complaint

Mr R complains that Everyday Lending Limited (trading as Trusttwo) was irresponsible when it provided two guarantor loans to him in 2016 and 2017.

background

Mr R took two loans with Trusttwo. A member of his family acted as his guarantor.
The first loan – taken in April 2016 – was for £5,000. It was repayable over 24 months at £289.96 per month. The total amount repayable was to be £6,959.04.

In June 2017 Mr R took his second loan. It was again for £5,000. This time it was repayable over 42 months at a rate of £213.62 meaning that Mr R was due to repay a total of £8,972.04.

As Mr R hadn't yet repaid Loan 1 when he took Loan 2, some of the proceeds from the later loan were used to settle the earlier one. £2,875.78 was used to settle Loan 1 which means Mr R received £2,124.22 into his bank account.

Trusttwo didn't agree that it had acted irresponsibly so Mr R brought his complaint to this Service. One of our adjudicators looked into Mr R's complaint and recommended that it should be upheld. We haven't heard back from Trusttwo, so the matter has come to me – an ombudsman – for a final decision. If Mr R accepts my decision it will be binding on the parties.

my findings

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

Trusttwo provided the loans in question while it was authorised and regulated by the Financial Conduct Authority ("FCA").

The FCA's Principles for Business set out the overarching requirements which all authorised firms are required to comply with. These included PRIN 2.1.1 R (6) which says: A firm must pay due regard to the interests of its customers and treat them fairly.

The Consumer Credit sourcebook ("CONC") set out the rules and guidance which apply to credit providers like Trusttwo when providing loans. CONC 5 sets out a firm's obligations in relation to responsible lending.

Section 5.2.1 of CONC set out what a lender needed to do before agreeing to give a borrower a loan saying:

> *(1) Before making a regulated credit agreement the firm must undertake an assessment of the creditworthiness of the customer.*

And at Section 5.2.1(2):

> *(a) the potential for the commitments under the regulated credit agreement to adversely impact the customer's financial situation, taking into account the*

information of which the firm is aware at the time the regulated credit agreement is to be made; and

(b) the ability of the customer to make repayments as they fall due over the life of the regulated credit agreement, or for such an agreement which is an open-end agreement, to make repayments within a reasonable period.

CONC also included guidance about 'proportionality of assessments'. CONC 5.2.4G(2) saying:

A firm should consider what is appropriate in any particular circumstances dependent on, for example, the type and amount of credit being sought and the potential risks to the customer. The risk of credit not being sustainable directly relates to the amount of credit granted and the total charge for credit relative to the customer's financial situation.

CONC 5.3 contained further guidance on what a lender should bear in mind when thinking about affordability. CONC 5.3.1G(1) saying:

In making the creditworthiness assessment or the assessment required by CONC 5.2.2R (1), a firm should take into account more than assessing the customer's ability to repay the credit.

CONC 5.3.1G(2) then added:

The creditworthiness assessment and the assessment required by CONC 5.2.2R (1) should include the firm taking reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.

CONC 5.3.1G(6) clarified what is meant by "*sustainable*":

For the purposes of CONC "sustainable" means the repayments under the regulated credit agreement can be made by the customer:

(a) without undue difficulties, in particular:

(i) the customer should be able to make repayments on time, while meeting other reasonable commitments; and
(ii) without having to borrow to meet the repayments;

(b) over the life of the agreement, or for such an agreement which is an open-end agreement, within a reasonable period; and

(c) out of income and savings without having to realise security or assets; and

unsustainable" has the opposite meaning.

CONC 5.3.1G (4) added that if a firm does take account of income and expenditure in its credit worthiness assessment:

> *(b) it is not generally sufficient for a firm to rely solely for its assessment of the customer's income and expenditure on a statement of those matters made by the customer.*
>
> *(c) its assessment should be based on what the firm knows at the time of the assessment*

I've mentioned that Mr R's loans were guarantor loans, meaning that if he failed to repay the loan in line with the credit agreement, Trusttwo could enforce the terms against the guarantor.

CONC 5.2.6G (2) makes clear that the existence of a guarantor doesn't remove or reduce the obligation on a lender to carry out the assessment I've outlined above.

Whilst CONC sets out the regulatory framework that authorised consumer credit providers have to adhere to it represents a minimum standard for firms. And - as an ombudsman - I'm also required to take into account any other guidance, standards, relevant codes of practice, and, where appropriate, what I consider to have been good industry practice.

Taking into account the relevant rules, guidance, good industry practice and law, I think there are some overarching questions I need to consider in order to decide what's fair and reasonable in the circumstances of Mr R's complaint:

1. Did Trusttwo complete reasonable and proportionate checks to satisfy itself that Mr R would be able to repay these loans in a sustainable way?
    - If so, did it make fair lending decisions?
    - If not, would those checks have shown that Mr R would've been able to do so?
2. Did Trusttwo act unfairly or unreasonably in some other way?

I've outlined above some of the regulations in place at the time Trusttwo provided the loans to Mr R. It had to carry out a reasonable and proportionate assessment of whether he could afford to repay them in a sustainable way.

The checks Trusttwo did, had to be proportionate to the specific circumstances of each loan. And what is proportionate will depend on a number of factors including things like the consumer's financial history and current situation as well as things such as the amount, type, cost of the credit being sought.

In light of this, I think that a reasonable and proportionate check ought generally to have been more thorough:

- the lower a customer'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 longer the term of the loan (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make payments for an extended period);

I've carefully considered what a reasonable and proportionate check should've looked like when Trusttwo was in the process of approving the loans for Mr R. For ease of reference I have rounded figures to the nearest pound.

Loan 1

Trusttwo says that it obtained details of Mr R's income. From the contact notes it seems it may have seen two payslips and averaged those out to give a monthly income of £2,173. It also established that he was renting and paying £420 per month for his rent. But it doesn't seem that it asked about his normal monthly outgoings. Rather it used a figure for his monthly outgoings of 35% of his income - £761.

It also seems that Trusttwo did a credit file check for Mr R and it seems that he may have explained his current debts. For example, he mentioned that he'd taken a payday loan because of an urgent utility bill. Apparently there had been an oversight which led to a late payment. He explained that there was a default on his file but that this was old and that he was clearing it monthly. It seems he told Trusttwo that he was going to pay off some of his credit and use the rest to relocate and pay a deposit on a new property. He mentioned that a recent loan was for a car.

Trusttwo calculated that Mr R's creditor repayments would be around £718, which taken together with his rent and calculated 35% living expenses left him with £275. But it then worked out that if he repaid his existing credit there would be an extra £290 available to him. This in turn meant that by the time he made the monthly repayments on Loan 1 (£290) to Trusttwo he would have £276 left as disposable income each month.

I do have some concerns that Trusttwo didn't obtain details of Mr R's actual monthly commitments: after all this loan was for a relatively large amount and Mr R was going to have to find almost £300 every month for the next two years to meet his obligations under the agreement. So, I don't think it did enough when it simply relied on an average figure rather than a figure specific to Mr R. But that aside, my real concern lies with Mr R's credit situation. Trusttwo was aware that Mr R had what I would term a relatively volatile credit history. I think that if Trusttwo had gone further into his credit history and thought about the likelihood of him being able to repay Loan 1 sustainably, it would've realised that he was - and had been for a long time - in a very difficult financial situation.

I've mentioned above that Trusttwo was aware that there was a default marker on Mr R's credit file. This related to a current account and from what I can see on the version of the credit file he's provided, this was recorded in late 2015: so, it wasn't that "old".
And I can see that although Trusttwo were aware that Mr R had credit cards, two of those had balances which exceeded his credit limit. And Mr R didn't just have one or two payday loans, taken recently to help him out of a sticky spot with a utility bill. In light of the information it did have, I think Trusttwo should've done much more to confirm that Mr R would be able to repay his loan sustainably.

If Trusttwo had done what I consider to be proportionate in these circumstances I think it would've seen that he had been borrowing consistently from high-cost short-term lenders such as those who provide payday loans, instalment loans and revolving credit, since at least 2012. And in the months before Mr R took Loan 1 there was a clear pattern of dependency – a cycle in which he was borrowing more and more to repay earlier creditors. By March 2016 he was also paying a direct debit to a debt recovery firm.

I've also had the benefit of seeing some of Mr R's bank statements which confirm the position he was in during March and April 2016. Even a high-level glance at these would alert a potential lender to Mr R's financial predicament. So, for example, in the first two weeks of April 2016 I can see the following transactions on Mr R's account:

- A loan deposit of £1,500 from Lender A
- A loan deposit of £780 from Lender B
- A repayment of £92 to Lender C
- A repayment of £254 to Lender D
- A repayment of £356 to Lender E
- A repayment of £782 to Lender B
- A repayment of £126 to Lender A
- A repayment of £69 to Lender F
- A repayment of £268 to Lender G
- A repayment of £302 to Lender G
- A repayment of £100 to Lender D

Additionally, Mr R was paying the debt recovery firm, his credit cards and overdraft charges. I accept that if Loan 1 had been capable of meeting all of Mr R's existing credit then he could potentially have reduced his monthly repayments (in the short term). But that wasn't the situation. In the days following the deposit of Loan 1 into his bank account Mr R did clear some of his high-cost short-term credit commitments as follows:

- He repaid Lender H £218, £570 and £391
- He repaid Lender D £106
- He repaid Lender F £791,
- He repaid Lender B £917
- He repaid Lender A £1,642

And so £4,635 of the loan advance went to repay Mr R's creditors almost immediately. But he still had other debts. Not only did he have his credit cards but there were still loans outstanding with some of the lenders I've mentioned above. And by the first week of May 2016 Mr R had to borrow once again from Lender A – a sum of £1,500.

This pattern of borrowing from one lender to repay other creditors and then taking short-term loans to plug the gaps left in his finances had been on-going for some time. And Trusttwo would've realised that Mr R was in serious financial difficulties had it done proportionate checks. I accept that Trusttwo had a snap shot of Mr R's credit file but armed with that, I think it should've been concerned and, consequently, satisfied itself that Mr R wasn't reliant on credit to make ends meet. I don't think it was adequate to put any reliance on his reassurance about staying on top of his repayments

I've mentioned above that Trusttwo didn't just have to check that Mr R could afford to repay Loan 1 on a pounds and pence basis, it had to ensure he could repay it sustainably. And had it considered the information it had and gone on to do proportionate checks it would've seen that this wasn't going to be the case with Loan 1. So, I uphold Mr R's complaint about Loan 1.

Loan 2

It seems that in the following months after taking Loan 1, Mr R repaid it as agreed. But it seems that the payment due at the end of December 2016 didn't go through. Trusttwo's notes say that Mr R explained that he had a new account. The statement of account suggests that this payment was then made by the guarantor. Over the following five months payments were made - usually by standing order. But I note that Mr R paid using his debit card to make April's payment – slightly later than usual as the standing order hadn't been received by Trusttwo.

I mention this background as it's something of which Trusttwo was aware at the time Mr R applied for Loan 2. Again, it asked him about his income, and it seems it saw two of his payslips and wisely used the lower figure in its affordability assessment - £2,420. He told Trusttwo that his rent was now £500. Again, Trusttwo used an estimated figure of 35% of his income for his expenditure.

Mr R was now indebting himself for a further three and a half years although he only received £2,124 into his bank account: £2,876 being used to settle Loan 1. It seems he wasn't going to use any of this sum to consolidate any other debts. I understand he told Trusttwo that the purpose of Loan 2 was to cover moving costs and a deposit.

Trusttwo recognised in its affordability calculation that Mr R's credit commitments amounted to £974 but as he was repaying Loan 1, that could be reduced by £290 (the monthly payment he'd been making on Loan 1). According to Trusttwo this left Mr R with a monthly disposable income of £175.

But Mr R's financial situation was as poor as it had been in April 2016. Throughout the period he'd held Loan 1 he'd continued to borrow from multiple other lenders. As I see it - every month he supplemented his income with further borrowing from high cost lenders. In May 2017 he'd borrowed a further £900 from payday lenders and in the two weeks before he took Loan 2 he had drawn down £940 on his revolving credit account, repaid that account nearly £1,200 and repaid other high cost creditors over £700. This wasn't a sustainable position for Mr R even without the added indebtedness of Loan 2.

In these circumstances I'm satisfied that a responsible lender should've realised that repayment of Loan 2 wasn't going to be sustainable for Mr R. I think he lost out because Trusttwo agreed to continue to provide him with expensive credit which was unfairly prolonging his indebtedness and likely to have implications for him in accessing mainstream credit.

In summary, I'm upholding Mr R's complaint about Loans 1 and 2 and I require Trusttwo to put things right.

putting things right

Trusttwo shouldn't have given Mr R loans 1 and 2. I understand that Mr R has continued to make repayments on Loan 2. Although Mr R took two loans, each for £5,000, he only received £2,124.22 in respect of Loan 2. I think it's fair he should repay the sum he had the benefit of - in other words, £7,124.22.

So, to put things right Trusttwo should:

a) Add together the total of the repayments made towards Loans 1 and 2 (but not including the sum of £2,875.78 used from the proceeds of Loan 2 to settle Loan 1)
b) Apply the sum calculated in a) above as though it was a repayment towards the total amount of principal borrowed (£7,124.22). If (as I expect it will) this results in Mr R having made overpayments (in other words more has been repaid than £7,124.22) then Trusttwo should refund these overpayments with 8% simple interest* calculated on the overpayments, from the date the overpayments would have arisen, to the date the complaint is settled.
c) Remove any adverse information recorded on Mr R's credit file in relation Loans 1 and 2.

*HM Revenue & Customs requires Trusttwo to deduct tax from this interest. It should give Mr R a certificate showing how much tax it has deducted, if he asks for one.

my final decision

For the reasons outlined above I am upholding Mr R's complaint and require Everyday Lending Limited (trading as Trusttwo) to put things right in the way I've explained.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 19 January 2020.

E J Forbes
ombudsman