DRN-3613273

The complaint

Ms H, through her representative, complains that Everyday Lending Limited trading as Everyday Loans, lent to her without carrying out the proper checks and lent to her irresponsibly.

What happened

Using information from the Everyday Lending records, here is a brief loan table:

Loan	Approved	Capital sum	Monthly instalments
1	July 2013	£800 plus fee £150	13 x £121.57
2	July 2014	£1,000	13 x £106.60
3	January 2015	£2,877.73 - £2,300 paid to Ms H	30 x £203.07

Part of loan 3 was used to repay loan 2. Ms H repaid loan 3 quickly – April 2015 – with another loan from her bank. After the complaint had been referred to the Financial Ombudsman Service, one of our adjudicators looked at it and thought that Everyday Lending ought not to have lent loans 2 and 3 to Ms H. Our adjudicator wrote to both parties to tell them this and his reasons why.

Ms H agreed to it and Everyday Lending agreed to the outcome for loan 2 but not for loan 3, which effectively mean that the unresolved part of the complaint was loan 3.

The unresolved complaint was passed to me to decide, and I issued a provisional decision on 8 November 2022 giving reasons why I agreed with Everyday Lending's outcome – that the complaint ought to be upheld for loan 2 only.

Since then, Ms H has responded to say that she accepts my provisional decision. As Everyday Lending had already agreed to uphold loan 2 then it seems that the complaint will be resolved satisfactorily with a loan 2 uphold.

In the circumstances I am issuing my final decision in the same terms and giving the same reasons as my provisional 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 Ms H would be able to repay in a sustainable way?
- If not, would those checks have shown that Ms H would have been able to do so?

The rules and regulations in place required Everyday Lending to carry out a reasonable and proportionate assessment of Ms H'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-focused" – 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 Ms H 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 her 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 Ms H.

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.

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 Ms H's complaint. This decision follows my provisional decision dated 8 November 2022 in which I planned to uphold loan 2 only and not loan 3.

As Ms H has accepted what our adjudicator has said thereby resolving the issue on loan 1, and as Everyday Lending has agreed to put things right for Ms H for loan 2, then it seems that the last unresolved part of this complaint was loan 3. And now that Ms H has responded to my provisional decision to agree to that as well, then I set out here the reasons why I do not consider that loan 3 ought to be upheld – just loan 2.

Loan 3 was for £2,300 plus additional capital to repay the balance on the previous loan. And it had become clear that Ms H had a large overdraft on one of her bank accounts and Ms H had applied for the loan to clear that overdraft.

Everyday Lending carried out proportionate checks. It obtained a credit file search and it reviewed Ms H's bank statements for the period leading up to January 2015 – which was when she applied for loan 3. And what Everyday Lending knew was that she had some other credit accounts to pay off, but these were relatively low level and one was the Everyday

Lending loan 2 about which it knew. Ms H had relatively little to pay for household expenses as she was living at home and paid a low ‘rent’ to her parents. She was paying about £39 a month in interest and fees on her overdraft which was around £2,150 and she was close to her overdraft balance.

Everyday Lending says that it lent her the money to consolidate the debt being her overdraft. But it knew that debt was only costing her £39 a month – admittedly that would have been just interest and charges and not any payment towards the principal debt on that overdraft. Its loan was committing Ms H to a 30 month period of repayments of just over £203 each.

However, I’ve thought about what Everyday Lending saw on her credit file when it lent loan 3 to her and I’ve looked at the intended use of loan 3 which would have been to cure that issue – which was the overdraft debt.

And although I think it may have been an expensive deal that Ms H got with loan 3 that is not what I’m being asked to look at. I can see that after consolidating loan 2 into loan 3 she had hardly any other debts to pay off. And Ms H had very little in the way of household outgoings and her bank statements do not reveal any other payments to creditors that I can see. And so, I think Everyday Lending was right to think that she could afford loan 3.

That Ms H realised she may have taken an expensive loan is borne out to some extent by the fact that Ms H cleared the Everyday Lending loan 3 debt a few months after taking it (April 2015). The loan account note explains that her bank had been able to offer her a better deal. And so, Ms H paid relatively little towards loan 3 and then realised she could do better elsewhere and handled her finances differently. But that does not necessarily mean that Everyday Lending lent to her irresponsibly when it approved loan 3 for her.

I note that Everyday Lending has agreed to put things right for loan 2. And my provisional decision did not uphold loan 3 which Ms H has now agreed to. So - to resolve the complaint, and about which the parties are agreed, I endorse Everyday Lending’s decision to uphold loan 2.

Putting things right

To put things right Everyday Lending should:

- remove all interest, fees and charges applied to Loan 2 including any secondary loan Ms H may have had with that loan,
- treat any payments made by Ms H in respect of loan 2 as payments towards the capital sums,
- If Ms H has paid more than the capital then any overpayments should be refunded to her with 8% simple interest* from the date they were paid to the date of settlement,
- remove any adverse payment information about Loan 2 from Ms H’s credit file.

*HM Revenue & Customs requires Everyday Lending to take off tax from this interest. Everyday Lending must give Ms H a certificate showing how much tax it’s taken off if she asks for one.

My final decision

My final decision is that I uphold Ms H’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 Ms H to accept or reject my decision before 19 December 2022.

Rachael Williams
Ombudsman