DRN-4069473

The complaint

Ms D complains that the loans from Everyday Lending Limited (trading as Everyday Loans) were unaffordable to her.

What happened

Ms D had three loans with Everyday Loans between August 2018 and October 2019 as follows:

Loan	Date	Amount	Term	Repayment	Due	Repaid
1	17 Aug 2018	£3,000	36m	£200.95	27 Aug 2021	1 Nov 2018 With loan 2
2	1 Nov 2018	£8,105.36	60m	£335.36	1 Nov 2023	11 Oct 2019 With loan 3
3	11 Oct 2019	£10,968.57	54m	£368.92	1 April 2024	6 Oct 2021

Ms D says she was struggling to maintain payments to high cost lenders at the time she took out the loans with Everyday Loans. She says she was borrowing for essentials, such as food, and her health was not good which led to her early retirement. Ms D adds that her financial position has now improved due to an endowment that matured and her retirement lump sum, but she now has a lower income.

Everyday Loans says the lending was for debt consolidation and home improvements and its checks showed she had sufficient disposable income to sustainably make the repayments.

Our adjudicator recommended the complaint should be upheld in part. He found Everyday Loans carried out proportionate checks for all the lending, but that the information showed Ms D was unlikely to be able to sustainably make her repayments on loans 2 and 3. Our adjudicator said Everyday Loans should refund all the interest and charges Ms D paid on loans 2 and 3 and remove any associated negative information recorded on her credit file.

Ms D accepted the adjudicator's view.

Everyday Loans initially responded to say that it accepted the adjudicator's view but has now said the information did not show that either of loans 2 or 3 were unsustainable.

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 need to take into account the relevant rules, guidance and good industry practice.

The Financial Conduct Authority (FCA) was the regulator when Everyday Loans lent to Ms D. Its rules and guidance obliged it to lend responsibly. As set out in the regulator's Consumer Credit Sourcebook (CONC), this meant that Everyday Loans needed to take reasonable and proportionate steps to assess whether or not a borrower could afford to meet its loan repayments in a sustainable manner over the lifetime of the agreement.

At the time of the initial lending CONC 5.3.1G stated that:

1. *In making the creditworthiness assessment or the assessment required … a firm should take into account more than assessing the customer's ability to repay the credit.*

2. *The creditworthiness assessment and the assessment required … should include the firm taking reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.*

Repaying debt in a sustainable manner was defined as being able to meet repayments out of normal income while meeting other reasonable commitments; without having to borrow further to meet these repayments; without having to realise security or assets (CONC 5.3.1G - 6) or without incurring or increasing problem indebtedness (ILG 4.3).

(The Office of Fair Trading was the previous regulator and it produced a document entitled 'Irresponsible Lending Guidance' which the FCA referenced in its consumer handbook. CONC 5.3.1G – 6 specifically referenced ILG 4.3.)

In November 2018, when Ms D applied for loan 2, the wording of the regulations changed, although the main requirements stayed the same.

CONC 5.2A.4R states that:

A firm must undertake a reasonable assessment of the creditworthiness of a customer before:

1. *entering into a regulated credit agreement; or*
2. *significantly increasing the amount of credit provided under a regulated credit agreement.*

In general, I'd expect a lender to require more assurance the greater the potential risk to the borrower of not being able to repay the credit in a sustainable way. So, for example, I'd expect a lender to seek more assurance, potentially by carrying out more detailed checks

- the *lower* a person'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 *longer* the term of the loan (reflecting the fact that the total cost of the credit is likely to be greater and the borrower is required to make payments for an extended period).

In addition, as per CONC 5.3.1G – 4b: it is not generally sufficient for a firm to rely solely for its assessment of the customer's income and expenditure, on a statement of those matters made by the customer.

Bearing all of this in mind, in coming to a decision on Ms D's case, I have considered the following questions:

- Did Everyday Loans complete reasonable and proportionate checks when assessing Ms D's loan applications to satisfy itself that she would be able to repay the loans in a sustainable way?
    - If not, what would reasonable and proportionate checks have shown?
- Did Everyday Loans make a fair lending decision?
- Did Everyday Loans act unfairly or unreasonably in some other way?

Everyday Loans carried out the following checks for all three loans:

- Checked and verified Ms D's income and employment;
- Checked and verified Ms D's mortgage costs;
- Reviewed Ms D's credit file and identified existing credit that was to be consolidated into the new loan;
- Reviewed Ms D's recent bank statements.

I'm satisfied these checks were reasonable and proportionate for all three loans.

<u>Loan 1</u>

As I'm satisfied that Everyday Loans carried out proportionate checks, I have now considered what this information showed for loan 1.

- Ms D's verified income was £1,973
- She had mortgage costs of £122 per month;
- Ms D said the purpose of the loan was for consolidation and that she intended to repay:
    - Three short-term loans totalling £2,415;
    - A credit card with a balance of £509;
- This meant her existing monthly credit commitments would be £315 going forwards;
- Everyday Loans used industry standard statistical data to estimate Ms D's monthly living expenses to be £754, although this appears to be roughly in line with what is shown on her bank statements;

Based on the above, Ms D would have had a monthly disposable income of £782 with which to pay the additional monthly repayments of £200.95. Although this meant she was still committed to paying over 26% of her income to credit repayments, I'm satisfied that the planned consolidation was beneficial to her, and that Everyday Loans made a fair lending decision.

Loan 2

Everyday Loans's checks showed:

- Ms D's verified income was £1,972;
- She had mortgage costs of £122 per month;
- Ms D said the purpose of the loan was for consolidation and property repairs and that she intended to repay:
    - Short-term loans that she'd needed to take out for damp-proofing the house;
    - Two credit cards with a combined balance of £3,180 – these were repaid directly by Everyday Loans;
- This meant her existing monthly credit commitments would be about £230 going forwards;
- Everyday Loans used industry standard statistical data to estimate Ms D's monthly living expenses to be £754, although this appears to be an under-estimate based on what is shown on her bank statements;

Based on the above, Ms D would have had a monthly disposable income of £866 with which to pay the additional monthly repayments of £335.36.

However, based on all the evidence I've seen, even though the repayments appeared affordable, I'm not satisfied this was sustainable for Ms D for the five years. I say that because:

- Ms D had requested a loan that was almost three times bigger than loan 1, less than three months later;
- Her regular expenditure appears to be under-estimated;
- She was now committed to spending almost 29% of her income on credit commitments;
- Although Ms D said she was planning to use loan 1 to repay short-term lenders and a credit card:
    - She continued to use short-term lending;
    - The credit card she said she would repay was still at its £500 limit;
- All five of Ms D's credit cards remained at their limits.

So I don't consider Everyday Loans made a fair lending decision for loan 2.

Loan 3

Ms D's financial situation appeared to be slightly improved as her income had increased a bit and she'd repaid her mortgage. However, she was still using short-term lenders, and whilst I acknowledge she says two of the loans were her partner's, it still reflects a household that is struggling financially. In addition, whilst Everyday Loans had repaid two of the credit cards with loan 2, both were now back up to their limits, with one of them having a balance which was £1,000 higher than before.

I consider that when Ms D requested her loan to be increased by almost £3,000 less than a year after loan 2, Everyday Loans should have realised that she was struggling financially, and further lending was unlikely to be beneficial to her, despite using some of the money to repay two further credit cards.

Based on all the evidence I have seen, I don't find Everyday Loans made a fair lending decision for loan 3.

In summary, I find it was irresponsible to approve loans 2 and 3 and Everyday Loans did not make a fair lending decision for either loan, although I cannot see it acted unfairly or unreasonably in any other way.

My final decision

My decision is that I uphold this complaint in part. Everyday Lending Limited (trading as Everyday Loans) should:

- Add up the total amount of money Ms D received as a result of having been given loans 2 and 3. The repayments Ms D made should be deducted from this amount.
    - Any overpayments should be refunded along with 8% simple interest (calculated from the date the overpayments were made until the date of settlement). *
- Remove any negative information recorded on Ms D's credit file regarding Loans 2 and 3.

*HM Revenue & Customs requires Everyday Loans to deduct tax from this interest. Everyday Loans should give Ms D a certificate showing how much tax it's deducted, if she asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D to accept or reject my decision before 14 June 2023.
Amanda Williams
Ombudsman