

Complaint

Ms S has complained about a loan Everyday Lending Limited (trading as “Everyday Loans”) provided to her. She says the loan was unaffordable and led to her going into a payment plan.

Background

Everyday Loans provided Ms S with an initial loan for £1,000.00 in January 2019. This loan had a term of 18 months. This meant that the total amount to be repaid of £2,401.20, including interest, fees and charges of £1,401.20, was due to be repaid in 18 monthly instalments of £133.40.

Everyday Loans then provided Ms S with a second loan for £5,000.00 in March 2022. This loan had an APR of 84.6% and a term of 48 months. This meant that the total amount to be repaid of £13,395.84, including interest, fees and charges of £8,395.84, was due to be repaid in 48 monthly instalments of just under £280.

One of our adjudicators reviewed Ms S’ complaint. He thought Everyday Loans hadn’t done anything wrong when providing loan 1. But that it should have seen that loan 2 was unaffordable for Ms S and therefore shouldn’t have provided it. So he thought that Ms S’ complaint should be partially upheld.

Ms S didn’t disagree with the adjudicator’s assessment but Everyday Loans did. So the case was passed to an ombudsman for a final decision.

As the parties are in agreement that Everyday Loans acted fairly and reasonably when providing loan 1, this decision is only looking at loan 2. And all references to loan made from this point onwards are made in relation to loan 2.

My findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

We’ve explained how we handle complaints about unaffordable and irresponsible lending on our website. And I’ve used this approach to help me decide Ms S’ complaint.

Having carefully considered everything I’ve decided to uphold Ms S’ complaint. I’ll explain why in a little more detail.

Everyday Loans needed to make sure that it didn’t lend to Ms S irresponsibly. In practice, what this means is Everyday Loans needed to find out enough about Ms S such that it could have a reasonable understanding of whether Ms S could afford to repay any credit it provided.

Our website sets out what we typically think about when deciding whether a lender’s checks were proportionate. Generally, we think it’s reasonable for a lender’s checks to be less

thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So we'd expect a lender to be able to show that it didn't continue to lend to a customer irresponsibly.

I've kept all of this in mind when deciding whether Everyday Loans acted fairly and reasonably towards Ms S.

The information Everyday Loans has provided suggested that it carried out a credit check before this loan was provided. The results of which showed that Ms S was already heavily indebted and that she'd previously had significant difficulties repaying credit. The bank statements obtained also show that Ms S was having returned direct debit payments too.

I'm also concerned that Everyday Loans' own income and expenditure calculation showed that this loan would take Ms S right to the margin of her disposal income. And Everyday Loans relied on the use of average data and minimum payments to her revolving credit commitments to calculate Ms S' expenditure when arriving at its monthly disposable income figure.

I've also considered that the recorded purpose of this loan appears to have been to purchase a car and debt consolidation. It clear what proportion of the funds advanced would be used to purchase a car and what was going to be used for consolidation purposes. In these circumstances, it's unclear to me how or what was going to be consolidated and more crucially how this loan, which was on such disadvantageous terms, was going to improve Ms S' outgoings going forward.

Overall and having considered everything, I'm persuaded by what Ms S has said about already being in a difficult financial position at the time she took out this loan. This is certainly backed up by the information gathered at the time of the advance. And while it's possible Ms S' difficulties reflected her choices rather than financial difficulty, I'd add that my experience of these types of cases suggest this is unlikely, in the absence of any reasonable or plausible arguments from Everyday Loans, I've been persuaded to accept Ms S' version of events here.

As this is the case, I do think that Ms S' existing financial position meant that she was unlikely to be able to afford the payments to this loan, without undue difficulty or borrowing further. And I'm satisfied that reasonable enquiries into Ms S' circumstances would more like than not have shown Everyday Loans that it shouldn't have provided this loan to her. As Everyday Loans provided Ms S with this loan, notwithstanding this, I'm satisfied it failed to act fairly and reasonably towards her.

Ms S ended up paying (and is still being expected to pay) interest, fees and charges on a loan she shouldn't have been provided with. So I'm satisfied that Ms S lost out because of what Everyday Loans did wrong and that it should put things right.

Fair compensation – what Everyday Loans needs to do to put things right for Ms S

Having thought about everything, Everyday Loans should put things right for Ms S by:

- removing all interest, fees and charges applied to loan 2 from the outset. The payments Ms S made, whether to Everyday Loans or any third-party debt purchaser, should be deducted from the new starting balance – the £5,000.00 originally lent. If

Ms S has already repaid more than £5,000.00 then Everyday Loans should treat any extra as overpayments. And any overpayments should be refunded to Ms S;

- adding interest at 8% per year simple on any overpayments, if any, from the date they were made by Ms S to the date of settlement†
- if no outstanding balance remains after all adjustments have been made, all adverse information Everyday Loans recorded about this loan should be removed from Ms S' credit file.
- If an outstanding balance does remain once all adjustments have been made, Everyday Loans should get in contact with Ms S to arrange an affordable payment plan. I'd also remind Everyday Loans of its obligation to exercise forbearance and due consideration, in the event it intends to collect on an outstanding balance and it be the case that Ms S is experiencing financial difficulty.

† HM Revenue & Customs requires Everyday Loans to take off tax from this interest. Everyday Loans must give Ms S a certificate showing how much tax it has taken off if she asks for one.

My final decision

For the reasons I've explained, I'm upholding Ms S' complaint. Everyday Lending Limited should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 24 March 2023.

Jeshen Narayanan
Ombudsman