

The complaint

Mr J complains that Everyday Lending Limited, trading as Everyday Loans, lent to him irresponsibly.

Mr J also complains that the Everyday Lending representatives pressurised him into increasing a loan he had applied for from £1,500 to £3,000.

Mr J says that as a result he has suffered distress and inconvenience.

What happened

Using information from Everyday Lending, here is a brief table of the approved loans.

Loan	Approved	Amount	Total to pay	repaid
1	20 February 2020	£1,000 for 18 months	£2,237.76	30 September 2021
2	30 September 2021	£3,000 for 24 months	£289.84	Outstanding

Loan 1 has been repaid. Mr J has not paid much back towards loan 2.

After Mr J had complained to Everyday Lending in November 2021, he received a final response letter (FRL) dated 24 November 2021. Everyday Lending accepted that it had done the wrong thing for loan 2 and it has confirmed to us that it will put that right for him.

One of our adjudicators considered the complaint and also thought that loan 1 ought to be upheld as part of Mr J's irresponsible lending complaint.

Our adjudicator did not think he had enough evidence to come to a view about Mr J having been pressurised into taking loan 2 at £3,000 as opposed to £1,500 as Mr J says. And so, our adjudicator did not uphold that part of the complaint. He did not consider that an additional payment for compensation over and above the usual redress for irresponsible lending complaints was warranted.

Everyday Lending agreed with our adjudicator and so the irresponsible lending element of the complaint appears to have been resolved for both loans. Mr J was not content with some parts of our adjudicator's view. The remaining parts of the complaint in dispute have been summarised by Mr J and I set them out below.

Mr J has said that:

- the loan 1 refund ought not to be used by being off-set against the debt he owes on loan 2, but paid directly to him
- he maintains that he was pressurised into loan 2 being larger than he wanted and so he says it should be altered to be a £1,500 loan

- if that loan 2 is altered to be one for £1,500 he accepts he owes money on it and was content to repay at a rate of £50 a month
- he wants a distress and inconvenience compensation payment of £150
- he wants his credit file rectified

Mr J has explained to us that he was a gambler and now has sought help and is gaining ground to overcome his gambling which is good to know. This is relevant as Mr J's justification for the distress and inconvenience payment he's asking me to review is this:

'Whilst waiving the interest on both loans partly puts me back in the situation I would have been in, I feel large companies who prey on those with poor credit ratings, pressured re-loans to spiral them into a dark place, there should be a penalty or compensation awarded. I think these companies should also to some degree take financial responsibility for their lack of affordability checks also.'

Everyday Lending has written to us with clear submissions on why it would not be appropriate to pay any refund monies directly to Mr J and it says that to off-set what it owes to Mr J against what Mr J owes to it is more appropriate.

The remaining part of the unresolved complaint has been passed 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 the relevant rules, guidance, and good industry practice - on our website.

As Everyday Lending has accepted that it needs to put things right for Mr J in relation to the lending then I do not need to go into further details on those points and so I have moved on to consider the outstanding parts still concerning Mr J.

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

Pressure to take £3,000

Mr J has sent to us (as has Everyday Lending) a recorded call from 30 September 2021, and I have listened to that call recording. Mr J telephoned Everyday Lending following receipt of a text from Everyday Lending. Mr J opened the conversation as it seems that his current loan (loan 1) was about to end and so he was responding to the text about possible further lending.

What followed between Mr J and the Everyday Lending representative was an exchange of information about Mr J's financial situation and whether anything had altered since his application for loan 1, 18 months earlier. Mr J was asked what he needed and he said that £1,500 would cover his outstanding bills and some home improvements.

The Everyday Lending representative asked him to reconfirm his accommodation, employment, income, and what his partner earned and told Mr J that they'd be able to give him a better rate for any new loan. And after a short 'hold' on the telephone the Everyday Lending representative explained that Mr J's credit score had improved and it could agree to a loan for £1,500 loan. However, Mr J would have to come to the branch with identification, a

payslip, and two months' worth of bank statements before it was confirmed. And an appointment was made.

Everyday Lending has sent to us all the files it has for Mr J about the loans, and for loan 2 there are no records about that appointment and what was said. Mr J has alleged that he was pressured into taking £3,000 rather than £1,500.

Mr J may feel strongly about this but there's no evidence to suggest this was the case. And as we are an alternative dispute resolution service, we look at matters in an informal way. It would not be appropriate to seek to resolve this part of Mr J's grievance by testing the evidence in the way that a court would – such as – examination and cross examination of Mr J and of the individuals in the Everyday Lending branch at the time. That is not what we do here and so I've looked at what we have.

Having reviewed what I have I can see that there are annotations on the bank statements and a discussion appears to have been had about the Nationwide account Mr J had as well as the Santander and the Barclays accounts. But there's nothing to indicate to me that Mr J's agreement to £3,000 was anything other than normal. Mr J appears to have signed a Direct Debit mandate form and initialled a series of boxes to confirm that he has had several elements about the loan explained to him, including the 14 day cancellation/withdrawal rights. I can take it no further.

Reading Mr J's recent submissions as to why he wanted an ombudsman to look at it all, Mr J's strength of feeling appears to touch on responsibility. Mr J seems to want me to come to a conclusion in which Everyday Lending would be penalised in some way. That is not our remit. Any award that the Financial Ombudsman makes is not punitive. We are not regulators of the financial industry. We consider financial complaints impartially, and so I have approached the complaint with that in mind.

Everyday Lending has accepted responsibility for its lack of affordability checks by agreeing to uphold loan 2 in the FRL and agreeing to our adjudicator's view earlier this year about loan 1. And so as Everyday Lending has accepted that it ought to have done more I do not need to make any further findings on that part.

Altering the lending agreement

The loan 2 agreement was for £3,000 and Mr J agreed to it. I am not able to change a contract by altering the amount agreed to. Only a court can do that and so it's for Mr J to take independent legal advice on that.

The crux of his request to alter the agreement from £3,000 to £1,500 is that Mr J is asking me to agree that he is not expected to repay £1,500 of the £3,000 loan and so he is asking me to direct that Everyday Lending writes off £1,500 of capital. Mr J received the benefit of that £3,000 capital when he took loan 2 and I see no grounds on which to direct Everyday Lending to write that sum off.

I have picked up on Everyday Lending's point that these sorts of agreements do have 14 day 'cooling off' periods and so even if Mr J did change his mind soon after signing the agreements for loan 2, he had that option. It's a fair point by Everyday Lending and reduces the argument presented by Mr J that he was somehow 'bounced' into taking £3,000 and that after the agreement had been signed, there was little he could do about it. Because that withdrawal/cancellation provision does give Mr J an option to reverse out of the agreement if he had wanted to. And that is part of the consumer protection laws we have in this country.

Distress and inconvenience payment

Mr J applied for the loan. He says his distress has arisen out of the lending. I have already outlined the reasons for not concluding that Mr J was pressurised into the loan. And so, there is no justification for any compensation in relation to that part of Mr J's complaint as I do not uphold that part of Mr J's complaint.

Mr J has also said: *'I feel large companies who prey on those with poor credit ratings, pressured re-loans to spiral them into a dark place, there should be a penalty or compensation awarded.'*

But this is not a reason to award compensation to Mr J. As I have outlined earlier, the Financial Ombudsman Service is not a regulator and awards we make are not ones awarded to punish the business in some way. That would mean that they are effectively a fine and that is not my remit.

As the usual approach for redress we take for these sorts of cases includes an 8% interest refund part then that usually covers the compensatory element for the complainant – here for Mr J.

It is complicated in Mr J's situation whereby most of Loan 2 remains outstanding and there is due to be a loan 1 refund. I do think that loan 1 should be dealt with separately to loan 2 and so, the redress section for Mr J is set out below in the *'putting things right'* section and that is what I consider fair and reasonable for both parties in these circumstances. It differs to the redress the adjudicator outlined.

Set-off

It is perfectly reasonable in most of the cases I see for the monies owed by the respondent business (the lender) to the successful complainant to be off-set against the debt the complainant owes the business. And Mr J's situation is no different.

I accept Everyday Lending's submissions about Mr J's payment history on loan 2 which is a modest sum considering the amount owed. It has told us earlier this week that Mr J owes it £2,710.16 on loan 2 after all outstanding interest and charges have been removed. Everyday Lending confirmed that Mr J has received a total of £4,000 from it.

Everyday Lending has explained that since loan 2 was approved the first repayment went through by direct debit in October 2021 but the second repayment in November 2021 was reclaimed by Mr J through his bank and the direct debit indemnity provisions on 30 November 2021. Everyday Lending has said that there was no justification for this. I make no finding in relation to that direct debit indemnity issue as it's not part of this complaint. However, I have noted this.

It seems that Mr J has paid nothing further towards loan 2 since the first payment in October 2021 despite seeming to accept that he owed at least the £1,500 even if he disputed the full £3,000.

Everyday Lending has told us *'...we have little confidence he will pay once he is in receipt of funds from Loan 1.'* Everyday Lending has concerns that he may not be able to pay what he owes to it and I consider that its concerns are justified.

So, as is usual, I will be directing that any monies due to Mr J be off-set against the debt Mr J owes to Everyday Lending on loan 2.

And as I have outlined earlier, I have no reasons or justification for directing that Everyday Lending should write off any portion of the capital sums Mr J received from it.

There are advantages of having the debt reduced substantially by the set-off as it means that Mr J will be debt free from Everyday Lending all the quicker if his balance to pay is less.

Mr J has said that he will pay the balance and I will leave that to Mr J and Everyday Lending to arrange a suitable and mutually beneficial repayment plan on any remaining balance. I remind Everyday Lending that it must approach Mr J's debt in a positive and sympathetic way.

My decision

In the circumstances, I endorse the fact that Everyday Lending has agreed to put things right for loans 1 and 2 and the '*putting things right*' section outlines what I consider to be fair and reasonable redress.

It differs to the redress outlined by our adjudicator and I think that what I have directed here is fair as it does compensate Mr J with 8% interest on the refunds for the payments made on Loan 1 as and when they were made up to the date of settlement of the complaint. That loan commenced in February 2020 which is over two years ago.

I do not uphold Mr J's complaint about being pressured into taking a loan larger than the one he applied for. I do not consider that any additional compensation is due to Mr J for the reasons I have given above.

Putting things right

Everyday Lending shouldn't have given Mr J loans 1 and 2.

Loan 1 has been repaid in full. Loan 2 remains outstanding.

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

A) Everyday Lending should add together the total of the repayments made by Mr J towards interest, fees and charges on loan 1, not including anything it has already refunded.

B) Everyday Lending should calculate 8% simple interest* on the interest, fees and charges payments made by Mr J which were considered as part of "A", calculated from the date Mr J originally made each of the payments, to the date the complaint is settled.

C) Everyday Lending should remove all interest, fees and charges from the balance on Loan 2, and treat any repayments made by Mr J as though they had been repayments of the principal. If this results in Mr J having made overpayments then it should refund these overpayments with 8% simple interest* calculated on the overpayments, from the date the overpayments would have arisen, to the date the complaint is settled. Everyday Lending should then refund the amounts calculated in "A" and "B" and move to step "E".

D) If there is still an outstanding balance then the amounts calculated in "A" and "B" should be used to repay any balance remaining on loan 2. If this results in a surplus then the surplus should be paid to Mr J. However, if there is still an outstanding balance then Everyday Lending should try to agree an affordable repayment plan with Mr J.

E) Everyday Lending should remove any adverse information recorded on Mr J's credit file in relation to loans 1 and 2 but that only needs to be done for loan 2 once it has been repaid.

*HM Revenue & Customs requires Everyday Lending to deduct tax from this interest. It should give Mr J a certificate showing how much tax it has deducted if he asks for one.

My final decision

My final decision is that I uphold Mr J's complaint in part and I direct that Everyday Lending Limited does as I have outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 19 July 2022.

Rachael Williams
Ombudsman