

The complaint

Mr L and Mrs L (Mr and Mrs L) are represented by the same claims management company.

Mr and Mrs L complain that Everyday Lending Limited, trading as Everyday Loans, lent to them irresponsibly in 2017.

What happened

Mr and Mrs L took a joint loan for £7,000 on 28 April 2017 over 48 months and the repayments were £394.36 each month. The total to pay back was just over £18,929 and by July 2020 my understanding from the documents sent to me was that Mr and Mrs L had repaid around £10,351.

Of the £7,000 loan, £3,507 was paid to Mr and Mrs L and the rest Everyday Lending used to pay off a credit card and another loan. Mr and Mrs L said they were going to use some of the cash given to them to repay a credit facility they had opened which had been attached to their bank account. And the rest was to be used to help pay down other items.

In or around July 2018 Mr and Mrs L entered a debt management plan. The debt was defaulted and assigned to a third party on 20 October 2021.

Mr and Mrs L complained to Everyday Lending and received its final response letter (FRL) dated 22 July 2022.

One of our adjudicators looked at the complaint and thought that the loan ought not to have been approved for Mr and Mrs L. The research Everyday Lending had done before approving the loan had included obtaining a credit search and looking at both customers' bank account statement transactions for the period leading up to April 2017. Copies have been provided. But the information it obtained showed Everyday Lending, that in his view Mr and Mrs L were not able to keep up the repayment of just under £395 a month for four years.

Everyday Lending disagreed but did not give much by way of explanation as to why it considered that. The Everyday Lending representative said: *'I would say that our loan has Mr and Mrs L in a good position with sufficient disposable income.'*

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 complete reasonable and proportionate checks to satisfy itself that Mr and Mrs L would be able to repay in a sustainable way?
- If not, would those checks have shown that Mr and Mrs L 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 and Mrs L'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 and Mrs L undue difficulty or significant adverse consequences. That means they 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 they had a contractual or statutory obligation to make and without the repayments having a significant adverse impact on their 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 and Mrs L. 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.

In light of 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 and Mrs L's complaint.

Mr and Mrs L had two different jobs. Mrs L was paid cash weekly and had provided payslips to Everyday Lending before the loan was approved. She earned about £340 a week. Mr L was employed and he earned on average about £1,669 a month after tax and deductions and this average is from the two copy payslips he provided to Everyday Lending before the loan was approved. The combined household income was around £3,376 each month. They

paid rent of £850 a month. And they would have had the usual monthly household bills and food costs which Everyday Lending had calculated as £1,000.

I have reviewed the bank account statement transactions sent to us by Everyday Lending, taking care to use the relevant ones from early 2017 and not those which seem to post-date the loan approval date. Those later ones seem to relate to the debt management plan that Mr L was arranging at one point in 2018 and 2019.

There were Everyday Lending account notes from March and April 2017 which gave us an insight into why Mr and Mrs L wanted such a large loan and to consolidate their debts.

Having looked at it all, I do agree with our adjudicator that Mr and Mrs L had regular monthly repayments on two larger loans (£157 and £133) plus several telephone contracts of about £9 a month. I work that out to have been around £308 a month in total.

Then Mr and Mrs L had six credit cards and three mail order accounts between them, which ranged from one credit card with an outstanding balance of £193, to one mail order account at £2,551 plus another two credit cards at £2,993 and £3,258. Most of the credit cards were at or close to their limits. The total of all that debt was around £15,664 and as a minimum repayment on those cards and mail order accounts at say 3% that translates into around £470 a month. So, the two sets of debt combined came to around £778.

Add into that figure the planned new instalment cost to Everyday Lending of around £394 and it comes to £1,172. The Everyday Lending calculations I've been presented with come to around total credit repayments they had to make each month as being £1,236. So, a similar sum to the one I calculated.

Everyday Lending's new loan to Mr and Mrs L, according to their figures, would have made them a saving of around £96 a month (disposable income of around £227 rather than £130).

But with the usual household costs and the fact that Mr and Mrs L would have had to pay down the remaining credit card and mail order principal balances of around £12,671, then I do not consider that the £394 a month for 48 months likely was a debt they could continue paying without being at risk of having to borrow again.

The credit situation presented to Everyday Lending before Mr and Mrs L approached them for a £7,000 loan was that they had already obtained relatively new credit in the latter part of 2016 and in the early months of 2017, and still they required more. And the application for the £7,000 in itself showed to Everyday Lending that they were not coping with the debt spread they already had. And so, the additional burden of a loan with it was not likely to be sustainable.

I uphold the complaint.

Putting things right

I understand this debt has been sold or assigned to a third party and so Everyday Lending should buy the debt back, bring it in-house, if it is able to do that, or liaise with the third party debt owner to achieve the following:

- remove all interest, fees and charges applied to the loan, including any of the third party fees and charges which may have been added
- treat any payments made by Mr and Mrs L in respect of this loan (including payments to the third party) as payments towards the capital amount of £7,000,
- If Mr and Mrs L have paid more than the capital then any overpayments should be

refunded to them 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 Mr and Mrs L.
- remove any adverse information about the loan including the default from Mr and Mrs Ls' credit files.

*HM Revenue & Customs requires Everyday Lending to take off tax from this interest. Everyday Lending must give Mr and Mrs L a certificate showing how much tax it's taken off if either of them asks for one.

My final decision

My final decision is that I uphold the complaint and I direct that Everyday Lending Limited does as I have outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L and Mr and Mrs L to accept or reject my decision before 22 May 2023.

Rachael Williams
Ombudsman