DRN-4750867

The complaint

Mr G is complaining about Everyday Lending Limited trading as Everyday Loans because he says it lent irresponsibly by giving him loans he couldn't afford.

What happened

Mr G took three loans with Everyday Loans in January 2020, September 2020 and December 2021. Each was for a higher amount than before, with some of the new loan being used to clear the balance of the previous one. His complaint concerns the second and third loans, which he says shouldn't have been given.

Our investigator said we can only consider a complaint about the final loan as Everyday Loans had a Scheme of Arrangement sanctioned by the Courts covering complaints about irresponsible/unaffordable lending for loans taken on or before 31 March 2021. This loan was for £5,100 over a term of three years with a monthly payment of £283.

Our investigator ultimately concluded the complaint about this loan should be upheld. She felt Everyday Loans' affordability assessment showed the loan was unaffordable.

Everyday Loans didn't accept the investigator's assessment. It said her calculation should have only used a proportion of Mr G's rent based on his share of the household income and didn't take account of the fact the loan was intended to repay other debts, which would have reduced his outgoings further.

The complaint has now been referred to me for review.

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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and what I consider was good industry practice at the time.

For the reasons already explained by the investigator, my consideration of this complaint is restricted to the last of the three loans. Before lending to Mr G, Everyday Loans was required to carry out appropriate checks to ensure the repayments were affordable and sustainable. To decide whether this requirement was met, the key questions I need to consider are:

- Did Everyday Loans complete reasonable and proportionate checks to establish that Mr G would be able to repay the loan in a sustainable way?

- If so, was the decision to lend fair and reasonable?

- If not, what would reasonable and proportionate checks have discovered, and would the decision to lend have been fair and reasonable in light of that information?

The rules, regulations and good industry practice in place at the time the loan was approved required Everyday Loans to carry out a proportionate and borrower-focused assessment of whether Mr G could afford the repayments. This assessment also had to consider whether the loan could be repaid sustainably. In practice this meant Everyday Loans had to satisfy itself that making payments to the loan wouldn't cause undue difficulty or adverse consequences. In other words, it wasn't enough to simply think about the likelihood of him making payments, it had to consider the impact of the repayments on Mr G.

Everyday Loans has described the information it gathered to assess whether Mr G's loan was affordable before it was approved. This included:

- information contained in his application, including residential status, employment status and his income, which was separately verified;
- information obtained from a credit reference agency (CRA), giving details of his existing credit arrangements and any past issues with credit, including missed payments and defaults; and
- an expenditure assessment using a combination of modelled data for key expenses, information obtained from an interview, a review of recent bank statements, and actual data from the CRA about the cost of his existing credit arrangements.

Everyday Loans maintains its affordability assessment demonstrated the loan was affordable.

On balance, I think the information it obtained was proportionate to the circumstances of this case and allowed Everyday Loans to make a fair assessment of whether the loan was affordable. But after reviewing this information, I think it should have concluded the repayments weren't affordable and declined to lend.

Everyday Loans calculated that Mr G had a monthly disposable income of £222 after the new loan payment was taken into account. In its recent letter, it's also said Mr G was planning to use the loan to clear some existing debt, which would increase this figure to £279.

This was based on the assumption Mr G's income was £2,650 but I don't think this figure is supported by the bank statements seen by Everyday Loans at the time. These show he was paid weekly and in the nine weeks before the loan was agreed (the entire period covered by the statements), his average income was £568, which actually equates to £2,461 per month. This discrepancy considerably reduces the disposable income calculated by Everyday Loans from £279 to just £90.

I'm also conscious Everyday Loans' calculation assumed Mr G's wife paid £120 of the £700 monthly rent he paid, but it's not clear it established whether she actually made such a contribution or took her circumstances into account in any other part of the affordability assessment. The lending rules, as set out in the FCA's Consumer Credit Sourcebook, are clear that a lender shouldn't take a partner's income into account without also considering their non-discretionary expenditure. For similar reasons, I don't think it was appropriate to assume Mrs G did or could even afford to contribute to the rent without considering her circumstances further. If Everyday Loans hadn't relied on Mrs G making a contribution to the rent, I think its calculation would actually have concluded Mr G's outgoings were greater than his income.

Notwithstanding the affordability calculation it completed, Everyday Loans also obtained recent bank statements for Mr G and these showed he was continuously overdrawn by as much as £300 to £500 and paying daily overdraft interest. I believe this indicates he was struggling to meet his existing commitments and couldn't afford the higher monthly payments associated with the new loan.

Taking everything into account, I think Everyday Loans should have concluded Mr G couldn't afford the repayments for the loan given in December 2021 and declined to lend. It's for this reason that that I'm upholding this complaint.

Putting things right

The principal aim of any award I make must be to return Mr G to the position he'd now be in but for the errors or inappropriate actions of Everyday Loans. But that's not entirely possible here as the lending provided can't be undone.

Because I don't think Everyday Loans should have lent to Mr G, I don't think it's fair for him to pay interest or charges on the amount borrowed. But he has had use of the money that was lent, so I think it's fair he repays the amount borrowed (without the addition of interest or charges).

To put things right, Everyday Loans now needs to take the following steps:

- Calculate the total of all Mr G's payments towards the loan, including all interest, fees, charges and insurances (not already refunded).

- If this exceeds the £5,100 borrowed, any excess above £5,100 should be paid to him with simple interest at 8% per year from the date of each overpayment to the date of settlement.

  HM Revenue & Customs (HMRC) requires Everyday Loans to deduct tax from any interest. It must provide Mr G with a certificate showing how much tax has been deducted if he asks for one. If Everyday Loans intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

- If the total of all Mr G's payments doesn't exceed the £5,100 borrowed, Everyday Loans should arrange an affordable payment plan with him for the shortfall.

- Remove any adverse information recorded on Mr G's credit file relating to this loan, once any outstanding balance has been repaid.

If Everyday Loans no longer owns the debt, it should liaise with whoever does to ensure any payments Mr G has made since moving the account are factored into the calculation of the compensation that's due or the balance that remains outstanding.

I'm satisfied this represents a fair and reasonable settlement to this complaint.

My final decision

For the reasons I've explained, I'm upholding Mr G's complaint. Subject to his acceptance, Everyday Lending Limited trading as Everyday Loans should now put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 10 June 2024.

James Biles
Ombudsman