DRN-3446383

Financial Ombudsman Service

The complaint

Mr C complains that Everyday Lending Limited, trading as Everyday Loans, lent to him irresponsibly and without carrying out proper affordability checks. He would like all the fees and charges associated with the loan refunded.

What happened

In July 2010 Everyday Loans approved a loan of £2,000 for Mr C, which was scheduled to be repaid at approximately £226 per month over a term of 12 months. The purpose of the loan is no longer clear, beyond that it was not intended for the consolidation of existing debt. When assessing the application, Everyday Loans took steps to verify Mr C's financial circumstances and carried out a credit check before approving the lending.

Whilst Mr C seems to have run into some financial difficulties in 2011, the loan was ultimately repaid.

Mr C complained to Everyday Loans that the borrowing was not affordable for him. Everyday Loans rejected his complaint, and so he brought his case to this service. The adjudicator thought that Mr C's overall indebtedness at the time, and the proportion of his income which he needed to dedicate to servicing that debt, were significant. And so she upheld the complaint. Everyday Loans didn't accept that, highlighting that Mr C had a reasonable disposable income, so it continues to believe the lending was affordable.

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'm going to uphold this complaint and I'll explain why. I'll say from the start that I would describe this case as being particularly finely balanced.

Everyday Loans is aware of its obligations under the rules and regulations in place at the time of this lending decision, specifically the Office of Fair Trading's Irresponsible Lending Guide (ILG), so I won't repeat them here. But, briefly, it was required to carry out borrower focused checks to ensure that Mr C would be able to repay the borrowing applied for in a sustainable way. As set out in ILG 4.1, that means that he could manage the repayments,

> *"…in a sustainable manner, without the borrower incurring (further) financial difficulties and/or experiencing adverse consequences."*

Essentially, Mr C needed to be able to meet his financial commitments and not have to borrow elsewhere to repay Everyday Loans for the loan to be considered affordable and sustainable.

Did Everyday Loans carry out proportionate checks before granting this loan?

Everyday Loans asked Mr C fairly detailed questions about his income and expenditure; reviewed a copy of a recent pay slip and a month's worth of bank statements; and carried out a credit check when considering his loan application. In all the circumstances of this case, I'm satisfied that its checks went far enough.

Did Everyday Loans respond appropriately to the information it had when deciding whether to provide this loan?

Based on what it knew about Mr C, I do not think Everyday Loans acted fairly and reasonably when it concluded that this loan would be sustainable for him, bearing in mind the guidance in force at the time.

As previously mentioned, the adjudicator thought that this loan brought Mr C's overall indebtedness to a problematic level. Everyday Loans responded by highlighting that, *"…there is no ruling on the maximum amount…"*, that is, what proportion of income can be definitively described as a problematic or unproblematic one. I accept that entirely. It also reiterated that its calculations showed that Mr C still had a reasonable disposable income after meeting his commitments.

Superficially, that is true. However, I think it overlooks some causes for concern in Mr C's spending and circumstances at the time.

I can see that Everyday Loans considered at the time of the application the fact that Mr C had defaulted on two credit card accounts in the two years prior: one in September 2008 and one in November 2009. There are notes from managers at the time acknowledging this and discussing needing to get to the root of the problem, which didn't seem to be a lack of income. However, the notes also acknowledge that actually Everyday Loans wasn't able to understand these defaults, suggesting the problem might simply be one of not paying on time. However, these were substantial default amounts, occurring within just over a year of each other. So I think they warranted greater significance in Everyday Loans' assessment of the application than they appear to have been given. More specifically, I think they should have led to a more in-depth analysis of Mr C's spending than took place.

Everyday Loans points out that the bank statement it reviewed at the time showed that the account was *"…well run and shows no signs of financial distress."* Again, on a superficial level, I can accept that. Mr C had an agreed overdraft limit that was around 33% of his monthly income. So it wasn't disproportionately large, and he managed it well. On the other hand, Mr C did have to use the overdraft most months, and was frequently overdrawn by more than the amount of this repayment. Meaning, hypothetically, that he could be described as having to borrow from his bank to make this repayment. That would, of course, not be in line with the guidance in force at the time.

However, that is unhelpfully hypothetical in this case and not the key issue. Ultimately, what I think is most significant are Mr C's cash withdrawals. A review of the statements shows that all the bills and living expenses that might be considered typical were managed through either direct debits or debit card use. This includes utility bills, household shopping, and leisure, such as eating out. And I can see that Everyday Loans reviewed the statement in detail, annotating it to explain what many items were for. Despite this seeming transparency in his day to day spending through the many direct debits and debit card transactions, Mr C continued to withdraw substantial amounts of cash. In the statement reviewed by Everyday Loans, he took out £700 in one month. Spending that is, essentially, unaccounted for. Although I don't think Everyday Loans needed to gather any more information on Mr C's circumstances, I have seen many more bank statements, and have checked that withdrawing this amount of cash was typical for Mr C, and not an anomaly. It was typical over a protracted period. So Everyday Loans had the right information to spot this and ask serious questions about it.

Nearly 12 years later, there is no sense in speculating what that money may have been spent on: how discretionary it might have been, and whether Everyday Loans could have satisfied itself that Mr C could reduce it. But it would needed to have done that in order for this lending decision to be deemed responsible, given that his typical cash use *exceeded* what Everyday Loans estimated to be his disposable income. And I've seen no evidence that it did. Instead, the evidence shows that Mr C's outgoings essentially exceeded his income, with some mild fluctuations from month to month. In that light, the credit card defaults do suggest more endemic financial management problems.

Therefore, in the round, and acknowledging the finely balanced nature of this case, I can't see how Everyday Loans could have concluded, based on what it knew about Mr C, that this lending could be repaid in a sustainable manner. It therefore follows that I uphold this complaint.

Putting things right

In order to put things right for Mr C, Everyday Loans must do the following:

A) Everyday Loans must remove all interest, fees and charges from this loan, and treat any repayments made by Mr C as though they had been repayments of the principal on the loan.

B) If this results in Mr C having made overpayments then it must refund these overpayments with 8% simple interest* calculated on the overpayments, from the date the payments were made, to the date the complaint is settled.

C) It must remove any adverse information recorded on Mr C's credit file in relation to this loan.

*HM Revenue & Customs requires Everyday Loans to deduct tax from this interest. It should give Mr C a certificate showing how much tax it's deducted, if he asks for one.

My final decision

For the reasons I've explained, I uphold this complaint and direct Everyday Lending Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 26 May 2022.
Siobhan McBride

Ombudsman