DRN-3718007

The complaint

Mrs B, through her representative, complains that Everyday Lending Limited, trading as Everyday Loans, lent to her irresponsibly.

What happened

Mrs B took two loans and using information from both parties, here is a brief loan table:

Loan	Date approved	Amount	Repayment	Repaid
1	February 2018	£1,400	£125.69 x 24 months	£663 (rounded) refinanced into loan 2
2	2 May 2019	£3,050	£238.58 x 36 months	26 April 2021

After Everyday Lending had responded to Mrs B's complaint with its final response letter (FRL), her complaint was referred to the Financial Ombudsman Service.

One of our adjudicators looked at the complaint and using the information she had she considered that Everyday Lending should put things right for Mrs B for loan 2. This was based on the figures she had and that she did not think Mrs B was able to afford all her credit commitments, her regular living expenses, and the Everyday Lending loan 2 as well.

Everyday Lending disagreed and said that it had used a higher figure than that used by our adjudicator for Mrs B's living expenses, and so its calculations at the time it lent to Mrs B were more accurate. And that although the credit file showed that Mrs B had been up to her limit on the overdraft facility she had on her current account (£2,499 on a £2,500 limit) when it had reviewed her actual copy bank account statements for April 2019 and the position was far better than that. Everyday Lending said that it disagreed with our adjudicator's calculation of the anticipated cost to Mrs B of 5% of her total debt of £5,800 (credit cards, mail order and overdraft facility) as that was not correct in relation to the overdraft figure.

It added:

> *'Also that overdrawn balance is only a snapshot of 1 day in the month so I feel using having a 5% repayment calculation on the full balance is inaccurate.'*

And it went on to add:

'…we had already accounted for [mail order] *£50.76,* [home credit loan] *£15 and Past due Credit £5.00 in the affordability (see the go-live document).'*

So Everyday Lending is saying that our adjudicator's interpretation of the figures was incorrect and Mrs B was able to afford loan 2.

Our adjudicator responded to correct a point which was that the £70 she had mentioned in her view should have been clearer and that it was a reference to the Council Tax arrears of £71 a month Mrs B was paying.

And our adjudicator said that the overdraft figure was relevant as the Financial Ombudsman always looks at the credit search results as a snapshot of the overall situation. Our adjudicator said the results showed Mrs B was overdrawn on her current account by £2,499 and it could have become '*a longer term product.'*

Mrs B's representative had received the adjudicator's view but the request for additional information about the period surrounding loan 1 has not been acted on. And it has not responded to accept or reject the adjudicator's view. From this I take it that Mrs B and her representative are content with the outcome and the uphold for loan 2. And so, it seems that the first loan is not contested. No additional documentation has been received and so I have not reviewed loan 1 further.

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.

Taking into account the relevant rules, guidance and good industry practice, I think the overarching 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 Mrs B would be able to repay in a sustainable way?

- If not, would those checks have shown that Mrs B 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 Mrs B'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 Mrs B 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 Mrs B**.** 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 Mrs B's complaint.

As I have outlined in the 'what happened' part of the decision, I consider that loan 1 is uncontested and so I make no further findings on it.

Loan 2 was a loan applied for to give Mrs B additional funds, to refinance loan 1 into loan 2 and to pay off further payday loans she had acquired since the earlier payday loans had been paid off using loan 1 funds.

Mrs B was coming back to Everyday Lending for more money - £3,050 – and it was due to be repaid over three years which was a longer loan term than loan 1. This ought to have prompted Everyday Lending to carry out a full financial review of Mrs B's situation before lending.

The overall picture was of a customer who had let her financial situation deteriorate between applying for loan 1 and coming back for more money at loan 2. Mrs B had taken additional high-cost credit loans and payday loans since obtaining loan 1. She had Council Tax arrears. Everyday Lending has sent to me the account notes relating to loan 2 in which is noted that Mrs B was in arrangements to pay with some of her lenders too. There was a payment to a debt collector and there was evidence of payments to at least one betting or gaming website. I accept that it looked low–level but still those payments were being made several times a week.

So although on a 'pounds and pence' calculation the loan may have looked just about affordable, the reality was that Mrs B was regularly taking these other high-cost credit loans out and having consolidated her debts once with loan 1, was coming back to Everyday Lending to do the same thing.

Everyday Lending used the new loan 2 funds to 'settle' its own loan 1 and even thought the outstanding balance was £560 it charged Mrs B interest and penalty interest which meant that the settlement figure for its own loan was £662.95. That was then added to the new loan amount of £3,050 which attracted its own interest.

And I have not seen any evidence that Everyday Lending sought to settle the other two high cost loans Mrs B said she had wanted to consolidate – one with a balance of £229.23 and the other with a balance of £970.23. It credited Mrs B with remaining loan funds of £2,387.05 and left Mrs B to utilise that money to reduce her debt commitment. So, it did not gain confirmation that Mrs B would do that. I see that it got information from her about the figures to settle those other loans but no confirmation she was going to do it.

And if Mrs B had paid off those two other larger loans with the new loan 2 money, that still left Mrs B with three credit cards, a mail order account and HMRC repayments plus Council tax arrears. And a home credit loan. And two other repayment plans.

So – whether the figures 'added up or not' I think that this was too close for comfort from Mrs B, and there was a significant risk that Mrs B did not use the £2,387 paid to her to pay down debt thereby exacerbating her position. And if she had paid down the other debt that still left her with a great deal of debt of about £3,300 plus the new loan 2 with Everyday.

I uphold Mrs B's complaint.

Putting things right

To put things right Everyday Lending should:

- remove all interest, fees and charges applied to Loan 2,
- treat any payments made by Mrs B in respect of this loan as payments towards the capital amount of £3,050,
- If Mrs B 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 should come to a reasonable repayment plan with Mrs B.
- remove any adverse information about Loan 2 from Mrs B's credit file.

*HM Revenue & Customs requires Everyday Lending to take off tax from this interest. Everyday Lending must give Mrs B 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 Mrs B's complaint in part and I direct that Everyday Lending limited does as I have outlined in the 'putting things right' section of the decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 29 November 2022.

Rachael Williams
Ombudsman