The complaint

Mrs N complained that Everyday Lending Limited trading as Everyday Loans irresponsibly provided her with an unaffordable loan.

What happened

The main loan details are as follows:

Date taken	Amount	Term months	Monthly payment	Total amount repayable	Loan status
February 2018	£5,000	36	£264.18	£9,510.48	Outstanding

One of our adjudicators reviewed what Mrs N and Everyday Loans had told us and he thought that Everyday Loans shouldn’t have provided this loan. So he recommended upholding Mrs N’s complaint. Everyday Loans disagreed and asked for an ombudsman to look at this complaint.

In brief summary, Everyday Loans disputed the income and expenditure figures our adjudicator had relied on in her view and said it was unfair to make an assessment of affordability on the basis of discretionary spending. It felt its assessment was proportionate and fair and showed that Mrs N would have over £300 disposable income. It also said this amount didn’t include additional income Mrs N received from overseas. Everyday Loans said she fell into difficulty with her account only when her health deteriorated and this didn’t happen because the loan repayments were unsustainable or unaffordable.

As the complaint is unresolved, it comes 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 of the relevant rules, guidance and good industry practice - on our website. Having thought about everything, I agree with the conclusion our adjudicator came to. I’ll explain why I say this.

The rules don’t say what a lender should look at before agreeing to lend. But reasonable and proportionate checks should be carried out. Lenders must work out if a borrower can sustainably afford the loan repayments alongside other reasonable expenses the borrower also has to pay. This should include more than just checking that the loan payments look affordable on a strict pounds and pence calculation – a proportionate check might also require the lender to find out the borrower’s credit history and/or take further steps to verify the borrower’s overall financial situation.

If reasonable and proportionate checks weren't carried out, I need to consider if a loan would've been approved if the checks had been done. If proportionate checks were done and a loan looks affordable, a lender still needs to think about whether there's any other reason why it would be irresponsible or unfair to lend. For example, if the lender should've realised that the loan was likely to lead to significant adverse consequences or more money problems for a borrower who is already struggling with debt that can't be repaid in a sustainable way.

Everyday Loans asked Mrs N about her income and expenses – including what she spent on her credit commitments. It also did its own credit check to understand her credit history and find out about her existing credit commitments and it reviewed a bank statement provided by Mrs N.

Everyday Loans recorded Mrs N's monthly take home pay was around £1,913 which it checked against information it saw on her bank statements and a payslip she provided. Mrs N told Everyday Loans that another member of the household paid the rent on her home. Everyday Loans took into account nationally available statistics when thinking about Mrs N's likely living costs.

Based on this, Everyday Loans affordability assessment showed that Mrs N's likely spending needs should've left her with just over £600 surplus cash each month.

This led Everyday Loans to conclude that the loan repayments of £264.18 would be sustainably affordable for Mrs N.

Like our adjudicator, I think Everyday Loans' checks were broadly proportionate. But, despite its affordability calculation appearing to show that Mrs N should have had enough disposable income each month to cover the loan repayments, I think Everyday Loans should've realised this was unlikely, given the picture painted overall by the other information it had gathered.

I think Everyday Loans saw that Mrs N had two other large loans, including one for more than £10,000 taken out in November 2017, just 3 months or so before she applied for this loan. In total, she owed more than £11,000 on loans and instalment credit – as well as a further £2,600 or so on active credit cards, which were already at or approaching the account limit. I think this looked like a relatively large amount of credit for someone in Mrs N's financial situation – especially bearing in mind that she had been in her current reasonably well paid employment for over 3 years and she wasn't responsible for paying any housing costs out of her income. And despite her bank account being boosted by a payment of around £1,740 near the start of February 2018, which moved her account into credit, Everyday Loans could see that Mrs N was around £600 overdrawn at both the start and end of the month's worth of transactions it saw - and paying bank fees for this.

I think Everyday Loans should've realised that it looked like Mrs N's debt had already become problematic for her and that she was financially over-stretched and struggling to manage her money.

I've taken carefully into account everything Everyday Loans has said in response to our adjudicator's assessment about the way it assessed affordability.

But I think Everyday Loans should've realised that the additional repayments for this loan, on top of the debt she was already paying, meant Mrs N would need to pay almost a third of her net income just to service her debt repayments. I think this was such a significant portion of her income being committed to paying for credit, it was likely she would struggle to repay this loan sustainably over the loan term given the evident money problems she already had meeting her existing credit commitments.

I've taken into account what Everyday Loans has said about discretionary spending. But it seems unlikely to me that Mrs N's circumstances would have allowed much scope for her to cut back on other spending throughout the loan term sufficiently to make the loan comfortably affordable. Especially keeping in mind that the income figure it relied on included regular benefits that were paid based on her circumstances and specifically intended to help cover other costs – not repay additional debt. I haven't seen anything to make me think that Everyday Loans could reasonably have expected Mrs N's overseas income would be sufficient to improve

So all the indications were that she would most likely remain in serious financial trouble regardless. Thinking about all the information Everyday Loans had gathered, I can't reasonably say that it made a fair lending decision based on the information in front of it. I don't think Everyday Loans was able to safely conclude that its loan would be sustainably affordable for Mrs N. I believe that Everyday Loans ought reasonably to have been aware that this loan was likely to be detrimental to Mrs N and recognised that it shouldn't have provided it.

So Everyday Loans needs to put things right.

Putting things right

I think it is fair and reasonable for Mrs N to repay the capital amount that she borrowed because she had the benefit of that lending - but she shouldn't repay any more than this.

If Everyday Loans has sold the outstanding debt it should buy this back before doing what I have outlined below. Otherwise, Everyday Loans should liaise with the new debt owner to achieve the following:

- add up the total amount of money Mrs N received as a result of having been given the loan. The repayments Mrs N made should be deducted from this amount.
- If this results in Mrs N having paid more than she received, then any overpayments should be refunded along with 8% simple interest* (calculated from the date the overpayments were made until the date of settlement).
- If any capital balance remains outstanding, then Everyday Loans should attempt to arrange an affordable and suitable payment plan with Mrs N
- Whilst it's fair that Mrs N's credit file is an accurate reflection of her financial history, it's unfair that she should be disadvantaged by the decision to lend a loan that was unfairly provided. So Everyday Loans should remove any negative information recorded on Mrs N's credit file regarding the loan.

*HM Revenue & Customs requires Everyday Loans to deduct tax from this interest. Everyday Loans should give Mrs N a certificate showing how much tax has been deducted if she asks for one.

My final decision

I uphold Mrs N's complaint and direct Everyday Lending Limited trading as Everyday Loans to take the steps I've set out above to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N to accept or reject my decision before 16 June 2022.

Susan Webb

Ombudsman