DRN-4138215

The complaint

Mr K and Miss V, through their representative, complain that Everyday Lending Limited, trading as Everyday Loans, lent to them irresponsibly. e

What happened

One loan was approved for them in May 2018 for £3,100 with a 24 month term repayable at £303.98. The total repayable was due to have been £7,295.52. It was settled early. The loan was for the purposes of a family holiday.

In the final response letter (FRL) dated 19 August 2022, issued to Mr K (and Everyday Lending has told us that FRL was meant to cover the joint lending to Mr K and Miss V) Everyday Lending gave reasons why it did not consider it had lent irresponsibly.

Mr K and Miss V's representative referred their complaint to the Financial Ombudsman Service. One of our adjudicators looked at it and thought that information Everyday Lending had showed Mr K and Miss V may have been having problems managing their money, because they had at least six short term loans outstanding, with other loans being taken previously. So, our adjudicator's view was that the repayment of the loan over the loan term was likely to have been unsustainable for them.

Mr K and Miss V's representative has acknowledged this opinion from our adjudicator and Everyday Lending has not responded. 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 when it approved the loan complete reasonable and proportionate checks to satisfy itself that Mr K and Miss V would be able to repay in a sustainable way?
- If not, would those checks have shown that they 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 K's and Miss V'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 K and Miss V 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 K and Miss V**.** 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 K and Miss V's complaint.

Everyday Lending said it obtained and reviewed '*a customer's'* bank statements for two months and a credit search. I've seen from the records that Everyday Lending reviewed one set for Miss V for the period 14 March to 14 May 2018 and a separate set of bank statements for a similar period for Mr K.

Everyday Lending also said that it checked where they both worked. Everyday Lending said it used statistical data and figures to calculate the living expense element of affordability. This calculation took into consideration the customers' income, region, household composition and residential status. It said its affordability calculation showed that they would have a monthly disposable income of around £265 after taking into account the new Everyday Loan monthly repayments.

I've seen from the records sent to us by Everyday Lending that it used £1,511 as Mr K's monthly net income (using the lowest sum seen on the bank statements). This seems reasonable.

Everyday Lending's own notes show that it had seen that Mr K's bank statements revealed gambling transactions, adverse entries and that he had payday loans. I've not seen any gambling transactions so I'm not sure that was correct.

I have looked at the copy bank statements supplied to Everyday Lending by Miss V. She had a £2,000 overdraft facility on her account which she used regularly. She was employed and her salary which credited her account on 26 March 2018 was £2,266.74 (after tax). But the following month on 26 April 2018 it was lower - £1,639.05 (after tax). Miss V received around £20 a week child tax credit. Plus, the additional income was around £247 child benefit each month (reference CHB on her bank statements). Everyday Lending has said that the £300 rental cost was paid for by Miss V and it came out of her account but I've seen from Miss V's statement that Mr K used to pay her around £300 just before rent day.

Looking at Mr K's bank statements, they show that on 28 February 2018 he received his salary after tax which was £2,421. His statements show many transfers to Miss V's account which coincides with many credits into her account. These demonstrate that they paid the household expenses together.

And Mr K paid some additional ones as well, such as the TV licence, motor finance, electricity bill and his telephone. Mr K's subsequent salary was only £1,511 after tax paid in on 28 March 2018.

Mr K's bank statements showed three separate payments to three high cost short term lenders on 1 March 2018 which added up to be around £453 plus another one paid on 2 March 2018 for £214 and to a home credit lender for £100. They all added up to be around £767.

And the following month the bank transactions showed Mr K had paid £107.94 he was already paying to a high cost lender (known to Everyday Lending) on an earlier loan (£107.94 for 24 months from March 2016) plus he had five other payments to other high cost short term lenders (all at the end of March and early April 2018) and so all of that added up to around £654 plus £100 for the home credit provider. His motor finance payment by Direct Debit did not go through and was returned to his bank twice in April 2018.

The need for repayments to be sustainable meant Everyday Lending needed to ensure Mr K and Miss V could meet any repayments without undue difficulty and without having to borrow further. As Mr K was actively repaying and still obtaining a number of payday lenders to supplement his income, 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 K would still need to use a significant share of his income to service his remaining debt each month suggesting a risk of unsustainability. And as Mr K and Miss V clearly shared the household expenses then I consider that would have had an inevitable effect on their joint finances. So, I don't agree that further lending would've been sustainable to Mr K and Miss V at this time.

And to further enhance the reason for me thinking this, I've reviewed the credit files for Mr K and for Miss V which were obtained by Everyday Lending before lending and it was littered with defaulted accounts and even though some were from several years before it showed a past history. Many had outstanding balances on them.
And both Mr K and Miss V had historic County Court Judgments registered. Which, together with Mr K's banks statements would have been information I do not consider that Everyday Lending could ignore.

I've seen the income and expenditure account in which Everyday Lending had calculated the joint income and joint outgoings and credit expenses. And it had created a lengthy 'Debt Table' which listed all the outstanding debts and credit commitments Miss V and Mr K had at the time. And from that I note that one loan approved for Mr K in March 2016 was being consolidated into this new joint loan. And that by doing so it would be the 'saving' of £107.94 each month. But that loan only had a balance of £77 (possibly £61 – the loan is duplicated on its Debt Table and two different figures were given). I consider that to have been unnecessary and inappropriate.

I uphold the 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 K and Miss V in respect of this loan as payments towards the capital amount of £3,100,
- If Mr K and Miss V 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 K and Miss V's credit file.

*HM Revenue & Customs requires Everyday Lending to take off tax from this interest. Everyday Lending must give Mr K and Miss V 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 the complaint and I direct that Everyday Lending Limited trading as Everyday Loans does as I have outlined in the 'putting things right' part of my decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K and Miss V to accept or reject my decision before 20 June 2023.

Rachael Williams
Ombudsman