

The complaint

Mr K, through his representative, complains that Everyday Lending Limited, trading as Everyday Loans, lent to him irresponsibly having failed to conduct thorough, appropriate, and reasonable checks.

What happened

In November 2018 Everyday Lending approved Mr K for one loan for £5,000 repayable over 30 months at a monthly cost of £372.78 (£90.65 weekly). The total to repay was £10,883.40 including the interest and fees. Mr K said that the loan was to purchase a car and to consolidate two other credit accounts – a credit card and a mail order account.

Mr K missed payments from as early as December 2018 and intermittently after that. By July 2019 Mr K was in arrears. Mr K's representative has told us that the account is in default and some of Everyday Lending's records show that may have occurred around May 2021. Everyday Lending has told us that by 12 July 2022, Mr K had repaid £8,415.29.

After Mr K had complained, Everyday Lending issued its final response letter on 12 July 2022 in which it gave reasons why it had concluded that it had lent responsibly.

Mr K referred his complaint to the Financial Ombudsman Service where one of our adjudicators looked at it. She did not think that Everyday Lending needed to do anything to put things right for Mr K.

Mr K's representative requested an ombudsman review but sent no further information in support of his claim.

The unresolved complaint was passed to me to decide. I asked for further details surrounding Mr K's financial circumstances at the time the loan was approved and asked about certain transactions on the bank account statements we have seen. But no response was received and so I proceeded to issue a provisional decision on 14 December 2022 using the information I had on file.

That provisional decision is set out on the next pages and is in smaller type to differentiate it. The reply date was today – 29 December 2022 – and so far Everyday Lending has acknowledged receipt of the provisional decision on 15 December 2022, but nothing further has been received from it. And Mr K has not responded at all.

This complaint has been ongoing with Everyday Lending since May 2022 and so it seems to be in the interests of all parties for the resolution to be finalised.

My provisional decision dated 14 December 2022

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 Mr K would be able to repay in a sustainable way?
- If not, would those checks have shown that Mr K 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 Mr K'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 Mr K 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 Mr K.

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 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 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 Mr K's complaint.

Everyday Lending has told us that Mr K worked full time earning £2,039.70 which was the average amount taken over four salary credits to his bank account (£450 weekly) which were seen by Everyday Lending. Mr K received child benefit (£20.70), he lived at home with his parents and he had a partner. He paid no rent or board to his parents.

Everyday Lending explained that it used Office for National Statistics (ONS) data to calculate the living expenses and applied an additional margin to accommodate any other costs which may arise. It has told us that it used a figure of £1,467.75 a month and that was the figure before any debt consolidation. It calculated Mr K had a monthly disposable income of £209.17 after taking into account the Everyday Loans monthly repayments.

Everyday Lending knew that although Mr K had no rent or board to pay, it had calculated that Mr K's repayments on credit agreements came to just under £913 each month, and his living expenses were £555 (total just under £1,468).

The £5,000 was paid to Mr K directly – there's no evidence of it paying down the two accounts Mr K wished to consolidate directly. So, it was relying on Mr K to do that. But even

with that element, meaning no accounting for the cash flow saving with any debt consolidation, still Everyday Lending calculated that Mr K would have had around £209 left over after paying its own new loan at £362.78 each month.

However, from my own calculations using the debt table from Everyday Lending, Mr K's total outstanding debt £10,699, of which £415 related to a bank account. Mr K's total loan repayments listed in that debt table was £492 and his total credit card balance was £2,274 so 3% (minimum repayment amount) would have been around £69. These add up to £561.

In addition, Mr K appears regularly to have been paying towards 'LeasePlan' at £352.52 a month. I've asked Mr K about this but he was not forthcoming with any information.

These credit commitments plus Everyday Lending's new loan repayments of 30 x £362.78 then the total paying out each month was around £1,275 which translates to be about 62% of his average net wage. I consider this too high to be sustainable for Mr K especially as the Everyday Lending loans was scheduled to be repaid over 30 months.

In addition to these figures, Mr K appears to have taken a business loan in November 2018 which was costing him £378.40 a month. Again, I have asked him about this but no information was forwarded to me.

In the circumstances, I consider that with Mr K's financial situation this £5,000 loan from Everyday Lending would have been too much for him to be able to repay sustainably.

But there was an additional factor which I think that Everyday Lending ought to have investigated as part of the creditworthiness assessment for Mr K before approving the loan. I can see that it did ask Mr K about this - his partner's payments on a £30,000 hire purchase (HP) agreement which had commenced 5 November 2018. These were for £489.77 and the payment was set up to be debited from Mr K's account.

I asked Mr K to clarify whether the bank account statements he had given to Everyday Lending at the time were his sole account or a joint account with his partner which may have explained why that payment had been set up on his bank account. But nothing was forthcoming on that query from Mr K. And reviewing the bank statements I have I cannot see that his partner has refunded Mr K in any way. So, proceeding on the basis that this was another regular repayment commitment Mr K had to bear then it was another reason for Everyday Lending to have realised that Mr K was not going to be able to afford this loan.

For several reasons, I plan to uphold Mr K's complaint.

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.

I have reconsidered the complaint and I am aware I've had nothing new from either party since issuing the provisional decision.

The total monthly credit commitment outgoings Mr K was committed to, using the Everyday Lending debt table, came to £561. That was 27% of Mr K's monthly income of £2,039. But the additional factors clearly visible from the bank statements Everyday Lending had reviewed before lending demonstrated two or three other large repayments which is why I was, and remain persuaded, that Mr K was overreaching himself with this Everyday Lending loan, and it ought to have known that. Those additional commitments, over and above the £561 each month from Everyday Lending's debt table list, were:

- the loan which appears to have been taken with a company which offers business loans, costing Mr K £378.40 each month

- the LeasePlan at £352.52 each month
- his partner's HP payments of £489.77 each month which may have been refunded to him but I've seen no evidence of that.

My view is that even if one of these was factored into Mr K's existing commitments together with the new Everyday Lending loan commitment of £372.78 each month, still the overall credit commitment would have been too much for him to repay sustainably over 30 months.

And Everyday Lending had shown us that it had calculated that Mr K's repayments on credit agreements came to just under £913 each month so that suggests to me that it had added in some of these other monthly repayments. And even on that figure - £913 a month – it translates to be almost 45% of his monthly pay, which is a high proportion to be committed to credit.

I uphold Mr K's complaint.

Putting things right

If Everyday Lending has sold the outstanding debt it should buy it back if it is able to do so and then take the following steps. If it is not able to buy the debts back then it should liaise with the new debt owner to achieve the results outlined below.

A) Everyday Lending should add together the total of the repayments made by Mr K towards interest, fees and charges on the loan not including anything it has already refunded.

B) Everyday Lending should remove all interest, fees and charges from the balance on the loan and treat any repayments made by Mr K as though they had been repayments of the principal. If this results in Mr K having made overpayments then it should refund these overpayments with 8% simple interest* calculated on the overpayments, from the date the overpayments would have arisen, to the date the complaint is settled. Everyday Lending should then refund the amounts calculated in "A" and "B" and move to step "C".

C) Everyday Lending should remove any adverse information recorded on Mr K's credit file in relation to the but that only needs to be done once it has been repaid.

*HM Revenue & Customs requires Everyday Lending to deduct tax from this interest. It should give Mr K a certificate showing how much tax it has deducted if he asks for one.

My final decision

I uphold Mr K's complaint and I direct that Everyday Lending Limited does as I have outlined above in the 'putting things right' part of the decision

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 26 January 2023.

Rachael Williams
Ombudsman