

The complaint

Mr B has complained that Everyday Lending Limited was irresponsible in lending to him.

What happened

In May 2015 Everyday Lending provided Mr B with a loan of £2,500 repayable over 24 months with a monthly repayment of £138.98.

Mr B complained that the loan was unaffordable. Everyday Lending looked into his complaint. It said it had carried out proper checks and it thought the loan was affordable.

Mr B referred his complaint to us. Our adjudicator upheld the complaint. She thought the checks carried out by Everyday Lending were proportionate but she didn't think the loan was affordable.

As Everyday Lending didn't agree, the matter has been referred to me.

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 carefully thought about everything, I think that there are two overarching questions that I need to answer in order to fairly and reasonably decide Mr B's complaint. These two questions are:

1. Did Everyday Lending complete reasonable and proportionate checks to satisfy itself that Mr B would be able to repay the loans without experiencing significant adverse consequences?
 - If so, did it make a fair lending decision?
 - If not, would those checks have shown that Mr B would've been able to do so?
2. Did Everyday Lending act unfairly or unreasonably in some other way?

The rules and regulations in place required Everyday Lending to carry out a reasonable and proportionate assessment of Mr B'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. In practice this meant that the business had to ensure that making the repayments on the loan wouldn't cause Mr B undue difficulty or significant adverse consequences. That means he 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 he had a contractual or statutory obligation to make and without the repayments having a significant adverse impact on his 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 B. 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.

In light of this, 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 of time 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 of the arguments, evidence and information provided in this context and what this all means for Mr B's complaint.

Everyday Lending carried out some checks before it lent to Mr B. These included asking for details of his income and expenditure, carrying out a credit check, requesting a payslip and bank statements. It calculated Mr B'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. From what I've seen, I think the checks that it carried out before lending to Mr B were reasonable and proportionate in the circumstances.

Everyday Lending established that Mr B's average monthly income was £1,602.39 and he was paying £400 in rent. It calculated his other living expenses were £560.83. He was due to pay £238.41 on his existing credit commitments. Everyday Lending estimated that Mr B would have a monthly disposable income of £219.16 after taking into account his new loan repayment of £138.98.

The credit search showed that Mr B owed £3,365 over eight accounts. He had a county court judgment of £1,848 from the previous year which he was repaying at a rate of £10 a week. There were four defaults registered against him from 2008 to 2015. Two months prior to his application he'd missed repayments on three accounts.

The bank statements Mr B gave Everyday Lending for March and April 2015 don't show the credit repayments that it would have expected to see from its credit search. In addition the payments Mr B did make to his credit card providers were made using his debit card as opposed to direct debit. That might indicate Mr B was choosing to pay less than the

minimum amount due and/or make the payments at a time when the funds were available in his bank account as I note that several direct debits were returned unpaid. I think this was at odds with the amount of disposable income Everyday Lending calculated Mr B should have.

On balance I think the information from Mr B's bank statement and the recent missed repayments should have made Everyday Lending realise that Mr B was probably not going to be in a position to sustainably repay the loan repayments of £138.98 over the next two years, given that he already seemed to be over-stretched financially. So I don't think Everyday Lending treated Mr B fairly when it agreed to lend to him.

I've also thought about whether Everyday Lending acted unfairly in some other way and I haven't seen any evidence that it did.

Putting things right

If Everyday Lending has sold the loan, it should buy it back if it is able to do so and then take the following steps. If Everyday Lending is not able to buy the loan back, then it should liaise with the new debt owner to achieve the results outlined below.

I understand Mr B is subject to an Individual Involuntary Arrangement (IVA) and his Insolvency Practitioner has told us they have an interest in any refund due to him. I therefore, remind all parties to ensure that any refund is processed in line with the terms as set out in the IVA.

As I have concluded Everyday Lending shouldn't have provided the loan, it should:

- refund all interest, fees and charges applied to the loan;
- treat any payments made by Mr B as payments towards the capital amount of £2,500;
- If Mr B has paid more than the capital, then any overpayments should be refunded to him with 8% simple interest* 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 repayment plan with Mr B; and
- remove any negative information about the loan from Mr B's credit file.

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

My final decision

For the reasons given above, I uphold Mr B's complaint and require Everyday Lending Limited to put things right for Mr B as set out above.

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

Elizabeth Grant
Ombudsman