

Complaint

Mr N has complained about personal loans Everyday Lending Limited (trading as “Everyday Loans”) provided to him. He says the loans were unaffordable and were therefore irresponsibly lent to him.

Background

Everyday Loans initially provided Mr N with a first loan for £2,000.00 in September 2017. This loan had an APR of 249.5% and a term of 24 months. This meant that the total amount to be repaid of £5,645.04, including interest, fees and charges of £3,645.04, was due to be repaid in 24 monthly instalments of just over £235. This loan was repaid in full with some of the proceeds from loan 2.

Everyday Loans provided Mr N with loan 2 for £4,000.00 in March 2018. £2,200.70 of the funds went towards settling the outstanding balance on loan 1. This loan had an APR of 191.5% and a term of 36 months. This meant that the total amount to be repaid of £13,819.68, including interest, fees and charges of £9,819.68, was due to be repaid in 36 monthly instalments of just under £400.

One of our adjudicators reviewed Mr N’s complaint and he thought Everyday Loans ought to have realised that it shouldn’t have provided Mr N with either of his loans. So he thought that Mr N’s complaint should be upheld. Everyday Loans disagreed. So the case was passed to an ombudsman for a final decision.

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

Everyday Loans needed to make sure it didn’t lend irresponsibly. In practice, what this means is Everyday Loans needed to carry out proportionate checks to be able to understand whether Mr N 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.

The information Everyday Loans has provided suggested that it carried out credit checks before these loans were provided. The results of which showed that Mr N already had a significant amount of existing debt as well as an outstanding county court judgement at the time of loan 1. And the loans which should have been consolidated with some of the funds from loan 1 were still outstanding at the time of loan 2.

Furthermore, I'm also concerned that Everyday Loans' own income and expenditure calculation for these loans showed that they would be taking Mr N right to the margin of his disposal income. And this was in the face of his increasing indebtedness in the period between loan 1 and loan 2 being taken out and the fact that the repayments to these loans were going to take up a significant proportion of his income.

I'm also shocked to see that more than half the funds to loan 2 went towards settling the outstanding balance for loan 1. I'm incredulous at this turn of events because the settlement figure was more than the amount Mr N was advanced in the first place.

All of this leaves me persuaded by what Mr N has said about already being in a difficult financial position at the time. And while it's possible Mr N's financial position reflected his 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 Mr N's version of events here.

As this is the case, I do think that Mr N's existing financial position meant that he was unlikely to be able to afford the payments to these loans, without undue difficulty or borrowing further. And I'm satisfied that reasonable and proportionate checks would more like than not have shown Everyday Loans that it shouldn't have provided these loans to Mr N. As Everyday Loans provided Mr N with these loans, notwithstanding this, I'm satisfied it failed to act fairly and reasonably towards him.

Mr N ended up paying interest, fees and charges on loans he shouldn't have been provided with. So I'm satisfied that Mr N 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 Mr N

Having thought about everything, Everyday Loans should put things right for Mr N by:

- refunding all interest, fees and charges Mr N paid on loan 1;
- adding interest at 8% per year simple on any refunded payments from the date they were made by Mr N to the date of settlement†
- removing all interest, fees and charges applied to loan 2 from the outset. The payments Mr N made, whether to Everyday Loans or any third-party debt purchaser, should be deducted from the new starting balance – the £4,000.00 originally lent. Any compensation due for loan 1 should also be used to reduce the amount Mr N owes on loan 2. If, after all adjustments have been carried out, Mr N will have ended up 'paying' more than £4,000.00 then Everyday Loans should treat any extra as overpayments. And any overpayments should be refunded to Mr N;
- adding interest at 8% per year simple on any overpayments, if any, from the date they were made by Mr N to the date of settlement†

- any and all adverse information recorded about loan 1 should be removed from Mr N's credit file. If no outstanding balance remains on loan 2 after all adjustments have been made, all adverse information Everyday Loans recorded about this loan should also be removed from Mr N's credit file.
- If an outstanding balance does remain once all adjustments have been made, Everyday Loans should get in contact with Mr N 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 Mr N is experiencing financial difficulty.

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

My final decision

For the reasons I've explained, I'm upholding Mr N'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 Mr N to accept or reject my decision before 24 April 2023.

Jeshen Narayanan
Ombudsman