

## The complaint

Mr M, through his representative, complains that Everyday Lending Limited, trading as Everyday Loans, lent to him irresponsibly.

## What happened

Mr M was approved for one loan on 20 January 2020 which was for £3,100 over 18 months at £267.42 each month. That meant that Mr M had to pay £4,813.56 in all and in fact paid it early and repaid £4,518.46.

Through his representative, Mr M had complained to Everyday Lending, received its final response letter in November 2022 and then referred his complaint to the Financial Ombudsman Service.

One of our adjudicators looked at the complaint and thought that Mr M was paying too much in credit commitments which, along with this £267 a month, would have been too high a percentage of his income. He also thought that Mr M's credit search results showed that he had been regularly taking and using payday loans for some time which demonstrated reliance on this type of credit. And he was in his overdraft most of the time. Our adjudicator referred to the income and expenditure (I&E) details Everyday Lending had sent to us as part of its credit worthiness assessment and had noticed that on its own figures it had worked out that Mr M would have been left with only £75.22 a month as disposable income which he considered to have been too low to be sustainable. He considered that there was a significant risk Mr M wouldn't have been able to sustainably meet his existing commitments, without needing further borrowing.

Everyday Lending disagreed and said that the £3,100 was going to be used for home improvements but also to clear two other payday loans he had and it named them but I have not repeated the names of those other lenders here.

Everyday Lending also said that

*'All creditors had been accounted for and added to the disposable income calc [sic] which showed he had a remaining budget. His defaults were historic and settled. All current creditors were paid. There were no unarranged overdraft fees from the bank statements. In addition, the customer had no dependents.'*

It seems that Mr M's representative acknowledged the view and therefore appears to have accepted our adjudicator's view. 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 Mr M would be able to repay in a sustainable way?
- If not, would those checks have shown that Mr M 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 M'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 M 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 M. 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 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 M's complaint.

Everyday Lending said it obtained and reviewed Mr M's bank statements before the loan was approved and a credit search. It also checked where he worked. Everyday Lending said it used statistical data and figures to calculate the living expense element of affordability. This calculation takes into consideration the customer's income, region, household composition and residential status. It said its affordability calculation showed that Mr M

would have a monthly disposable income of around £75 after taking into account his new Everyday Loan monthly repayments.

Mr M had declared on the application form that his income was £936 a month and his rent had been £464 a month. Whereas Everyday Lending have demonstrated it used a monthly income of £1,840.

The documents it has sent us includes a copy of the bank account statements covering 1 December 2019 to mid-January 2020. From that Everyday Lending seems to have picked up on the weekly income into that account for December 2019 which all added up to be £1,714. The weekly amounts ranged from £300 on 2 December 2019 to £584 on 20 December 2019. The latter was much higher than the other payments and may have been a Christmas bonus or overtime work: it's not clear.

The bank statements go on to show two salary credits in January 2020 which were £392 and £339. And so, I do think that the £584 weekly salary payment was not usual. Added to which Mr M had said on the application details I have seen that he earned £936 a month. So, there's some discrepancy which is odd.

And I disagree with Everyday Lending's submission to us after receiving our adjudicator's view. The account notes I have seen show that Mr M only ever wanted the loan for some kitchen appliances and home improvements and not to consolidate debt. And the 'debt table' it had created during its assessment of Mr M's application has indicated that the two items to be 'consolidated' were ones which had already been paid off or related to a type of pre-paid cashcard. And so, I do not consider either of those were ones to be consolidated as Everyday Lending maintains.

Mr M's credit search results show relatively little debt overall, but using that plus what the bank statements showed – and which Everyday Lending had reviewed – then my list of Mr M's credit commitments are as follows:

- A credit card balance of £340, and he was over the £300 limit. Calculating a minimum repayment requirement of 3% that would have been £10
- A Mail Order balance of £1,825 and spent £56 a month on that which I calculate to have been about 3%
- Phone £69 each month
- The Everyday Lending loan at £267 each month
- A relatively new loan taken 12 December 2019 repayable at £25 a week which translates into £108 a month
- A high cost instalment loan lender which was charging Mr M £107 each month

All these added up to £617 each month which excluded the pre-paid card item and made no provision for trying to reduce his overdraft.

Using the higher income figure of £1,840 each month then that would have been 33.5%, but as I have outlined earlier I think that Mr M's income was likely less than that each month. Add this £617 figure into the I&E Everyday Lending had done and Mr M would have had no disposable income as it had utilised a general expenses figure of £754 and just under £513 for his rent.

Mr M was using his overdraft but it was not a large one. And Mr M had at least two payments that had been returned as unable to go through due to insufficient funds and I have seen from the account notes that the assessor had noted those.

The need for repayments to be sustainable meant Everyday Lending needed to ensure Mr M could meet any repayments without undue difficulty and without having to borrow further. As Mr M had been using several payday lenders to supplement his income in the 12 months leading up to his application, I think his financial situation was probably deteriorating at that stage and he was likely to struggle to make the repayments under this new loan.

Even after repaying some of his debt, Mr M would still need to use a significant share of his income to service his remaining debt each month suggesting a risk of unsustainability. So, I don't agree that further lending would've been sustainable to Mr M at this time.

I uphold this 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 Mr M in respect of this loan as payments towards the capital amount of £3,100,
- If Mr M has paid more than the capital then any overpayments should be refunded to him with 8% simple interest\* from the date they were paid to the date of settlement,
- remove any adverse information about the loan from Mr M's credit file.

\*HM Revenue & Customs requires Everyday Lending to take off tax from this interest. Everyday Lending must give Mr M a certificate showing how much tax it's taken off if he asks for one.

### **My final decision**

My final decision is that I uphold this complaint and I direct that Everyday Lending Limited, trading as Everyday Loans, must put things right for Mr M as I have outlined in the decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 19 April 2023.

Rachael Williams  
**Ombudsman**