DRN-3590058

The complaint

Miss R, through her representative, complains that Everyday Lending Limited lent to her irresponsibly.

What happened

Miss R says that she applied for a loan and it was approved in February 2010. It was for £1,400 repayable over 24 months and the monthly repayments (including an additional insurance premium) was £145.35.

Everyday Lending in its final response letter (FRL) following Miss R's complaint thought that it had been brought too late. That element of the complaint about jurisdiction has been resolved by another ombudsman. I need say no more about it.

Following that, one of our adjudicators considered the complaint on its merits, and thought that Everyday Lending had done nothing wrong. Miss R did not agree and telephoned to speak to that adjudicator. I have listened to that recorded call. Miss R was going to send to us additional information – whether that was through her representative or directly to the adjudicator – but never did. That was on 12 June 2020 and today is 21 July 2022 so almost six weeks ago. Miss R and her representative were informed I would be issuing my decision today – 21 July 2022.

The unresolved complaint was passed to me. I consider it appropriate in the interests of both parties for this complaint to be resolved and I am issuing my 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 general approach to complaints about unaffordable/irresponsible lending - including all the relevant rules, guidance, and good industry practice - on our website.

Considering the relevant rules, guidance and good industry practice, I think the questions I need to consider in deciding what's fair and reasonable in the circumstances of this complaint are:

- Did Everyday Lending, each time it lent, complete reasonable and proportionate checks to satisfy itself that Miss R would be able to repay in a sustainable way?
- If not, would those checks have shown that Miss R would have been able to do so?
- 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 Miss R'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-focussed" – 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 Miss R undue difficulty or significant adverse consequences. That means she 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 she 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 Miss R**.** 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.

Considering 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 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 the arguments, evidence and information provided in this context and what this all means for Miss R's complaint.

The monthly repayments (including the payment protection insurance Miss R was sold at the same time) was £145.35. The copy documents I have seen from Everyday Lending is that the PPI premium was £11.43 a month.

The PPI claim has been dealt with separately and earlier to this irresponsible lending complaint. Miss R has said that the PPI claim was upheld. Miss R said it had been dealt with by the Financial Ombudsman Service but I have found no records about that in our systems for our case management. As Miss R says it was upheld then I must assume that the PPI premiums have been refunded. And as it has been the subject of a former complaint then I have not focussed on the PPI element of the loan taken with Everyday Lending.

Miss R had told Everyday Lending that she was employed, provided payslips, and copy bank statements (for all four of her accounts), and was living at home with her parents.

Everyday Lending's records show that she had no dependents and had outgoings of around £441 each month which consisted of living expenses £150, £100 to £150 rent to her parents, petrol, mobile phone cost of £30, car insurance and one other monthly creditor repayment of £51.74.

There's also a different note to say that her expenditure was £491 each month. I add it up to be £471.48 if the contribution to her mother was £100 and £521.48 a month if the contribution to her mother was £150. From the copy bank statements Miss R provided for Everyday Lending at the time she applied, it seems that she gave her mother £100 one month and £150 another month so it did seem to vary.

Her income had been verified as £1,043. The money left over after paying all her outgoings (including the other credit commitment costs), using the £491 figure, was £552.

I have seen from the bank statements that Everyday Lending had at the time, that in December 2009 Miss R's salary had been £831 not £1,043. So, I think Everyday Lending ought to have used the lower salary when assessing affordability or at least an average which I have calculated as £937 a month.

The cost of this loan (with the PPI insurance) was going to be just over £145.

Her mobile phone cost appears on her bank statements as over £163 but had been counted as £30 a month. However, when I looked at this telecommunications credit commitment more closely I could see that the balance on the credit search results list dated as being an updated entry of 13 January 2010 was for £163. Her bank statement shows on 18 January 2010 she paid the telecoms supplier that full amount. Which meant that she did not owe it anything. So, the £30 per month likely was the running costs and it seems that is what Everyday Lending included in its Income and Expenditure (I&E) calculations.

The I&E seems to have a note attached to the 'living expenses' of £150 as being 'Everyday' which, if that means, Everyday Lending was counting her loan repayments to itself as her living expenses then I do not think that it had calculated enough for day-to-day living costs.

The £51 repayment was for a loan she had taken in January 2010 for about £1,300 for 36 months which meant it would have been due and owing for all the 24 months Miss R was having to repay Everyday Lending. I do think that having taken a loan just one month before she applied to Everyday Lending then that ought to have been an alert to it as to why Miss R needed another so quickly. But, even if it had decided to do further checks at that stage, having looked at the information and documentation it reviewed before approving the loan, I do not think it could have done more.

Miss R had an overdraft of £1,400 on one of her accounts and it looks to be the situation where Miss R kept that account in its overdraft status up to its limit all the time.

Therefore, having considered all of this, I have calculated Miss R's outgoings as £521 which included a £150 payment to her mother and counted the £150 'living expenses' category as Miss R's living expenses. Then adding on the cost of this loan at £145, Miss R's outgoings come to £666. And using the average income figure of £937 to account for the lower salary in December 2009, even on those figures I think Miss R would have been able to afford the Everyday Lending loan.

In a recent telephone call to one of our adjudicators Miss R has said she applied for this loan in branch and she was in a physical state which would have been obvious to an onlooker. I do not refer to is specifically to respect Miss R's privacy. Miss R maintains that the Everyday Lending staff would have known that. Her claim is that she says it would have been clear to those staff that she would not be able to afford this loan because of the consequences of this physical state she was in. I have no evidence to substantiate any of this and so I have discounted it.

Miss R said on that telephone call that she had a medical condition as well and that varied as to when it affected her. I am sorry to hear of this. She also thinks that was important for us to know about but has sent no evidence of it. And having thought about this, even if Miss R had sent to us some information about that medical condition I doubt it would alter my view.

And I say this because, unless Miss R told Everyday Lending in 2010 about her illness and unless that illness was one where it may have compromised her ability to make the monthly loan repayments, then any medical evidence I were to receive now would be unlikely to make a difference to my assessment of her complaint. And there's nothing in the documentation I have seen in the lead up to this loan approval in February 2010 to suggest she had told Everyday Lending about a medical issue. So, I doubt I'd consider this relevant.

Miss R seems to think that the PPI complaint and result was significant but we have no details of that complaint on our records that I have found. Miss R has sent us no evidence of it. I doubt that it would be relevant to an irresponsible lending complaint.

Miss R has had time to send these details in if she considered them important to this complaint. And Miss R is professionally represented. Nothing has been received, even upon receipt I doubt I would have considered them relevant enough to make a difference and so in the interests of resolving this complaint I have proceeded to decide now.

My final decision

My final decision is that I do not uphold Miss R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 18 August 2022.

Rachael Williams
Ombudsman