

The complaint

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

What happened

Mr R applied for and received three loans from Everyday.

	Date	Amount	Repayment	Term
Loan 1	October 2015	£3,311	£265.70	24 months
Loan 2	February 2017	£5,000	£309.25	36 months
Loan 3	August 2017	£7,500	£404.69	36 months

Mr R says Everyday didn't conduct thorough enough checks despite the increasing size of the loans. He says he was regularly using his overdraft and couldn't afford to make the repayments.

Everyday looked into his complaint. It said during the application process, it had checked Mr R's credit file, one month's bank statement and payslips, and carried out an employment check. It had used statistics to calculate his monthly expenditure and was confident Mr R had sufficient disposable income to repay each of the loans at the time they were granted. Everyday rejected Mr R's complaint.

Mr R was unhappy with Everyday's response, so he referred it to our service. One of our investigators looked into his complaint and upheld it in part. He said on balance that he felt it was not unreasonable for Everyday to have agreed Loan 1 based on the evidence available. But he felt Loans 2 and 3 were unaffordable for Mr R so should not have been agreed. Our investigator explained how he felt Everyday should put matters right for Mr R.

Everyday didn't agree with all that our investigator said. It agreed to uphold Mr R's complaint about Loan 3, but said it felt Loan 2 had been lent reasonably. Mr R didn't respond to our investigator's opinion of the complaint but did reject Everyday's offer to settle just on Loan 3.

As there was no agreement, the complaint has been passed to me for a 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.

Given both parties have accepted Loan 3 should be upheld, I'll not comment further on that loan. Instead, I'll focus my decision on Loans 1 and 2 which remain in dispute.

We've set out our approach to complaints about high cost credit on our website – including the key relevant rules, guidance, good industry practice and law. I've considered this approach when deciding this complaint.

Everyday had to carry out reasonable and proportionate checks to satisfy itself that Mr R would be able to repay the loan sustainably. That means he should be able to repay what he borrowed without undue difficulty, while being able to meet other commitments and without having to borrow further. It's not about Everyday assessing the likelihood of it being repaid, but it had to consider the impact of the loan repayments on Mr R.

There are key questions I need to consider in order to decide what is fair and reasonable in the circumstances of this complaint:

- Did Everyday carry out reasonable and proportionate checks to satisfy itself that Mr R was in a position to sustainably repay the loan?
- If not, what would reasonable and proportionate checks have shown at the time?
- Did Everyday make a fair lending decision?
- Did Everyday act unfairly or unreasonably towards Mr R in some other way?

There is no set list of checks that it had to do, but it could take into account several different things such as the amount and length of the loan, the amount of the monthly repayments and the overall circumstances of the borrower. I've mentioned above, Everyday set out the checks it carried out on Mr R's applications in its final response letter, so I'll not repeat that.

Loan 1

Did Everyday carry out reasonable and proportionate checks?

Mr R applied for Loan 1 to repay two credit cards and raise £1,000 for some equipment he wanted to buy. Everyday's credit file check showed the two credit cards he wished to repay were up to date, but that he had one account in default from 2012.

Everyday saw four weeks payslips from Mr R which show a regular weekly income of just over £400. His bank statement showed his wages being paid in and an overdraft of £250 which he used regularly. He exceeded the limit in the month prior to this loan with his balance reaching almost double the agreed limit.

So there does seem to have been some pressure on Mr R's finances which I'd have expected Everyday to look into a little more in order to ensure he could sustainably repay the loan. I've seen no evidence that it asked any further questions, so I'm not persuaded it carried out reasonable and proportionate checks on Loan 1.

What would reasonable and proportionate checks have shown at the time?

Our investigator asked Mr R to provide more information regarding his finances at the time Loan 1 was taken – for example by providing bank statements covering a greater period. But Mr R was unable to provide any.

I've seen Mr R's weekly payslips from the month leading up to the loan and I've seen that money going into his account. As I've mentioned the majority of his expenditure appears to be discretionary, and he was repaying some existing debts which will have simplified his finances to some extent.

Given Mr R's expenditure appears to have been largely discretionary and in the absence of

any further evidence, I can't reasonably say with any degree of certainty that Loan 1 was unaffordable for him. It follows that I can't reasonably say that Everyday reached an unfair decision to lend Loan 1 to Mr R. I don't uphold his complaint about Loan 1.

Loan 2

Did Everyday carry out reasonable and proportionate checks?

Mr R settled Loan 1 with a lump sum payment on 4 November 2016 and took Loan 2 on 7 February 2017 – just three months later. Loan 2 was for £5,000, £4,000 of which was for debt consolidation and £1,000 for a holiday.

When he'd applied for Loan 1, Mr R's credit file had showed he had approximately £2,600 worth of credit. By the time he applied for Loan 2, his credit file showed a loan of £4,000 and three revolving credit facilities totalling almost £1,800.

So it seems Mr R's situation had worsened since Loan 1 and he was seeking to increase his indebtedness by borrowing 'new' money over and above the amount he wanted for consolidation. Mr R's bank statement showed he was still using his overdraft facility and exceeded it on occasion.

So I think in this instance, Everyday had sufficient information to understand that Mr R's financial situation was worsening and this ought to have led to a more detailed look into his circumstances.

Mr R's payslips for the period Everyday checked showed his income varied between £400 and £566 weekly. Everyday calculated that to mean he had an average monthly income of £1,776. I note that Everyday relied on statistics to calculate Mr R's expenditure – using a figure of 35% of his income – so it felt he could afford the loan. But that assumes Mr R's expenditure was in line with the average and fluctuated along with his pay, and that he'd continue to receive some weeks of higher pay – nearing the £560 mark – rather than his basic pay of £400.

But Mr R's indebtedness had more than doubled since his previous application. He was using around 70% of his available credit on his revolving credit facilities and regularly exceeded his overdraft. So I'd have thought Everyday would have wanted to check in more detail that Mr R could afford the loan. I've seen no evidence it did.

Mr R paid rent of £550 per month and Everyday calculated his expenditure (using the statistics mentioned above) to be £621. The repayments due on this loan were £309, leaving £306 to cover his other credit commitments and emergency spending etc. Everyday used a figure of 3% of the balance as a monthly payment to his revolving credit facilities. The rules lenders must follow with regards to revolving credit (set by the regulator and detailed in the Consumer Credit Sourcebook (CONC) section 5.3.1) say lenders should consider the borrower's ability to repay the maximum amount of credit in a reasonable time. I think 3% repayments are unlikely to have enabled Mr R to do that.

So Everyday would have been aware that Mr R's income was variable week on week and his budget was tight given the figures it had assumed were correct. But his credit situation had worsened between Loans 1 and 2 and he was increasing his indebtedness. I think given what it knew, Everyday ought to have identified Mr R was relying on credit and so should have realised that Mr R would be unlikely to be able to repay the loan on a sustainable basis. Therefore, I think Everyday didn't reach a fair decision when it agreed to lend to Mr R.

Loan 3

As I've already said, this loan is no longer in dispute, so I don't propose to comment further. For the sake of completeness however, I have included this loan in the next section regarding what Everyday should do to put matters right.

Putting things right

When we uphold a complaint, we normally direct businesses – as far as is reasonably practicable – to put the complainant in the position they would be in now if the mistakes it made hadn't happened. In this case, that would mean putting Mr R in the position he would now be in if he hadn't been given loans 2 and 3.

But Mr R has been lent the money and has used it, so it's right he should pay it back. But I don't think Everyday should benefit through interest and charges on the loans. So, I think Everyday should:

1. Calculate and refund all the interest and charges Mr R has paid to date on loans 2 and 3.
2. If the borrowing is still in place, it should reduce the outstanding capital balance by the amount calculated at Step 1.
3. If, after Step 2, there remains an outstanding capital balance, Everyday should ensure that it isn't subject to any historic or future interest and/or charges and reach an affordable repayment plan with Mr R. But if Step 2 leads to a credit balance, the amount in question should be given back to Mr R and 8% simple interest* should be added to the surplus.
4. Everyday should remove any adverse information recorded on Mr R's credit file as a result of the interest and charges on loan 2 and 3.

*If Everyday considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr R how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold this complaint in part. Everyday Lending Limited trading as Everyday Loans should put matters right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 6 January 2023.

Richard Hale
Ombudsman