DRN-3430423

The complaint

Mr H complained that Everyday Lending Limited trading as Everyday Loans irresponsibly provided him with an unaffordable loan.

What happened

The main loan details are as follows:

Date taken	Amount	Term months	Monthly payment	Total amount repayable
April 2019	£5,000	60	£309.40	£18,564

One of our adjudicators reviewed what Mr H and Everyday Loans had told us and she thought that Everyday Loans shouldn't have provided this loan. So she recommended upholding Mr H's complaint. Everyday Loans disagreed and asked for an ombudsman to look at this complaint.

In brief summary, Everyday Loans said that Mr H's credit file showed no sign of financial difficulty and there were no arrears, defaults or county court judgements present within the last 12 months. Also, Mr H had said he would use part of the loan to repay other debt and after doing this and taking into account the monthly repayments for this loan, Everyday Loans' affordability calculation at the time showed he had monthly disposable income of £452.62. Everyday Loans said it didn't believe this would have indicated that any further borrowing would be unsustainable at the time it was approved.

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.

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 thought about everything, I agree with the conclusion our adjudicator came to. I'll explain why I say this.

The rules don't say what a lender should look at before agreeing to lend. But reasonable and proportionate checks should be carried out. Lenders must work out if a borrower can sustainably afford the loan repayments alongside other reasonable expenses the borrower also has to pay. This should include more than just checking that the loan payments look affordable on a strict pounds and pence calculation – a proportionate check might also require the lender to find out the borrower's credit history and/or take further steps to verify the borrower's overall financial situation.

If reasonable and proportionate checks weren't carried out, I need to consider if a loan would've been approved if the checks had been done. If proportionate checks were done and a loan looks affordable, a lender still needs to think about whether there's any other reason why it would be irresponsible or unfair to lend. For example, if the lender should've realised that the loan was likely to lead to significant adverse consequences or more money problems for a borrower who is already struggling with debt that can't be repaid in a sustainable way.

Everyday Loans asked Mr H about his income and expenses – including what he spent on his credit commitments. It also did its own credit check to understand his credit history and find out about his existing credit commitments and it reviewed bank statements provided by Mr H.

Everyday Loans recorded Mr H's monthly take home pay was around £1,804 which it checked against information it saw on his bank statements. Everyday Loans took into account nationally available statistics when thinking about Mr H's likely spending and also allowed an extra amount as a 'buffer' to account for any change in circumstances or one-off additional expenses.

Based on this, Everyday Loans affordability assessment showed that Mr H likely needed to spend around £1,292 per month which should've left him with more than £500 surplus cash each month.

This led Everyday Loans to conclude that the loan would be sustainably affordable for Mr H.

Like our adjudicator, I think Everyday Loans' checks were broadly proportionate. But, despite its affordability calculation appearing to show that Mr H should have had enough disposable income each month to cover the loan repayments, I think Everyday Loans should've realised this was unlikely, given the picture painted overall by the other information it had gathered.

I think Everyday Loans saw that Mr H had a long history of using expensive short-term and unsecured loans and, when he applied for this loan, he was already paying at least five other providers of payday loans and high cost credit. In total he owed more than £11,000 on loans and instalment credit – as well as a further £1,200 or so on active credit cards, which were close to the account limits.

During the 8 month period covered by the credit report, he had been persistently using most of his £1,000 overdraft. And, despite significant payments into his account from other lenders and his family, Everyday Loans saw from his bank statements that Mr H was still overdrawn at the start and end the month..

I think Everyday Loans should've realised that it looked like Mr H's debt had become problematic for him and he was over-reliant on credit he couldn't afford without borrowing further to pay for it.

I've taken carefully into account everything Everyday Loans has said in response to our adjudicator's assessment about the way it assessed affordability and noted that it understood that Mr H would use around £250 out of the loan proceeds to repay another outstanding loan. He said the balance would go towards the cost of car repairs.

But this doesn't affect my view overall. Everyday Loans didn't have control over how Mr H used the loan as it paid the loan balance direct to him. And having seen the extent of Mr H's reliance on using credit and the extent of his active credit commitments, I think it should've been apparent that there was a real risk Mr H would use the loan to meet financial demands that he considered to be the most immediate and pressing.

Even if Mr H had used this loan to repay the loan he'd discussed, I don't think Everyday Loans had sufficient reason to think this would've improved his overall position sufficiently to achieve a significant and sustainable improvement in his financial situation, given his reliance on using credit. It looks like the loan he planned to repay had only a single payment left – whereas this loan was potentially going to cost Mr H £13,564 in interest over the loan term and increase the amount of his monthly repayments for the next five years. And Everyday Loans was aware that the bulk of the loan was intended in any event to be spent and so it would add to his overall indebtedness.

I think it's also fair to say that, even with the planned debt consolidation, Mr H would still need to pay such a significant portion of his income towards credit, Everyday Loans should've realised that Mr H would likely struggle to repay this loan sustainably over the loan term.

So all the indications were that he would most likely remain in serious financial trouble regardless. Thinking about all the information Everyday Loans had gathered, I can't reasonably say that it made a fair lending decision based on the information in front of it. I don't think Everyday Loans was able to safely conclude that its loan would be sustainably affordable for Mr H. I believe that Everyday Loans ought reasonably to have been aware that this loan was likely to be detrimental to Mr H and recognised that it shouldn't have provided it. So Everyday Loans needs to put things right.

Putting things right

I think it is fair and reasonable for Mr H to repay the capital amount that he borrowed because he had the benefit of that lending - but he shouldn't repay any more than this.

Everyday Loans should do the following:

- add up the total amount of money Mr H received as a result of having been given the loan. The repayments Mr H made should be deducted from this amount.
- If this results in Mr H having paid more than he received, then any overpayments should be refunded along with 8% simple interest* (calculated from the date the overpayments were made until the date of settlement).
- If any capital balance remains outstanding, then Everyday Loans should attempt to arrange an affordable and suitable payment plan with Mr H
- Whilst it's fair that Mr H's credit file is an accurate reflection of his financial history, it's unfair that he should be disadvantaged by the decision to lend a loan that was unfairly provided. So Everyday Loans should remove any negative information recorded on Mr H's credit file regarding the loan.

*HM Revenue & Customs requires Everyday Loans to deduct tax from this interest. Everyday Loans should give Mr H a certificate showing how much tax has been deducted if he asks for one.

My final decision

I uphold Mr H's complaint and direct Everyday Lending Limited trading as Everyday Loans to take the steps I've set out above to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 27 May 2022.

Susan Webb
Ombudsman