DRN-4845022

Financial Ombudsman Service

The complaint

Mrs C complains that Everyday Lending Limited, trading as Everyday Loans ("Everyday Lending"), lent to her irresponsibly and the interest charged was too high.

And Mrs C is not content that an email she had sent to Everyday Lending during the complaint process was unanswered.

What happened

In July 2023 Mrs C took one loan for £1,000 over 18 months repayable at £134.72 each month. The total amount to pay back is £2,424.96. That loan term is still running.

After Mrs C had complained, she received the Everyday Lending's final response letter dated 1 March 2024 in which it gave reasons why it was not upholding her complaint. Mrs C referred it to the Financial Ombudsman Service where one of our investigators considered that despite Everyday Lending having carried out proportionate checks it had not made a fair lending decision. So, our investigator upheld the complaint.

Everyday Lending disagreed. The unresolved complaint was passed to me for a decision and on 2 July 2024 I issued a provisional decision. I addressed a couple of points not earlier covered and I gave reasons why my opinion differed to that of our investigator.

Both parties had time to respond. A duplicate of that provisional decision is here for ease of reading. It is in smaller type to differentiate it and forms part of this decision.

Duplicate of my provisional decision dated 2 July 2024

> 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 Mrs C would be able to repay in a sustainable way?
> - If not, would those checks have shown that Mrs C would have been able to do 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 Mrs C undue difficulty or significant adverse consequences. That means she 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 her 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 Mrs 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 Mrs C (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 Mrs C's complaint. But I consider that Everyday Lending did carry out proportionate checks and gathered detail from Mrs C and did not lend irresponsibly. So, I am issuing a provisional decision to give my reasons why.

Mrs C's income was declared as £358 each week (around £1,500 a month) and she was in receipt of Universal Credit (UC) and child benefit at £40 each week. The UC figure varied, for example on 7 July 2023 Mrs C received just under £1,140 and the month before on 9 June 2023, it had been £942. The UC document Everyday Lending received from Mrs C was the one for the period 4 June 2023 to 3 July 2023 and covered Mrs C and her husband as a couple, plus housing benefit and benefit for two children. So, the monthly amount received by Mrs C after deductions including part of her rent (around £595) was just under £1,140. Mrs C also received her salary of around £1,500 a month after tax.

Mrs C has told us that an incorrect figure was used for her rent. She had informed Everyday Lending that her rent was £730 each month, but she says Everyday Lending used £130 a month. Having checked the UC documents it was clear that a large part of the rent was paid directly to the landlord (around £595), leaving a balance of around £130 a month to pay. So in fairness to Everyday Lending, I do not think that it got that part of its calculations wrong.

Everyday Lending had used an Open Banking on-line method to view her bank account transactions. It said it did that for both of her bank accounts.

I've reviewed the statements Everyday Lending supplied to us. Mrs C paid a large part of her income each week to an account which was either joint with her husband or was her husband's account. It appears that the other account was used to pay the bills for the household.

Mrs C also had Standing Orders and Direct Debits and regular card transactions for:

- four debt collectors
- another high-cost short term instalment loan at £8 a month
- payments to her credit card of which she had three
- a buy-now-pay-later company which was the one Everyday Lending paid off for her.

Before any debt consolidation, Everyday Lending had done a credit search and seen that Mrs C's total debt balance was £1,136 which related to three revolving credit debts which included credit cards. Payments to these cards were evident in the open banking report Everyday Lending had viewed.

Mrs C was asked about the historic defaulted debts and was told they had arisen due to employment troubles during Covid and were being managed through the four debt collection agencies – also evident from her statements.

It had calculated that Mrs C had income in total of £2,267 and outgoings of £1,642.75. So, with a disposable income of just under £670 each month Everyday Lending considered Mrs C could afford the monthly payments of just under £135.

Mrs C says that some debt may have been that belonging to her husband and may not have been hers. Whereas, Everyday Lending has told us that it added to her debt commitments the payments for all the debts of which it was aware. And I consider this reasonable as it seems these were being paid for out of Mrs C's bank account. So, to have not included them would have been the wrong approach by Everyday Lending.

Mrs C has said that it's unfair it used those debts in its I&E calculations. Everyday Lending has explained that if those debts were incorrectly added into the calculations then that was because it was being cautious. I find that a reasonable and prudent approach. And by doing that, Everyday Lending has explained that it had depressed Mrs C's monthly disposable income and still had calculated that Mrs C could afford the loan.

If those payments were removed, because they were not debts for which she was liable, then her disposable income would have been higher and so she'd be even more able to afford the loan. Again, I find this a logical point to make and I accept it.

Our investigator's view was that because Mrs C was using her overdraft facility regularly and was close to her credit card limits across three cards then Mrs C was reliant on her overdraft, not managing her finances well and did not have the disposable funds Everyday Lending had calculated she had. Our investigator thought that these showed reliance on credit and demonstrated that Mrs C was in financial difficulties.

Where I differ in my view from the investigator is that her finances do not show she was in financial difficulties. She had some adverse credit history demonstrated by the debt collection payments, for which Mrs C had given legitimate explanations. These older debts were being managed and Everyday Lending is the sort of lender for which some adverse entries on a credit file do not automatically lead it to refuse a loan application.

Mrs C's overdraft was modest at £250 and did not appear to be attracting overdraft fees. And her income was enough to clear it with more than adequate funds to leave the account in credit each month. The transfer of money to her partner's account or what may be a joint account were transfers which were within Mrs C's control. The overdraft use was not due to returned direct debits or having to use it to pay down priority bills or for other transactions of that nature. The overdraft could have been unused if slightly less was transferred to the other account. I'm not persuaded that Mrs C's circumstances were such that Mrs C had to rely on her overdraft.

Before any debt consolidation, Everyday Lending had done a credit search and seen that Mrs C's total debt balance was £1,136 which is not a high figure. Mrs C's credit cards were being used but she was also paying them down regularly and I know this having viewed the bank statements. Everyday Lending would have seen this too.

I consider that Everyday lending did proportionate checks and more by interviewing Mrs C and obtaining copy documents from her to verify details. It was correct in relation to its calculations surrounding her rent. It included some debt which may have been her husband's but erring on the side of caution it added the repayment sums in for all of those and still the loan looked affordable.

I disagree that use of credit cards and use of an overdraft without any obvious signs of having difficulty repaying the existing debt would automatically lead to Everyday Lending refusing the £1,000 loan.

I plan not to uphold the complaint.

Lack of response to the 5 March 2024 email Mrs C sent to EL

Everyday Lending acknowledges it did receive Mrs C's email on 5 March 2024 and failed to reply to it.

We can consider complaints about the way the complaint has been handled if it's part of the main complaint covering a regulated activity. So, I do consider I can review this.

I do think that Everyday Lending was wrong not to have replied to this email. But overall, I do not consider that the lack of reply was such that some sort of compensation payment is due. And I say this because, despite it being poor that no reply was sent, the impact on Mrs C was not likely to have been so great that I feel a payment to her to compensate is necessary. This email was sent to Everyday Lending after its FRL, so the complaint procedure was underway. Mrs C made a valid point surrounding what she had perceived as incorrect facts being used. So, there was a missed opportunity by Everyday Lending not to explain to her how it had got to the £130 a month rent cost figure.

I note that Everyday Lending has accepted it did not reply, I think it also needs to acknowledge it ought to have replied. But I do not consider a compensation award is required as Mrs C informed Everyday Lending in her email that she knew she had the option to bring it to the Financial Ombudsman Service if she did not get a reply. And Mrs C did refer her complaint to us. So, I do not consider that monetary compensation is needed.

High interest

From the loan documentation I have seen, the account notes together with the recorded telephone calls I have listened to, I consider that Mrs C was made aware of the interest charged. I think that Mrs C took the loan being aware of the interest to pay. The monthly amounts of just under £135 for 18 months can be calculated to be around £2,425 and so I think it's very likely Mrs C knew what the loan was going to cost her.

Added to which, interest for a loan is a commercial decision decided upon by the lender and not usually an element of lending with which the Financial Ombudsman Service interferes.

The loan interest Mrs C has quoted is for an 18 month loan term and not a 12 month loan term. The FCA Cost Cap regulations do not apply to 18 month loan terms.

I plan not to uphold this part of Mrs C's complaint.

S140A

I've also considered whether Everyday Lending has acted unfairly or unreasonably in any other way and I have considered whether the relationship between the parties might have been unfair under s.140A of the Consumer Credit Act 1974.

However, for the reasons I've already given, I don't think Everyday Lending lent irresponsibly to Mrs C or otherwise treated her unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here.

Future repayments

I have been sent evidence which indicates that Mrs C, jointly with her husband, are now in a debt management plan (DMP) through a debt advice charity, they have been served with notice to leave their accommodation, Mrs C is about to go on maternity leave which inevitably means a reduced income. I am sorry to read of the difficulties in finances these may bring to Mrs C and the family. But I have been asked to review the lending decision made in July 2023 which means I've focussed on what Everyday lending did and knew at the time it made that loan decision.

I remind Everyday Lending to treat Mrs C fairly and with forbearance especially as following this complaint it is very aware of her current personal and financial circumstances.

Both parties were invited to submit further points by 16 July 2024.

Everyday Lending did not respond to the provisional decision.

Mrs C has sent us further submissions all of which I have read carefully and I have answered in the next section.

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.

Mrs C sent me a copy of a loan she had taken out after the Everyday Lending loan but that's not relevant to the issues about which I have been asked to review – the lending decision in July 2023. The other loan post-dates it.

I note that other loan has now defaulted and I am sorry to read of this but Everyday Lending would not have known of this in July 2023. But it is relevant when Everyday lending approaches Mrs C about the debt as it's a further detail surrounding Mrs C's current circumstances.

Mrs C has made points surrounding her having credit cards with 95% of the credit limit used and use of her overdraft. But I have addressed all these points in my provisional decision and explain why it is I consider that Everyday Lending did all it should have done before lending. And that what it knew at the time was not information which would have led it to have declined the loan. I gave full reasons, which are repeated here, as to why I did not consider it lent irresponsibly.

The email dated 5 March 2024 was a missed opportunity by Everyday Lending to explain something that clearly was an issue for Mrs C. But within a few days Mrs C had referred her complaint to the Financial Ombudsman Service which was the option open to her to pursue the resolution of the complaint. What Mrs C has said now does not change my view about the lack of response to that email and her request for compensation.

Having reviewed it all including Mrs C's recent submissions, my opinion remains the same. I do not uphold the complaint.

S140A

I've also considered whether Everyday Lending has acted unfairly or unreasonably in any other way and I have considered whether the relationship between the parties might have been unfair under s.140A of the Consumer Credit Act 1974.

However, for the reasons I've already given, I don't think Everyday Lending lent irresponsibly to Mrs C or otherwise treated her unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here.

Future repayments

As I have said in my provisional decision, I have been sent evidence which indicates that Mrs C, jointly with her husband, are now in a debt management plan (DMP) through a debt advice charity, they have been served with notice to leave their accommodation, and Mrs C is about to go on maternity leave (or may already be on maternity leave) which inevitably means a reduced income.

I understand another loan Mrs C took out has also defaulted. These are all relevant to Everyday Lending going forward as to how it approaches Mrs C about the debt.

I am sorry to read of the difficulties in finances these may bring to Mrs C and the family. I remind Everyday Lending to treat Mrs C fairly and with forbearance especially as following this complaint it is very aware of her current personal and financial circumstances.

My final decision

My final decision is that I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 14 August 2024.

Rachael Williams
Ombudsman