DRN-3550118

The complaint

Mr D complained that Everyday Lending Limited trading as Everyday Loans lent to him irresponsibly and provided him with an unaffordable loan.

What happened

Everyday Loans provided a loan to Mr D as follows:

Date taken	**Loan amount**	**Term**	**Typical monthly repayment**	**Total amount payable**	**Loan status**
23 March 2019	£5,000	60 months	£351.50	£21,090	Outstanding

When Mr D complained to Everyday Loans it didn't uphold his complaint so he brought his complaint to us.

Mr D said he had signed up to this loan on the understanding that Everyday Loans would refinance the loan after an initial start-up period and that it was unaffordable for him otherwise. He told us that when he wasn't able to restructure his borrowing with Everyday Loans as he had hoped to do, this made his already difficult financial situation worse and led to extreme emotional, financial and mental distress which has had lasting consequences for him and his family.

One of our investigators looked at the complaint and thought that Everyday Loans should've undertaken more thorough checks to ensure it wasn't putting Mr D into a position where he would be over-extending himself to repay the loan. So he thought Everyday Loans should pay redress for this – particularly as he didn't think that the loan looked affordable for Mr D. But he didn't think that Everyday Loans had misled Mr D about refinancing the loan and so he didn't uphold that part of Mr D's complaint.

Everyday Loans disagreed. It mainly said that it felt the way it had worked out affordability was fair and even using figures the investigator had suggested still showed the loan was affordable.

There was been a further exchange of correspondence but the complaint still wasn't resolved, so it came to me to decide. I issued a provisional decision.

What I said in my provisional decision

Here are some of the main things I said.

"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. And even if proportionate checks were done and a loan looked affordable, a lender still needed to think about whether there was 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 already struggling with debt that can't be repaid in a sustainable way.

Everyday Loans asked Mr D about his income and expenditure. It checked Mr D's payslip information and worked out that his average earnings were around £1,962 each month.

It also asked about the purpose of the loan and understood it would be used for debt consolidation – in other words, Mr D said he would use the loan to repay other debt. But he mentioned that not all the debt he intended to repay was his own - so Everyday Loans should've understood that effectively he planned to spend part of the loan.

When working out what he could afford, Everyday Loans allowed for Mr D's housing costs. Everyday Loans also took into account statistical information and factored into its calculations an amount that reflected the typical monthly expenditure someone in Mr D's circumstances might reasonably expect to pay according to national UK averages worked out by the Office for National Statistics.

This figure also included an extra 'buffer' for any minor fluctuations in Mr D's income or expenses or in case he needed to meet an unplanned expense.

As well as this, Everyday Loans carried out its own credit checks in order to see Mr D's credit history and understand what he was paying towards his current credit commitments. Everyday Loans saw that Mr D had three credit cards and a mail order account and the outstanding balance owed on these accounts was £4,650.

It could also see from bank statements he supplied that he was typically overdrawn on his current account. He appeared to be often close to his £2,000 overdraft limit, bringing his total indebtedness typically to more than £6,000 – it was around £6,400 on the day Everyday Loans did its credit checks.

Our investigator didn't think Everyday Loans' checks were proportionate. I've also noted the exchange between the investigator and Everyday Loans about whether it was fair to include additional income as part of its affordability assessment. I saw no evidence on the information provided to me that showed Mr D had any other regular income paid into his account other than his earnings. But I don't need to make findings on these issues as it makes no difference to the outcome. I think Everyday Loans saw enough in the information it had in front of it to have realised that Mr D probably wouldn't be able to repay the loan in a sustainable way.

I say this because, despite its affordability calculation appearing to show that Mr D 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.

Everyday Loans saw that Mr D seemed to be typically overdrawn by an amount broadly equivalent to a month's pay - so it would've understood that there was no realistic prospect of his account being brought back into credit unless there was significant improvement in his financial situation. It had already factored in his bonus earnings when assessing his monthly income. So it's hard to see how Everyday Loans might've thought Mr D would be able to boost his monthly income much beyond the figure it worked out. Even if it did think Mr D's family situation meant there was additional income coming into the household, I think it's fair to say that it should've understood that money was paid to cover other specific costs - it wasn't intended to be available for the purpose of repaying additional expensive debt.

And I think the fact that he was seeking a loan in order to repay what he owed elsewhere was a clear indication that Mr D was already struggling to manage money problems. Debt consolidation can be very expensive – Mr D would incur further interest charges on debt that already included interest. This loan would potentially cost him more than £16,000 over the loan term. So it isn't an option I'd expect a borrower who was on top of their finances would be likely to want to choose.

Although its £5,000 loan could potentially have cleared all Mr D's credit cards and mail order account and reduced his overdraft by a few hundred pounds, Everyday Loans was aware that paying for his existing debt left Mr D struggling to stay within his overdraft. It follows that increasing his overall debt servicing costs (by taking out this loan) would make his financial situation worse – not just month to month but also bearing in mind the overall cost of this expensive loan.

So I think it should've realised that this loan was unlikely to be sustainably affordable for Mr D – and it shouldn't have provided it.

In coming to my provisional decision, I've taken into account that Mr D was sometimes paying more than the minimum monthly amounts owed to his credit cards and on his mail order account – paying just the minimum monthly repayments would've reduced his debt servicing costs, which in turn might've improved his financial situation at the bank when he took out this loan. But I don't think this would've been enough of a saving to lead me to a different conclusion – especially keeping in mind that minimum monthly repayments are insufficient to make any meaningful inroads into revolving account balances and effectively extend the debt and add to long term costs.

I can also see that when Mr D exceeded his overdraft limit on one occasion he was able to transfer £600 from a savings account to bring the account back within its overdraft limit. This suggests to me that he had a degree of flexibility in his finances that month. But £600 wouldn't be enough to cover even two months' worth of monthly repayments on the loan Everyday Loans was providing or significantly reduce his overdraft. Keeping in mind that he was signing up to make these loan repayments for the next five years and it looked like he'd be relying indefinitely on borrowed money from the bank to pay his way, I still think this is a complaint I should fairly uphold.

To sum up, although Everyday Loans understood that the loan was intended for debt consolidation, it didn't have control over how Mr D used the money it provided as it paid the loan balance to him. And he had talked about spending some of the money on paying someone else's loan – so this would mean his own indebtedness (and the amount he had to pay towards it) would not be offset by the full amount of the loan. And even if Mr D had used the loan to clear his own debts, this would still have left the bulk of his overdraft in place, and the loan monthly repayments meant that Mr D would now have to pay more than he'd been doing before taking the loan. So I don't think Everyday Loans had sufficient reason to think its loan would've improved Mr D's overall position sufficiently to achieve a significant and sustainable improvement in his financial situation when all the indications were that Mr D wouldn't be able to repay the loan in a sustainable way. His debt servicing costs would still be beyond his means and so he would remain in serious financial trouble regardless.

For these reasons, I plan to uphold Mr D's complaint that he should not have been given the loan. I hope that settings things out this way is helpful and I invite Everyday Loans to reconsider its position.

Our investigator didn't think Everyday Loans had misled Mr D about the possibility of refinancing the loan so he didn't recommend that Everyday Loans should pay redress for any other reason. Mr D hasn't commented on that and I haven't seen anything which makes me think Everyday Loans acted unfairly towards Mr D in any other way.

So I'm not awarding any additional redress."

What the parties said in response to my provisional decision

Mr D agrees with what I've said in my provisional decision.

Everyday Loans has acknowledged receipt of my provisional decision but has not commented further.

The deadline I set for responses to be received has now passed so I think it's reasonable for me to proceed with my review of this complaint.

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 approach to unaffordable/irresponsible lending complaints on our website and I've kept this in mind while deciding this complaint.

Given that I've not received any further evidence or comment that changes my mind about this complaint, I confirm the conclusions I reached in my provisional decision.

Putting things right

I think it is fair and reasonable for Mr D to repay the capital amount that he borrowed, because he had the benefit of that lending.

But he has been charged extra for lending that should not have been provided to him. In line with this Service's approach, Mr D shouldn't repay more than the capital amount he borrowed.

If Everyday Loans sold any outstanding debt it should buy this back if able to do so and then take the following steps.

Otherwise, Everyday Loans should liaise with the new debt owner to achieve the results outlined below and do the following:

- add up the total amount of money Mr D received as a result of having been given the loan. The repayments Mr D made should be deducted from this amount
- if this results in Mr D having paid more than he 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 try and arrange an affordable payment plan with Mr D bearing in mind its obligation to treat Mr D sympathetically and fairly if he still needs further time to pay
- whilst it's fair that Mr D's credit file is an accurate reflection of his financial history, it's unfair that he should be disadvantaged by any adverse information recorded about a loan that was unfairly provided. So Everyday Loans should remove any negative information recorded on Mr D's credit file regarding the loan.

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

My final decision

I uphold this complaint and direct Everyday Lending Limited trading as Everyday Loans to take the steps I've set out above to put things right for Mr D.

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

Susan Webb
Ombudsman