DRN-3705715

The complaint

Miss T complains that Everyday Lending Limited lent to her when she could not afford it. She says that Everyday Lending did not verify her financial situation properly. Miss T says that the cost of the loan was 'excruciating'.

What happened

Miss T applied for and was approved for one loan. It was to consolidate debt. Miss T says that the amount given to her did not consolidate all her debts. After the consolidation she still had other outstanding loans and had to service the Everyday Lending loan too, and she was not able to afford it.

Everyday Lending has explained that she was approved for a loan of £12,606 in November 2017. That loan was used to clear a loan and several credit cards. I have seen records which show that Everyday Lending paid those loans and cards off directly with cheques. No cash was forwarded to Miss T.

The interest on top was going to be £8,334 and the total repayable was £20,940. The repayment was £349 each month for 60 months.

Miss T had repaid £18,497 by May 2022, and likely due to have paid it off around this time – October 2022. Miss T has sent me a recent credit file as it seems that the current balance is £526. Miss T has explained that since the loan was approved, she has never missed a payment but to achieve that she continually racked up '*further debts in order to continually break even'.*

Everyday Lending has explained that it used Miss T's income calculated from the payslip it saw and the '*ytd'* (Year to Date) figure. That came out to be just a few pence under £2,334 a month. It knew her mortgage was £406 a month. It reviewed two months of bank account statements – October and November 2017. It carried out a credit search and compiled a 'debt table' which has been sent to us.

Account notes from 2017 show us that Miss T had told Everyday Lending the monthly Credit Union payment was a £100 a month to savings – not another credit agreement. This information has been updated by Miss T recently to say that the £100 was a loan cost not a payment to a savings account. I come back to this later in the decision.

Miss T was a homeowner with equity. She had committed to closing her credit cards once they were paid off. And a recent update from Miss T indicates that most were.

Miss T has referred to the endless emails and contact she received where Everyday Lending tried to sell her additional loans or further extend her credit. She says this was an example of behaviour where Everyday Lending preyed on vulnerable people.

Everyday Lending responded to her complaint with its final response letter (FRL) dated 17 May 2022. It said it did not uphold her complaint.

Everyday Lending said in the FRL that at the time of the application Miss T's overdraft was not being used and the bank account was well managed. It said Miss T's

> '…*monthly financial commitments together with your general living expenses as detailed above, was calculated as £2,198.25 prior to the consolidation of any debt..'*
>
> and it said that Miss T had '…*a monthly disposable income of £327.55 after taking into account your consolidated loans and your Everyday Loans monthly repayments.'*

Everyday Lending said that the high interest rate was one which was contractually agreed before taking the loan. And it referred to the 14 day cooling off period which was built into the agreement.

Everyday Lending said in its FRL that the calls and emails from the branch to Miss T were just to see if there was any further borrowing or help it could offer and said that it was open to Miss T to decline any further offers of credit.

Miss T referred her complaint to the Financial Ombudsman Service. One of our adjudicators looked at the complaint and thought that the loan ought not to have been approved.

Our adjudicator did consider that the checks Everyday Lending carried out were proportionate but that the information it gathered was not applied correctly. If it had it would have realised that the disposable income figure it had calculated for Miss T (just over £145 each month before the loan consolidation had taken place) was inaccurate.

And our adjudicator thought that even after the debt consolidation, Miss T still had other debt commitments to pay alongside her Everyday Lending loan. So, our adjudicator thought that all combined her total credit repayments amounted to a significant proportion of her monthly income so there was a significant risk that she would not have been able to meet the commitments without having to borrow again.

Everyday Lending disagreed and said that there was no evidence that Miss T's credit card balances had increased over and above what it already knew about in the lead up to the loan. And that she had capacity of over £5,000 on her existing credit cards.

Everyday Lending pointed out that by consolidating some of the other credit commitments it would reduce her monthly repayments. And that its own research showed that Miss T's bank statements showed no payday loans, no returned payments, and no missed payments from her credit check reports. So, there was no evidence she was struggling to pay before it offered her its loan. And so, it said she'd be fine handling the lower monthly repayment sums after their loan had cleared some of her debt.

I asked Miss T for some additional information recently which she has sent.

The unresolved complaint was passed to me to decide.

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 T would be able to repay in a sustainable way?
- If not, would those checks have shown that Miss T 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 T'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 Miss T undue difficulty or significant adverse consequences. That means he 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 he 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 T**.** 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 of time 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 T's complaint.

This was a significant level of lending and repayable over five years. So, I would have expected Everyday Lending to have carried out a full financial review of her situation before approving the loan.

High interest rates

Before I give my findings on the core of the complaint relating to affordability, the issue surrounding the expense of the loan is not one I have looked into. Each lender sets its rates commercially and that element is not one that the Financial Ombudsman Service interferes with.

The additional emails from Everyday Lending

Miss T in her original complaint about the emails to Everyday Lending added to her complaint the details surrounding the emails and/or calls she received from its representatives asking her about new loans or further lending. Miss T has described this as '*the coercion and intimidation'.*

I have been sent account notes from Everyday Lending and I have seen copy emails received by Miss T. And I note that these were not very often – about once each six months. And I have seen no language in those emails which suggest 'coercion or intimidation'.

I do not know what Miss T had agreed with Everyday Lending as to how and when it could contact her (her privacy settings or her communication preferences) but it did not seem to contact her often enough to be intimidating. And on one occasion where she did engage and receive some quotes for additional lending Miss T refused to proceed. There's no evidence of coercion there.

I do not uphold this part of her complaint.

Irresponsible lending

I accept what Everyday Lending has said that there does not appear to be any evidence that between Miss T applying for the loan and obtaining the loan her credit card balances had increased a lot. I use this decision to correct that. I think that our adjudicator was saying that Miss T had a lot of credit card debt.

However, having said that, I have looked at all the evidence and a good starting point is to consider the headline summary which Everyday Lending had obtained from its credit search results. That told it Miss T had 2 'Live Loans' and 10 'Revolving Accounts' which included credit cards. The summary says:

> *'Total Loan Balance Outstanding £12229.00*
>
> *Total Revolving Balance Outstanding £13666.00'*

So, Miss T had £25,895 of debt (plus a mortgage on top), and Everyday Lending paid off £12,606 of that debt – reducing it to £13,289 - but then its own agreement added £20,940 to her debt load making a total new debt level of £34,229. I would need to factor in to this the scenario that if Miss T had kept her debt situation as it was, then her credit cards would have continued to have attracted interest and would have taken a long time to pay off if she had continued to pay the minimum repayment sum only.

But even with this consideration in mind, the time at which this creditworthiness assessment for Miss T was being carried out, still I consider that such a large increase in her overall indebtedness cannot be ignored. And when dealing with these situations, trying to second guess how a person would have run their lives or what else Miss T may have done about her debt is something we will never know. So I have stated the facts as it was at the time Everyday Lending was assessing her for the loan.

I have reviewed all the information Everyday Lending has provided, including careful analysis of Miss T's bank account statements provided to it in 2017, and its income and expenditure analysis.

Miss T had seven credit cards, three mail order accounts, a loan and a hire purchase agreement (HP), a current account which attracted a fee and some communications accounts which had zero balances.

The debt table Everyday Lending created listed all her debts (outstanding balances) together with the monthly repayments due where it was a loan or the monthly minimum repayments due where it was credit card/mail order account. Using the figures in that debt table I have seen that excluding the mortgage, her repayment figure was £942 each month. Everyday Lending has noted that in its records.

After its proposed consolidation of the HP agreement, and five credit cards Miss T's monthly repayment figure would reduce to £413.The new consolidation loan was £349 a month so that made the total £762. This new loan was for five years and so the consistency of that regular £349 over the 60 months was a big commitment. 'Pounds and pence' calculations alone are not, in my view, enough in this case.

It may look as if its calculations meant that Miss T was facing a composite monthly repayment figure which was approximately £180 a month less than it says she had been paying before its loan. But that did not account for the principal remaining on two of her credit cards which at minimum repayment would take a long time to repay.

One had a balance to pay off which was about £4,260 and the other was about £510. That remaining credit card balance of about £4,770 would have been costing her around £235 a month minimum (at a minimum payment rate of 5% and £167 if it was a 3.5% rate). And I realise that those minimum payment figures were added into the debt table calculations.

But Miss T still needed to be able to paydown the capital. And I do not think that was factored into the repayments. Credit cards are very different to loans when it comes to repayments as consistently repaying at the minimum repayment amount is a long and difficult way to pay a card down, as the interest added the following month absorbs a large portion of the minimum payment just made by the card holder.

So, with an additional £180 'released' for Miss T each month, in theory it may have been put towards the capital reduction of the credit cards. But that is not a large improvement.

And the new monthly figure of £762 to cover off the Everyday Lending loan and her other commitments (excluding the mortgage) came to about 32% of her net monthly income which still was high.

Added to which, Everyday Lending has shown from its records that

- it knew Miss T's creditor repayments on its 'Credit Agreements Tab' was just under £944 a month. And with an income of £2,334 that was around 40%. So, I think it knew from the start Miss T was overindebted.

- It has submitted to us that there were no signs of Miss T struggling with her repayments at the time. But my view is that if any customer approaches a lender wanting to consolidate debts then the starting point is just that – he or she is finding it difficult to cope and, usually in my view, is seeking a way to alleviate the high debt costs.

- I'd consider that 40% of Miss T's net monthly income (before her mortgage) was a high percentage of her income going on the existing debt. And that alone likely ought to have acted as an alert to Everyday Lending.

- it used its usual formula to calculate her living expenses of £848.27 a month which I don't think was an accurate way to assess Miss T's finances especially as it had sight of her bank statements

- no cash was being lent to Miss T – the whole £12,606 was being used to pay off other debtors and so it knew that the figures had to be accurate and compelling for the consolidation plan to be an effective help to Miss T. And I don't think that they were.

I said in the 'what happened' section that a £100 a month payment had been picked up on and an Everyday Lending account note from 2017 said that Miss T had told it the monthly Credit Union payment was a £100 a month to savings – not another credit agreement.

I've checked this with Miss T and she has sent me an application form dated April 2017 to that Credit Union for a loan. Miss T has said that the loan for £1,500 was granted and she was paying £100 a month towards it. So it seems the account note was wrong and I am now satisfied that Miss T did not have any savings with a Credit Union. She has confirmed she had no other savings at the time. And adding in this additional cost each month, her monthly debt repayments were higher than I have outlined earlier in this decision.

Miss T has said that most of her credit cards closed after they were paid off with this Everyday Lending loan.

My conclusion is, especially with the additional £100 a month cost to the Credit Union loan, Miss T was not able to sustainably afford this loan from Everyday Lending. The overall increase in her indebtedness was significant.

I don't consider that a creditworthiness assessment ought to ignore the holistic picture which was the debt was restructured and increased overall and spread out over five years to appear affordable – but I don't think it was.

I uphold the irresponsible lending part of Miss T's complaint.

Putting things right

To put things right Everyday Lending should:

- remove all interest, fees and charges applied to the loan,

- treat any payments made by Miss T in respect of this loan as payments towards the capital amount of £12,606

- If Miss T 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,

- But if there's still an outstanding balance, Everyday Lending can offset what the refund may provide against the outstanding sum. But I think that Miss T is on the cusp of paying this loan off and so this part may be academic. If necessary, Everyday Lending should come to a reasonable repayment plan with Miss T if needed.

- remove any adverse payment information about the loan from Miss T's credit file.

*HM Revenue & Customs requires Everyday Lending to take off tax from this interest. Everyday Lending must give Miss T 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 Miss T's complaint in part and I direct that Everyday Lending Limited does as I have directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 24 November 2022.

Rachael Williams
Ombudsman