DRN-3426065

The complaint

Miss B has complained that Everyday Lending trading as Everyday Loans was irresponsible in lending to her.

What happened

In July 2018 Miss B took out a loan with Everyday Loans for £1,500. She said the purpose of the loan was to buy a car. The loan was taken out over 18 months with an APR of 149.3% and her monthly repayments were £162.71 making the total repayable at the end of the term £2,928.78. The loan was repaid in May 2019 out of the proceeds of a second loan from Everyday Loans.

The second loan of £1,923.31 was taken out in May 2019. The loan was to be repaid over a period of 24 months with an APR of 144.7%. The monthly payments were £179 making the total repayable at the end of the term £4,296.

Miss B ran into difficulties repaying the second loan. She complained that Everyday Loans hadn't properly checked she could afford the loans.

Everyday Loans looked into her complaint and didn't uphold it. It said the checks had been properly carried out and it thought the loans were sustainable. Miss B referred her complaint to us.

I issued a provisional decision explaining why I was minded to uphold the complaint in part. An extract from my provisional findings is set out below:

"*We've set out our general approach to complaints about unaffordable/irresponsible lending - including all of the relevant rules, guidance and good industry practice - on our website.*

Having carefully thought about everything, I think that there are two overarching questions that I need to answer in order to fairly and reasonably decide Miss B's complaint. These two questions are:

- *Did Everyday Loans complete reasonable and proportionate checks to satisfy itself that Miss B would be able to repay loan in a sustainable way?*
- *If not, would those checks have shown that Miss B would've been able to do so?*
- *Did Everyday Loans act unfairly or unreasonably in some other way?*

The rules and regulations in place required Everyday Loans to carry out a reasonable and proportionate assessment of Miss B'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 Loans 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 Miss B 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 she 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 Loans to simply think about the likelihood of it getting its money back, it had to consider the impact of the loan repayments on Miss B. 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 a number of factors including – but not limited to – the particular 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.

In light of this, 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 of time 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 of the arguments, evidence and information provided in this context and what this all means for Miss B's complaint.

With regard to the first question Everyday Loans gathered some information about income and expenditure from Miss B before it made the first loan. It received a copy of her payslip and two months' bank statements. It also carried out a credit check and a job check. Miss B told it she had two children. I think these checks were reasonable and proportionate.

Everyday Loans said it confirmed that Miss B's income was £2,015.96 a month. This was made up of a salary from her job, child benefit, working tax credit and disability living allowance. The disability living allowance was intended to cover the extra costs involved in looking after a child with a disability. So I don't think Everyday Loans should have taken that part of her income into account which amounted to about £319 a month.

Everyday Loans used statistical data and figures to calculate the living expense element of affordability. This calculation takes into consideration the customer's income, region, household composition and residential status. It also said it applied a buffer to the living expenses amount to accommodate any unexpected minor changes in the customer's circumstances or one-off additional expenses. It said its affordability calculation showed that Miss B would have a monthly disposable income of £805.12 after taking into account her estimated expenditure of £1,048.13 and her new Everyday Loan monthly repayment of £162.71. Even adjusting the figures to exclude the disability allowance, Miss B would still have been left with a reasonable amount of disposable income.

I've reviewed Miss B's bank statements and credit search. Overall they don't suggest that Miss B was having trouble managing her finances. In particular I note she had no recent or short term loans. There was also no evidence of gambling or returned payments. The bank account appears to have been managed with transfers from a savings account when necessary. On current evidence I can understand why Everyday Loans came to the conclusion that the first loan would be sustainable over the term for Miss B.

By November 2018 Miss B was having difficulty repaying the first loan due to a change in her circumstances. She'd started making weekly repayments. By the time of the second loan Miss B was on maternity leave. Her monthly income had gone down to £1,627.94 and she'd another child. Everyday Loans carried out similar checks as for the first loan. It calculated that her general living expenses were £711 and thought Miss B would have a monthly disposable income of £121.53 after making the new loan repayment of £179 and paying other creditors.

However the credit check Everyday Loans made for the second loan showed that Miss B was in an arrangement to pay two utility accounts. She was paying about £324 a month to other lenders. I think it should have been clear to Everyday Loans that if Miss B was already struggling to repay the first loan, she would find it even harder to make the slightly higher repayments for the second loan.

Overall, I don't think Everyday Loans properly scrutinised the information available to it to ensure that Miss B would have enough funds to be able to make the repayments for the second loan over 18 months. I don't think Everyday Loans focussed on Miss B as a borrower and her specific circumstances. In my opinion it ought reasonably to have been aware that Miss B would be unlikely to be able to repay the second loan sustainably over the loan term. That means it should reasonably have concluded that it wasn't appropriate to lend to Miss B.

I've also thought about whether Everyday Loans acted unfairly in some other way and I haven't seen any evidence that it did."

Both parties agreed with my provisional decision.

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.

As both parties agreed with my provisional decision, I see no reason to change it and my provisional findings now form part of this final decision.

Putting things right

To put things right I think Everyday Loans should:

- remove all interest, fees and charges applied to the second loan,
- treat any payments made by Miss B as payments towards the capital amount of the second loan,
- if Miss B has paid more than the capital then any overpayments should be refunded to her with 8% simple interest* from the date they were paid to the date of settlement,
- but if there's still an outstanding balance, Everyday Loans should come to a reasonable repayment plan with Miss B; and
- remove any adverse information about the second loan from Miss B's credit file.

*HM Revenue & Customs requires Everyday Loans to take off tax from this interest. Everyday Loans must give Miss B a certificate showing how much tax it's taken off if she asks for one.

My final decision

I uphold Miss B's complaint and require Everyday Lending Limited trading as Everyday Loans to put things right for Miss B as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 9 May 2022.

Elizabeth Grant
Ombudsman