DRN-3462266

The complaint

Ms K complains that Everyday Lending Limited (Everyday) lent her money on a high cost loan which she was unable to afford to repay.

What happened

Ms K was provided with a loan for £2,000 on 2 September 2015, repayable at the rate of about £183 a month over 24 months. She had problems repaying the loan and in February 2016 consulted a debt advice charity. She couldn't afford after that to pay more than a nominal payment each month. By June 2020 £2,834 still remained outstanding and Everyday passed the loan amount onto a third party to seek recovery. All recovery has been put on hold whist Ms K pursues her complaint.

Ms K complained that the loan was unaffordable to her. She is a single parent and at the time had four children of 17 and under and another child and responsibility for a grandchild. She believed that Everyday hadn't given her sufficient information about the loan and carried out inadequate affordability checks.

Everyday said it carried out its normal verification checks, which included obtaining a credit report, verifying Ms K's income and obtaining two months' payslips and bank statements. It calculated her outgoings using ONS (Office for National Statistics) data allowing 35% of her monthly income plus £80 for each child. It used her lowest net figure for her pay and added child benefits and tax credits. It said that she spent around £2,225 on her monthly outgoings and credit commitments. It believed she had an adequate disposable income to afford the loan repayments.

Our adjudicator said that by assessing Ms K's normal income, and her outgoings from her bank statements, she would have been left with a negative income so wouldn't have been able to afford the loan instalments. He also pointed out that she had several loans/accounts in default and a recent county court judgement (CCJ).

Everyday hasn't responded to the adjudicator's view, so the matter has been passed to me for further consideration.

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.

Considering the relevant rules, guidance, and good industry practice, I think the questions I need to consider in deciding what's fair and reasonable in the circumstances of this complaint are:

- Did Everyday complete reasonable and proportionate checks to satisfy itself that Ms K would be able to repay the loan in a sustainable way?

- If not, would those checks have shown that Ms K would have been able to do so?

The rules and regulations in place required Everyday to carry out a reasonable and proportionate assessment of Ms K's ability to make the repayments under the agreement. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower-focused" – so Everyday had to think about whether repaying the loan would be sustainable. In practice this meant that Everyday had to ensure that making the repayments on the loan wouldn't cause Ms K undue difficulty or significant adverse consequences. That means she 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 she had a contractual or statutory obligation to make and without the repayments having a significant adverse impact on her financial situation.

In other words, it wasn't enough for Everyday to simply think about the likelihood of it getting its money back - it had to consider the impact of the loan repayments on Ms K**.** 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 such a 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).

Considering her income, the loan would have represented a considerable commitment from Ms K, so I think Everyday should have carried out a thorough assessment of her circumstances.

From its records I've noted that Everyday considered Ms K to be a risk and had initially refused her a loan. However it appears that it was persuaded that her debts were historical and she was making efforts to make her situation better.

The credit report shows that Ms K had two loans and two credit cards in default. The loans were with a debt collector. The total debt just for these items was over £6,000. Although the defaults were several years old the balances were nevertheless still active. I note Everyday allowed a 3% payment each month for each debt. Ms K also had a recent (June 2014) CCJ for £2,600 against her. Again, Everyday allowed a 3% payment for this, though I've seen no indication that the creditor was prepared to accept this. I think bearing in mind Ms K hadn't been able to pay these debts, that was an indication that she was likely to struggle with more credit.

Everyday assessed Ms K's monthly income at £2,506, including child benefit and tax credits. Based on the lower of her two payslips, the number of children under 16 and her tax credits (which are on the file in a statement), I think this figure was more like £2,365. And whilst I note Everyday's use of statistics, where the customer's bank statements are at hand I think it more realistic to get the outgoings from the statements. Our adjudicator did estimate that Ms K had a negative income left of over £1,000 each month. As this figure appears to include a one-off payment towards a loan for £1,121, I don't think she had a negative income left. But using the figures from her bank statements I estimate that she was spending around £2,320 a month including her credit commitments, just allowing for minimum payments for her defaulted debts, CCJ and credit cards. This left her with very little disposable income each month.

Everyday says the loan was for debt consolidation, and I note that two loans were paid off by Everyday. but the instalments for those loans (according to the credit report) totalled £153, against the new loan instalment of £183. There's no indication that any other loans were to be paid off so I can't say that she was able to free up any more money.

Whilst Ms K's total loan and credit card minimum payments amounted to something like 21% of her income, I nevertheless think that the fact of all her defaults, CCJ and her high outgoings meant that this loan was likely to be unaffordable. Indeed I note that she became unable to repay the loan within about five months of taking it out.

So, whilst I think that Everyday carried out proportionate checks, those checks should have revealed that she would have been unlikely to be able to afford the loan instalments. So, I don't think Everyday made a fair lending decision

Putting things right

Ms K has had the capital payment in respect of the loan, so it's fair that she should repay this. So far as the loan is concerned, I think Everyday should refund all interest and charges as follows:

- Remove all interest, fees and charges applied to the loan.
- Treat any payments made by Ms K as payments towards the capital amount of £2,000.
- If Ms K has paid more than the capital, refund any overpayments to her with 8%* simple interest from the date they were paid to the date of settlement.
- But if there's still an outstanding balance, Everyday should come to a reasonable repayment plan with Ms K.
- If Everyday has sold the outstanding debt to a third-party it should do what it can to buy it back - if it can't, it can't deduct any outstanding balance from the redress and it then it needs to work with the third-party to bring about the steps above.
- Remove any adverse information about the loan from Ms K's credit file.

*HM Revenue & Customs requires Everyday to deduct tax from this interest. It should give

Ms K a certificate showing how much tax it’s deducted if she asks for one.

My final decision

I uphold the complaint and require Everyday Lending Limited to provide the remedy set out under “Putting things right” above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms K to accept or reject my decision before 16 June 2022.

Ray Lawley
Ombudsman