Financial Ombudsman Service

complaint

Mr B thinks Everyday Lending Limited (trading as Everyday Loans) acted irresponsibly by lending him money in May 2011.

background

In May 2011, Everyday Lending lent Mr B £1,500. Mr B agreed to repay this amount, with interest, over 24 months. The monthly loan repayment was £99.33, and if Mr B made each payment when due he'd repay £2,335.26 in total.

Mr B thinks Everyday Lending acted irresponsibly by lending him the money. He says he ended up being unable to afford the repayments, and had to arrange a debt management plan.

Everyday Lending initially objected to us looking to the complaint, because it said Mr B didn't bring the complaint within the time limits that apply. An ombudsman looked at this and said this was a complaint we could consider. The complaint was then passed to an adjudicator to review.

Our adjudicator looked at the complaint and thought it should be upheld. She said that Mr B had a low income, and as such thought Everyday Lending needed to carry out more detailed checks about his general financial position. She felt given Mr B's housing and living costs, together with his existing debts, he wasn't in a position to take on further credit commitments.

Everyday Lending disagrees. It says the credit reference it obtained at the time didn't show Mr B's other short term debts. Our adjudicator, in response, said that Everyday Lending knew Mr B had a second bank account, and that if it had looked into this further it would have been aware of Mr B's other debts.

Everyday Lending didn't reply to the adjudicator. The complaint has been referred to me to decide.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In considering what is fair and reasonable I have taken into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and what I consider to have been good industry practice at the relevant time.

In this case, the main guidance was the Office of Fair Trading's guidance on irresponsible lending.

Everyday Lending was entering into a regulated consumer credit agreement. Everyday Lending needed to make a reasonable assessment of whether Mr B could afford to meet repayments in a sustainable manner.

This involved a consideration of the potential for the credit commitment to adversely impact on the borrower's financial situation, taking account of information that the creditor is aware of at the time the credit is granted.

In particular, credit ought to be repaid by the borrower without undue difficulty – that is, without incurring or increasing problem indebtedness – over the life of the credit agreement out of income or available savings without having to realise security or assets.

This also means the borrower had to be able to make repayments while also meeting other debt repayments and other normal outgoings, and without having to borrow to meet these repayments.

The extent of any affordability assessment had to be proportionate, and might depend on a number of factors, including the type of credit, the amount and cost of the credit, and the circumstances of the borrower including credit history and other financial commitments.

In light of this, I think reasonable and proportionate checks would generally be more thorough:

- The lower a customer's income (as it could be harder to make any loan repayments from a lower income)
- The higher the amount to be repaid (as it could be harder to meet a higher repayment from a given income)
- The longer the term of the loan (as the total cost of the loan is likely to be greater and the customer is required to make payments for an extended period).

I've looked at what Everyday Lending has done with this in mind.

Based on what I've seen, Mr B applied for this loan in late April 2011. He wanted to borrow £1,500 to consolidate debt. He told Everyday Lending he was paid every four weeks, and that his pay varied depending on overtime.

According to Everyday Lending's system notes, it had sight of a payslip, and a mortgage statement. It also looked at one of Mr B's bank statements. It has sent us a copy of the bank statement. Everyday Lending has also sent us a credit report from a credit reference agency which it says it took into account before deciding to lend.

I've carefully considered the information shown on these documents. Having done so, I think it would have been proportionate for Everyday Lending to have carried out further checks. I'll explain why.

First, I note that Mr B's income was relatively low – and he said it fluctuated depending on overtime. So I think there was a real prospect that Mr B's income might change materially during the 24 month term of the loan.

Second, I note the expenditure shown on his bank statement was roughly the same as his income. And I see that, according to the credit file, Mr B was having difficulties meeting payments towards his existing debts as and when they were due – I see a number of missed payments towards one of his credit cards, and the balance of this card was also over its credit limit. Mr B had also taken out a second credit card within the last six months, and he was close to the limit of this card as well. Finally, the credit file showed that Mr B had a second current account, and that Mr B had exceeded his overdraft limit on this account.

Finally, Mr B told Everyday Lending he was using the loan to consolidate debt. But I note that the amount Mr B wanted to consolidate was rather more than the outstanding debt shown on his credit file, and the monthly payments towards this new loan were greater than the payments shown towards the unsecured debts shown on his credit file. This suggests to me that there might have been other debts, beyond the ones shown on the credit file. And it certainly suggests that the information shown on Mr B's statements didn't give a full picture of his current financial circumstances.

Based on the information I've seen about Mr B's circumstances, I think further checks would have been appropriate.

I've therefore gone on to consider what further checks would more likely than not have revealed. Mr B has told us that at the time he took out this loan, he had a number of defaulted accounts and a number of payday loans. Based on what I've seen, it looks as though the defaults didn't happen until after he took out the loan from Everyday Lending. But I do see that he had a series of short term loans from early December 2009 onwards. Based on what I've seen, Mr B drew down around 15 short term loans from the end of December 2009 to the date he borrowed from Everyday Lending, and on 10 occasions he deferred repayment of a short term loan by extending its term.

Around the time he applied for this loan, on 26 April Mr B drew down a loan of £500 from one lender, and on 27 April, he drew down a loan of £280 from another lender. And I see that he needed to pay £976 in May 2011 to repay these loans. I acknowledge that these loans didn't appear on Mr B's credit file. But I think it's likely that, had Everyday Lending asked for details of Mr B's other bank account, it would have become aware of these loans. And I think if it had it would have questioned whether further lending was sustainable.

As I've already noted, the amount Mr B was spending according to his bank statement was already close to his monthly wage. The payments towards this new loan were already greater than the existing unsecured credit commitments that Everyday Lending were aware of. But when we take this together with Mr B's history of short term lending, I think there was a real prospect that Mr B would need to borrow again to fund his new commitments. I don't think that the repayments to this new loan were sustainable, and I don't think Everyday Lending should have lent Mr B this loan.

putting things right

Everyday Lending shouldn't have lent Mr B the money. I understand there may be a balance outstanding on it. So to put things right Everyday Lending should:

- Remove any interest, fees and charges from the loan, so he only needs to repay the £1,500 he originally borrowed;
- Apply the payments Mr B has made to the loan to the £1,500 he borrowed.
- If this means Mr B has paid more than £1,500, Everyday Lending should refund any overpayment. Everyday Lending should add interest to any overpayment (the rate is 8% per year*) from the date Mr B paid it until the date he gets it back.
- If Mr B still owes an outstanding balance, Everyday Lending should arrange an affordable repayment plan with him.
- Everyday Lending should remove any adverse information recorded on Mr B's credit file in relation to the loan once the loan is settled.

*HM Revenue and Customs requires Everyday Lending to take tax off this interest. It should give Mr B a certificate showing this if he asks for one.

my final decision

For the reasons above, I uphold Mr B's complaint. Everyday Lending Limited should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 30 April 2020.

Edward Hardman
ombudsman