lent to him. And this was despite the bank statements revealing he had at least two payday loans (possibly more than one with the same company) and at least one credit collector repayment.

All in all, I consider that Everyday Lending lent to Mr M irresponsibly as the second loan would have committed him for four years and the amount taken was double what he had been approved for before. I have seen that the monthly repayments for loan 2 were less than for loan 1 but as these were going to be over 48 months then I consider the overall debt commitment was much higher. And as I pointed out earlier, with most of Mr M's monthly salary being withdrawn in cash immediately after his payday then I am aware that Everyday Lending would have seen what I have noted – that he would not have had enough to pay even his basic credit commitments and living expenses never mind the payday loans and this additional sum for the loan (plus the connected insurance).

I am planning to uphold Mr M's complaint for loans 1 and 2.

I understand loan 2 remains unpaid and was transferred to the Recoveries Department around August 2016.

This is the end of the duplicated provisional decision.

### ***How did each respond?***

Everyday Lending has acknowledged the email sending to it the provisional decision but has not responded.

Mr M has responded and has said he agrees with my provisional decision.

In the circumstances I see no reason to depart from the findings and conclusion in my provisional decision and I repeat those here and they form part of this final decision.

I uphold Mr M's complaint.

### **Putting things right**

To put things right Everyday Lending should:

- remove all interest, fees and charges applied to Loans 1 and 2 relating to the main loans (including the interest charged on the secondary loan sums),
- treat any payments made by Mr M in respect of these loans as payments towards the total capital amount of £6,000 (excluding the secondary loan sums),
- If Mr M has paid more than the capital on the main loans 1 and 2 then any overpayments should be refunded to him with 8% simple interest\* from the date they were paid to the date of settlement,
- If the debt has been sold to a third party, Everyday Lending should buy it back if it can. Everyday Lending is entitled to use any 'refunded' sums to offset against the capital amount Mr M owes it for the main loans 1 and 2 only, but to do that Everyday Lending must own that debt. It is not entitled to do that set-off unless it owns the debt.
- If there's still an outstanding balance, Everyday Lending should come to a reasonable repayment plan with Mr M.
- remove any adverse payment information (including any defaults) about Loans 1 and 2 from Mr M's credit file.

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

### **My final decision**

My final decision is that I uphold Mr M's complaint and I direct that Everyday Lending Limited trading as Everyday Loans, does 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 7 June 2022.

Rachael Williams  
**Ombudsman**