DRN-3724023

The complaint

Ms G, through her representative, complains that the loans from Everyday Lending Limited, trading as Everyday Loans, were mis-sold to her.

Ms G also complains about the rate of interest charged to her.

What happened

Using information from Everyday Lending's records here is a brief loan table:

Loan	Approved	Capital Amount	Total to repay	Monthly repayment	Repaid
1	7 Nov 2018	£1,500	£2,866.68	£159.26 x 18	25 Nov 2019
2	25 Mov 2019	£4,000*	£10,399.68	£288.88 x 36	o/s

*£387.85 of the £4,000 capital was used to repay loan 1

Everyday Lending issued its final response letter in August 2022 in which it explained that it had carried out proportionate checks and that included taking copy payslips, interviewing Ms G, reviewing recent bank account statements, and doing a credit search. It did not uphold her complaint.

Ms G's representative referred it to the Financial Ombudsman Service and one of our adjudicators looked at the complaint. He considered that the information Everyday Lending had obtained showed that she had extensive debt issues culminating in several County Court Judgments (CCJs) and defaulted accounts and there was evidence of gambling. So, he thought that Everyday Lending should put things right for Ms G in relation to both loans.

Everyday Lending disagreed and gave reasons why. These are summarised as follows:

- Everyday Lending used the 3% figure on her historic debt outstanding balances to calculate how much Ms G was repaying. So it does not accept the 5% figures used by our adjudicator
- Ms G had no dependents and her husband paid one of the main household expenses which was the mortgage.
- In calculating the expenditure figures for Ms G Everyday Lending had built into those figures a 'buffer' meaning a margin to accommodate any unexpected minor changes in her living expenses.
- The CCJs were historic and one Ms G had disputed it as being hers.
- Ms G took a second job and her income had increased – this was relevant for loan 2
- Everyday Lending was aware of the gambling but said that even after the gambling transactions were accounted for it had calculated that Ms G still had around £912 disposable income.

The unresolved complaint was passed to me to decide and I issued a provisional decision on 21 November 2022 giving reasons why I considered that Ms G's complaint ought to be upheld for both loans. I gave both parties time to respond.

The full text of the provisional decision is duplicated here and it is in smaller type to differentiate it and it forms part of this final determination.

My provisional decision findings dated 21 November 2022

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 Ms G would be able to repay in a sustainable way?
- If not, would those checks have shown that Ms G would have been able to do so?

The rules and regulations in place required Everyday Lending to carry out a reasonable and proportionate assessment of Ms G'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 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 Ms G 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 his 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 Ms G. 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. Considering 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 the arguments, evidence and information provided in this context and what this all means for Ms G's complaint. Even though the outcome is the same as the one reached by our adjudicator, I've chosen to issue a provisional decision to allow time for any elements requiring clarity to be so clarified by either of the parties.
This provisional decision has been reached on current evidence. I will review it in two weeks. My provisional decision is that I plan to uphold Ms G's complaint and I explain my reasons here.

I note that Ms G thinks she took three loans with Everyday Lending but records show that it was two. Our adjudicator made it clear that if Ms G had more information to show she had taken a third loan he would review it. Nothing has been sent to us by Ms G or her representative to demonstrate that there was a third loan and so I am proceeding on the records I have been provided with and that there were two loans only.

One of the reasons I am issuing a provisional decision is to give Ms G time to clarify this point if she wants to.

I plan to deal with each loan in turn as there has been quite a lot of information about both loans.

And I start with the basis of the complaint. Reading Ms G's representative's letter of complaint dated 13 April 2022 it also refers to there being three loans and says that Ms G had concerns regarding the sale of the loan facilities and the affordability of them. After it had received Everyday Lending's final response letter (FRL) in August 2022, then it asked for more details from Ms G. Her explanation to her representative seems to have been that she was concerned about the high level of interest and that she did not realise that on the second loan she'd be paying back about £10,000. She says she thinks it is against the law for interest like this to have been charged.

Interest charged

Lenders can charge the rates they consider commercially viable and policies relating to commercial decisions are not ones that the Financial Ombudsman get involved with. There are some regulations which impose a 'cost cap' which limits the level of interest which can be charged to a customer but these loans do not fall into that category.

I see there was a large amount of interest chargeable on the loan and I can appreciate that Ms G might now feel this was unfair. But I think it's fair to say that the loan agreement set out reasonably clearly both what the interest rate was and how much she would have to pay if the loan ran to term. Taking everything into account, I think Ms G was made aware she was taking a high cost loan on terms she seemed content to agree to at the time.

Reviewing the procedure and the agreements which were carried out at the time Ms G borrowed, then I am satisfied that Everyday Lending made it clear what the interest charges were, what the total charge for credit was and how much Ms G would have to pay
So, I do not plan to uphold this part of Ms G's complaint.

Loan 1

For loan 1, Ms G approached Everyday Lending as a new customer and required £1,500 for some small home improvements and for Christmas. Ms G told Everyday Lending that the house was in her husband's name and he paid the mortgage. Everyday Lending checked her employment situation and got a copy of her payslip and used it to calculate she earned £1,257 a month after tax. It showed that she was working 60 hours a month at this point. Everyday Lending did a credit check and carried out a review of her bank statements. I've been sent all these documents and I have looked at them all.

Everyday Lending explained that it used national statistics data to calculate reasonable living expenses for Ms G and the figure it came to was just under £954. That left her with around £144 each month after Ms G had paid the new loan taken with Everyday Lending. So, it considered it affordable. It sent to me the income and Expenditure (I&E) spreadsheet to demonstrate this.

The credit searches Everyday Lending carried out have been sent to us and Everyday Lending created a table of debt. And it seems to have used Ms G's bank statements to compile this debt table as well as the credit search results it obtained. And I say this because some of the transactions which appeared in her bank statements reveal what she had been paying to some of the items listed in her credit searches. So, it seems that was the information (about her credit commitment outgoings) on which Everyday Lending relied.

The headline information at the start of the credit search was that she had one live loan with a total loan balance outstanding of £3,229, and she had a history of CCJs.

The one loan Ms G was repaying started in October 2017 and was costing her £195 each month. It had a starting balance of £4,000 and the loan was for 36 months so she would have had about two years left to pay on that loan.

The credit search results show she had a default in November 2016 (so about two years before applying for loan 1) and the balance still outstanding was £3,165.

She had another with a debt collector debt dated 1 March 2013 with an outstanding balance of £719.

Ms G had two defaulted accounts relating to a telecommunications supplier and dated back to 1 October 2014 and 1 December 2012. They were for £20 and £109 respectively.

There was mention of Ms G having had CCJs but none listed so although the headline information had referred to Ms G having some, which may be due to them being older than six years. But the debt table compiled by Everyday Lending includes payments towards these Judgment debts and so it seems that they were ones with outstanding debts to pay down. I've seen no details of these CCJs and is another reason I am issuing a provisional decision so that additional details can be sent to me by either of the parties to clarify these.

The monthly repayments sum as calculated by Everyday Lending and evidenced in its debt table is that Ms G was paying around £455 each month and that included a high balance credit card for which it had calculated the minimum payment of 3%. It had not built into Ms G's figures that she still had to pay off the capital on that debt.

There was a note on the loan account records before the loan was approved which states That

> *'the derog. at the Birmingham address is not her and has issues with this before – have included anyway'.*

'Derog' appears to be a reference to adverse entries. And Everyday Lending has since told us that this may be reference to a dispute in relation to one of the CCJs. But I've no additional information or confirmation of that and so, on current evidence, I am proceeding on the basis that the CCJs listed are all associated with Ms G.

And I don't think it was appropriate for Everyday Lending to not investigate a recent CCJ and simply accept what Ms G had told it – that it was not hers and had been a mistake. The presence of that CCJ plus the other historic one do reveal a distinct inability to afford and/or manage debt. And I say this because for a person to get to the position where the creditor applies to court for a judgment, usually that debtor would have been in financial trouble for a long time. Obtaining a CCJ usually would be considered a last resort to recoup money from a customer.

Everyday lending seems to be using the suggestion that one of the CCJs may not have been Ms G's to help to support its defence of the complaint. But if at the time the loan was applied for it did not seem to consider it important enough to investigate that, or decided to proceed anyway, then I do not think that to raise it now as an important element carries much weight.

As I said – I have no concrete information about the CCJ which may not have been hers, and so in the absence of anything to demonstrate that to me, I have proceeded on the basis that the CCJs about which Everyday Lending knew relate to Ms G.

On the I&E spreadsheet Everyday Lending has sent to me it had recorded '*creditor repayments'* of £454.64 each month and that appears to dovetail with the debt table Everyday lending had compiled. However, as I referred to earlier, the minimum repayment on a relatively large debt does not account for the capital sum which still had to be paid down.

The £455 a month on creditor commitments (including paying down her CCJ debts) amounted to 36% of her calculated salary of £1,257. And there are two things which I have to say on that – one is that the salary for one of the months which credited her account was £700 and so nowhere near the average it had used of £1,257. And 36% of that £1,257 salary was high before the new Everyday Lending loan repayment of £159 was added in which then made it 49% of her salary. This I consider to have been too high to be sustainable especially in light of Ms G's credit history.

I have considered the facts gathered from Ms G's bank statements that Ms G was in credit to around £700 when she applied for loan 1, and had just paid for a holiday costing around £1200. On the one hand this suggests disposable cash, but on the other hand it demonstrates to me that despite having a credit balance, Ms G's handling of her money was not thought out and her history shows this had led to CCJs and defaulted accounts in the past. With at least two CCJs, Ms G had real problems organising her financial affairs and managing her money and Everyday Lending knew of these details.

And in any event, going forward, still I consider that 49% of her salary for the total repayments was too high. And that 49% figure is calculated using the figures Everyday Lending had listed on its own debt table compiled in 2018, not our adjudicator's calculations.

For loan 1 I do not consider that any gambling transactions were significant as there were very few, if any, on Ms G's statements and I have not included those into my assessment for loan 1.

Even allowing for the fact that lending companies can, and often do, lend to people with adverse entries on their credit files, in Ms G's case I think that was too much alongside the 49% use of her income to satisfy all debts.

I do consider that the checks Everyday Lending were proportionate for this loan and having looked at the information it obtained I consider that it was not affordable. I plan to uphold Ms G's complaint about loan 1.

Loan 2

Loan 2 was for much more money and was applied for just a year into the repayment schedule for loan 1.

Loan 2 was for £4,000 of which around £388 was used to pay off the last part of loan 1.

Ms G had told Everyday Lending in June 2019 (during loan 1) that she wanted more funds and this was '*to pay off her cruise'*. Loan 2 was not negotiated until November 2019 and appears to have been used to consolidate loan 1 and get more for additional home improvements (a kitchen). The loan was due to have been repaid in 36 monthly instalments of £288.88 so just under £289.

Ms G had explained to Everyday Lending that she had two jobs and her combined salary was around £2,264 each month. It carried out similar checks as before including calculating that Ms G's expenditure was about £1,222 each month. It said in its FRL:

> *'Our affordability calculation conducted at the time showed she had a monthly disposable income of £911.96 after taking into account consolidated loans and Everyday Loans monthly repayments.'*

Everyday Lending's submissions to us recently has used that same disposable income figure after it had explained that it had factored in the gambling transactions.

Everyday Lending has sent to us its I&E spreadsheet but there was 'no data' – so there was nothing to see. As this is a provisional decision it may want to forward that to me.

The credit search plus the details Everyday Lending gleaned from Ms G and from her bank statements led to it making another debt table. That shows that Everyday Lending now knew Ms G had another (a third) CCJ and was paying that down.

The details I have from the credit search result carried out in November 2019 shows me that Ms G had taken a loan for £5,000 on 1 November 2018 – just a week before taking Everyday Lending's loan 1 – which was costing her £213 each month and had been for at least 48 months and so still had three years to run when she was applying for loan 2.

It seems that Everyday Lending did not know of that debt at the time it approved Ms G for loan 1. And this was likely because it had been taken out just a few days before she had obtained the Everyday Lending loan 1.

The balance on that loan taken in November 2018 was £4,621 in November 2019. And from the dates it looks like Ms G may have refinanced the loan she'd been paying £195 for (referred to above in relation to loan 1) into this loan as the £195 a month loan ended on 1 November 2018 which is when this one costing her £213 started. And it is another detail which demonstrates to me that Ms G seems continually to take loans or top-up existing loans.

Ms G had increased her hours from 60 a month to 138 a month for her main job and had taken on a second job.

Her total repayment commitments demonstrated from the debt table created by Everyday Lending amounted to just under £400 (not including the £159 for loan 1) which does translate to be about 17% of her double salary figure of £2,264. With the new Everyday Lending loan her commitments would amount to 30% of her double salary.

And again, this only included a minimum repayment element for one of the large outstanding debts which meant that the paying down of the capital for that had not really be factored in. I've also considered the fact that Ms G's bank statements show she was in credit at the time (£2,448) she applied for loan 2.

As for the gambling transactions I added up those which were spent for the period covered by the copy bank statements - 27 September 2019 to 28 October 2019 – and they add up to £471. That figure has been written on the bank statements and so it seems the Everyday Lending assessor was aware of these. That would have been about 20% of her double salary, which is quite high.

I note that Ms G received credits from that gambling website as well but that does not deter from the fact that Ms G spent 20% of her salary on gambling and that it was a marked increase from just 12 months before.

I've balanced all the information and evidence I have about the complaint and I've decided that I plan to uphold Ms G's complaint about loan 2.

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.

Neither of the parties have responded to the provisional decision and so I have no further information about any of the elements that could have been clarified if the parties had wanted to do that.

We have received an acknowledgment from Everyday Lending and so I know that the provisional decision had been received.

As I have no further submissions or evidence from either party then I see no reason to depart from the provisional findings I made last month and which are duplicated here. I repeat those and they form part of the final decision.

I uphold Ms G's complaint.

Putting things right

Everyday Lending shouldn't have given Ms G loans 1 and 2.

Loan 1 has been repaid in full. Loan 2 remains outstanding.

If Everyday Lending has sold the outstanding debt it should buy it back if it is able to do so and then take the following steps. If it is not able to buy the debts back then it should liaise with the new debt owner to achieve the results outlined below.

A) Everyday Lending should add together the total of the repayments made by Ms G towards interest, fees and charges on loan 1, not including anything it has already refunded.

B) Everyday Lending should calculate 8% simple interest* on the interest, fees and charges payments made by Ms G which were considered as part of "A", calculated from the date Ms G originally made the payments, to the date the complaint is settled.

C) Everyday Lending should remove all interest, fees and charges, including those yet unpaid, from the balance on Loan 2, and treat any repayments made by Ms G as though they had been repayments of the principal. If this results in Ms G having made overpayments then it 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. Everyday Lending should then refund the amounts calculated in "A" and "B" and move to step "E".

D) If there is still an outstanding balance then the amounts calculated in "A" and "B" should be used to repay any balance remaining on loan 2. If this results in a surplus then the surplus should be paid to Ms G. However, if there is still an outstanding balance then Everyday Lending should try to agree an affordable repayment plan with Ms G.

E) Everyday Lending should remove any adverse information recorded on Ms G's credit file in relation to loans 1 and 2 but that only needs to be done for loan 2 once it has been repaid.

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

My final decision

My final decision is that I uphold Ms G's complaint and I direct that Everyday Lending Limited, trading as Everyday Loans, does as I have set out in the 'putting things right' part of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before the extended deadline of 9 January 2023.

Rachael Williams
Ombudsman