DRN-4130745

The complaint

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

What happened

Mr C took one loan in September 2018 for £5,000 to pay off three or four payday loans and to help towards the cost of his forthcoming wedding. It had a loan term of 60 months and was due to cost Mr C £198.96 (just under £199) each month. The total cost was scheduled to be £11,937.60 but Mr C repaid it after 8 instalments in May 2019 and so he paid just over £6,289 in total.

After Mr C's representative had complained to Everyday Lending, it responded with its final response letter in January 2023 (FRL) and it gave reasons why it did not consider that the loan had been lent irresponsibly.

Mr C's representative referred the complaint to the Financial Ombudsman Service and one of our adjudicators considered it. He thought that the combination of Mr C's existing debt, his payday commitment and the percentage amount of his income which was needed to repay his credit commitments was too high at 57% and so he thought that the loan ought not to have been approved.

Everyday Lending disagreed and said that

- he was low risk on its internal scoring system
- Everyday Lending was helping Mr C to get out of his payday loan cycle and assist in his bank account health
- it was reasonable to use his August 2018 payslip to calculate his year to date salary and use that to get an average figure for the months
- Mr C owned his new home outright with no mortgage
- Mr C's credit file showed no defaults or County Court Judgments (CCJs) with all payments up to date and there were no signs of gambling or returned direct debits.

Mr C's representative made no comment on our adjudicator's opinion.

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 C would be able to repay in a sustainable way?
- If not, would those checks have shown that Mr C 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 C'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 C 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 C**.** 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 several factors including – but not limited to – the 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.

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 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 C's complaint.

Everyday Lending did have detailed information from Mr C such as his payslip from which it used a year to date (YTD) figure of £2,256 as Mr C's average monthly income. Everyday Lending had carried out a credit search and had calculated that Mr C had credit commitment costs of £1,738 each month which even on Everyday Lending's own figures was a high sum.

Everyday Lending used Office for National Statistics (ONS) data to calculate what it considered was a fair figure for Mr C's expenditure costs each month. That figure was around £834 a month. It reviewed one month of Mr C's bank account transactions for the month leading up to 26 September 2018.

I do not accept Mr C's submissions through his representative and his own email giving his representative instructions that Everyday Lending lent to him '…*without proper vetting or even a though as to how it would affect me financially'.* And I say that because I have seen and demonstrated int his decision that Everyday Lending did make many checks on Mr C's finances before lending. Its what it did with that information which I have looked at carefully.

And Everyday Lending's account notes plus the checks it did show me that it knew a fair part of Mr C's current domestic and financial circumstances. It knew he was divorced, he paid around £366 a month child support and this was through the CSA (Child Support Agency) and so it was a set cost. He had a fiancé and was due to be married. He'd purchased a house mortgage free in June 2018. It had sought copies of the property title deeds to verify that.

And I do not accept Everyday Lending's submission that Mr C had no defaults on his credit file as he did have two but they dated from 2014. And Mr C did have a returned direct debit apparent on the set of bank account statements he sent to Everyday Lending.

Everyday Lending's suggestion that Mr C's low risk score on its internal scoring system is not at all persuasive as the creditworthiness assessment carried out before lending needs to have been from the borrower's perspective.

So, from one perspective I can see that Mr C may have been a customer with more solid foundations when compared to many other of its customers. But on the other hand, it's clear from Everyday Lending's own figures that Mr C was overindebted. And although the loan may have appeared to have assisted with his payday loans for the immediate period after the loan was approved, the term was due to have been for 5 years. And Everyday Lending's calculations showed that Mr C would have had very little left over each month – about £138 – after repaying all his commitments plus the new Everyday Lending loan. For a man in Mr C's circumstances, I consider that to have been a low figure and I agree with our adjudicator that his credit commitments took up a large percentage of his income.

I uphold Mr C's complaint.

Putting things right

The loan was repaid in May 2019. To put things right Everyday Lending should:

- remove all interest, fees and charges applied to the loan,
- treat any payments made by Mr C in respect of this loan as payments towards the capital amount of £5,000,
- If Mr C 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 C's credit file.

*HM Revenue & Customs requires Everyday Lending to take off tax from this interest. Everyday Lending must give Mr C 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 Mr C’s complaint and direct that Everyday Lending Limited trading as Everyday Loans does as I have outlined above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr C to accept or reject my decision before 19 June 2023.

Rachael Williams
Ombudsman