DRN-3585072

## The complaint

Mr S complains that Everyday Lending Limited trading as TrustTwo irresponsibly provided him with a loan that was unaffordable.

## What happened

Mr S was given a single loan by TrustTwo. The main loan details are as follows:

| Date taken | Loan amount | Number of monthly instalments | Typical monthly repayment | Total amount payable |
|---|---|---|---|---|
| January 2020 | £10,000 | 60 | £394.58 | £23,674.80 |

The stated loan purpose was debt consolidation – in other words, Mr S said he would use the loan to repay other debt.

Mr S complained that TrustTwo ought to have known that he could not afford to repay the loan and that he would need to borrow further in order to make the repayments. He told us he got into further debt and financial hardship as a result.

When Mr S complained to TrustTwo it didn't uphold the complaint so he brought his complaint to us.

One of our investigators looked into what happened. He felt that although the loan might've looked affordable, the lender wasn't in a position to make a fair lending decision without more information. So he felt that this was a complaint we should uphold and he set out the steps TrustTwo should take to put things right.

TrustTwo disagreed with our investigator's view. In brief summary, TrustTwo said that using the loan for debt consolidation would have increased Mr S's disposable income by around £740 and so improved his overall financial situation significantly. It said an up to date credit report didn't show any evidence of financial harm or material distress resulting from the loan even though Mr S didn't in the event fully use its loan for the planned debt consolidation.

The complaint 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.

"There are some general principles I will keep in mind and questions I need to think about when deciding whether to uphold Mr S's complaint.

Before agreeing to lend, lenders must work out if a borrower can 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.

It's important to keep in mind that when working out if a loan looks likely to be affordable a lender must take a 'borrower focussed' approach and think about the impact of the lending on the customer. The lending decision shouldn't just be about the business risk to the lender of not getting its money back.

A lender must take reasonable steps to satisfy itself that the borrower can sustainably repay the loan – in other words, without needing to borrow elsewhere. The rules don't say what a lender should look at before agreeing to lend. But reasonable and proportionate checks should be carried out. For example, when thinking about what a borrower has left to spend on a new loan after paying other expenses, as well as taking into account the loan amount, the cost of the repayments and how long the loan is for, a proportionate check might mean a lender should also 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 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.

This was a guarantor loan which means that if Mr S didn't make his loan repayments, TrustTwo was entitled to ask the guarantor to do this in his place. But TrustTwo still needed to take all reasonable steps to ensure that the loan was sustainably affordable for Mr S in the first place.

I've kept all these things in mind when thinking about Mr S's complaint.

TrustTwo gathered some information from Mr S before it agreed the loan. It asked him for details of his income and verified this using a credit checking service. It wanted to know what he spent on rent or a mortgage. Mr S told TrustTwo he paid £450 per month towards his mortgage. TrustTwo obtained a credit report to find out about Mr S's credit history and relied on statistical information which indicated what the likely living expenses would be for someone in Mr S's particular circumstances based on national UK averages.

Mr S's monthly take home pay was recorded as £4,200. After reviewing the information on the credit report it obtained and taking into account how much it thought Mr S would be likely to spend over the month, TrustTwo worked out that if he used the loan for debt consolidation, Mr S should still have a cash surplus each month of £400 or so. So TrustTwo concluded that the monthly repayment for this loan should've been affordable for him and he would have extra monthly disposable income by using its loan to consolidate other debt.

On this basis, TrustTwo concluded that it was fair to provide this loan to Mr S – and it still thinks this.

I've carefully taken into account everything TrustTwo has said – including comments made in response to our investigator's view.

Our investigator thought TrustTwo needed to do further checks before agreeing this loan. I don't think I need to make a finding on whether its checks were proportionate or not because it makes no overall difference to the outcome and it's not why I am upholding this complaint. I think TrustTwo saw enough detail in the information it had gathered to realise that Mr S was already in serious financial difficulty and that further lending was unlikely to be sustainable. And that's why it shouldn't have provided this loan.

I say this because it was aware that Mr S had a history of reliance on expensive high cost credit and there were clear signs that he was over-stretched financially. Despite recording information that appeared to show that Mr S had enough spare cash each month to cover the loan monthly repayments, I think TrustTwo should've realised that it couldn't rely on this information. That's because Trusttwo hadn't checked to see how Mr S was actually spending his money and what Mr S had declared was significantly at odds with what TrustTwo saw in the information it had gathered during the loan application process.

The credit report TrustTwo relied on showed that Mr S was an established user of expensive credit with a substantial five figure amount of debt – close to £40,000 - owing on at least 20 active accounts that seems to have included credit cards, bank accounts, short term and/or unsecured loans, vehicle finance, communications and home credit accounts. In addition, he had outstanding borrowing of more than £270,000 secured on his home.

Trusttwo saw that he had two delinquent accounts that had run into payment problems in May 2018 – they had both been in arrangements to pay with one having just cleared and the other with a £99 balance to pay. Within the six months running up to him applying for this loan, Mr S had taken out loans that looked like expensive short-term and/or unsecured loans amounting to around £17,000. Mr S was asked why he needed to borrow these loans and he said it was just for cash flow for Christmas and some home improvements. He explained that one large loan for £10,00 taken out in July 2019 had been used to pay for a vehicle that had since been sold. The balance still showing on his credit report for this loan was £695.

Having other outstanding lending or even an impaired credit history wouldn't be unusual for a borrower applying for this type of expensive borrowing, and it wouldn't necessarily be a bar to lending. But I don't think TrustTwo took properly into account what the information it had gathered showed about Mr S's overall financial situation and the likelihood of him being able to pay its loan in a sustainable manner.

I think our investigator was right to say that all the indications were that Mr S wasn't managing his money well and he was already struggling financially. I believe it ought to have been apparent to TrustTwo that Mr S probably didn't have the amount of disposable income that it thought and the signs were that his finances were, in reality, under significant stress and his debt was already unmanageable.

To my mind, the picture painted overall showed that Mr S was already over-reliant on using expensive credit and the signs were that he was increasing his dependency on using credit to manage his financial situation. And this loan looked like a continuation of that pattern of lending.

I don't think TrustTwo was reasonably able to be satisfied in these circumstances that Mr S would be able to make its loan repayments in a sustainable way.

I've taken into account that TrustTwo understood that the loan was intended for debt consolidation. But it paid the loan directly to Mr S and didn't have control over how he used the money – so there was always a risk that this loan would add to his overall indebtedness, which seems to be what happened according to what Trusttwo has said. And the scale of Mr S's overall debt compared to the smaller value of the loan makes me think that he would most likely remain in serious financial trouble regardless. I don't think TrustTwo was able to safely say this loan would improve his position sufficiently to achieve a significant and sustainable improvement in his financial situation overall bearing in mind that his plans seemed to be to clear his smaller shorter term loans with a loan that would potentially cost him more than £13,000 over the next five years.

In coming to my decision, I've taken carefully into account everything TrustTwo has said, including its response to our investigator’s view – but this doesn’t change the outcome. It told us it had seen a more recent credit report that hadn’t shown Mr S had been reliant on short-term loans to cover the repayments. I haven’t seen this report. But, regardless of what it may have seen, I think Mr S would likely still need to pay a disproportionate amount of income towards debt servicing costs and TrustTwo should’ve recognised this wasn’t a sustainable position for him to be in over the loan term.

I will of course be happy to review what I've said in my provisional decision if TrustTwo would like to send me the up to date credit report it has mentioned (or indeed a current credit report) to see if this changes what I think about this case.

To sum up, as things stand, I can’t reasonably say that TrustTwo made a fair lending decision based on the information in front of it. I don’t think TrustTwo was able to safely conclude that its loan would be sustainably affordable for Mr S . And so it shouldn’t have provided it and TrustTwo needs to put things right.

Like our investigator, I haven’t seen enough to make me think that TrustTwo acted unfairly or unreasonably towards Mr S some other way. So I’m not proposing to award any additional redress over and above what I've set out below.

But as Mr S has been further indebted with a high amount of interest and charges on a loan that he shouldn’t have been provided with, I’m satisfied that he has lost out as a result of what TrustTwo did wrong.

For all the reasons I have explained above, I think it is fair and reasonable for TrustTwo to take the following steps to put things right.”

**What the parties said in response to my provisional decision**

Trusttwo has confirmed it now agrees to uphold this complaint in line with what I’ve said in my provisional decision and Mr S is happy with this outcome. So I think it’s reasonable for me to proceed to issue a final decision.

**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.

I’d like to thank both parties for all the information that has been provided about this matter and TrustTwo, in particular, for responding so promptly to my provisional decision.

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**

Mr S should repay the capital amount that he borrowed, because he had the benefit of that lending. But in line with this Service's approach, Mr S shouldn't repay more than the capital amount he borrowed.

So TrustTwo should:

- add up the total amount of money Mr S received as a result of being given the loan. The payments Mr S made should be deducted from this amount
- if this results in Mr S 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 TrustTwo should attempt to arrange an affordable/suitable payment plan with Mr S bearing in mind the need to treat him positively and sympathetically if he still needs further time to pay what he owes.
- Whilst it's fair that Mr S's credit file is an accurate reflection of his financial history, it's unfair that he should be disadvantaged by the decision to lend this loan. So TrustTwo should remove any negative information recorded on Mr S's credit file regarding the loan.

*HM Revenue & Customs requires TrustTwo to deduct tax from this interest. TrustTwo should give Mr S 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 TrustTwo to take the steps I've set out above to put things right for Mr S.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 4 August 2022.

Susan Webb
**Ombudsman**