DRN-4314614

Complaint

Miss R has complained about personal loans Everyday Lending Limited (trading as "Everyday Loans") provided to her. She says the loans were unaffordable and were therefore irresponsibly lent to her.

Background

Everyday Loans provided Miss R with an initial loan for £1,000.00 in September 2021. This loan had an APR of 249.5% and a term of 18 months. This meant that the total amount to be repaid of £2,431.62, including interest, fees and charges of £1,431.62, was due to be repaid in 18 monthly instalments of £135.09. This loan was settled early with some of the proceeds of loan 2 in July 2022.

Everyday Loans then provided Miss R with a second loan for £2,500.00 in July 2022. £869.18 went towards repaying the outstanding balance on loan 1. This loan had an APR of 191.5% and a term of 30 months. This meant that the total amount to be repaid of £7,797.60, including interest, fees and charges of £5,297.60, was due to be repaid in 30 monthly instalments of £259.92.

One of our adjudicators reviewed Miss R's complaint and eventually reached the conclusion that Everyday Loans ought to have realised that it shouldn't have provided Miss R with loan 1 but that it didn't do anything wrong when providing loan 2. So she thought that Miss R's complaint should be partially upheld.

Neither party agreed with our adjudicator's assessment. So the case was passed to an ombudsman as per the next step of our dispute resolution process.

My provisional decision of 7 August 2023

I issued a provisional decision – on 7 August 2023 - setting out why I intended to uphold Miss R's complaint. I won't copy that decision in full, but I will instead provide a summary of my findings.

I started by explaining that we've explained how we handle complaints about unaffordable and irresponsible lending on our website. And that I had used this approach to help me provisionally decide Miss R's complaint.

Everyday Loans needed to make sure it didn't lend irresponsibly. In practice, what this means is Everyday Loans needed to carry out proportionate checks to be able to understand whether Miss R could afford to repay any credit it provided.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So we'd expect a lender to be able to show that it didn't continue to lend to a customer irresponsibly.

I was concerned that Everyday Loans' own checks in the lead up to loan 1 showed that Miss R had had recent difficulties repaying credit in the form of defaults. I could also see that Miss R had had a county court judgment obtained against her too.

I was also concerned that Miss R's indebtedness increased in the period between loans 1 and 2. And not only was loan 2 for a larger amount than loan 1, it was also taken out before loan 1 had been repaid and in circumstances where there'd been late payments on loan 1 as well.

I also considered it important to note that Everyday Loans was required to establish whether Miss R could sustainably make her loan repayments – not just whether the loan payments were technically affordable on a strict pounds and pence calculation. The loan payments being affordable on a strict pounds and pence basis might have been an indication that a consumer could sustainably have made their repayments.

But it didn't automatically follow that this was the case. And as a borrower shouldn't have to borrow further in order to make their payments, it followed that a lender should realise, or it ought fairly and reasonably to realise, that a borrower wouldn't be able to sustainably make their repayments if it was on notice that they were unlikely to be able to make their repayments without borrowing further.

Everyday Loans' own notes appear to show that Miss R was constantly calling and asking for a loan top-up in the months leading up to loan 2. In my view, this indicated a reliance on credit. Furthermore, the underwriting notes for loan 2 also appeared to indicate that Every Loans was concerned that Miss R was borrowing from a number of friends and family in the period leading up to this loan too. Yet Everyday Loans still chose to ignore what I considered to be clear warning signs in preference of what the other information obtained suggested were over optimistic assessments of disposable income.

Bearing all of this in mind, I was satisfied that the information Everyday Loans obtained ought reasonably to have alerted it to the fact that Miss R was unlikely to have been able to repay these loans without borrowing further or experiencing financial difficulty. And I was also satisfied that the information Everyday Loans gathered ought to have alerted it to the fact that it shouldn't have provided these loans to Miss R.

As Everyday Loans provided Miss R with these loans, notwithstanding this, I was minded to conclude that it failed to act fairly and reasonably towards her. And this left me intending to uphold Miss R's complaint about both her loans.

Miss R ended up paying interest, fees and charges on loans she shouldn't have been provided with. So it was my intention to find that Miss R lost out because of what Everyday Loans did wrong and issue a final decision which directed Everyday Loans to put things right.

Responses to my provisional decision

Miss R confirmed that she was happy with my provisional decision and that she had nothing further to add.

Everyday Loans didn't respond to my provisional decision or ask for any additional time to do so.

My findings

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

I set out in some detail why I intended to uphold Miss R’s complaint in my provisional decision of 7 August 2023. As I’ve not been provided with anything further by the parties to consider, I’ve not been persuaded to alter my conclusions. So I’m still upholding Miss R’s complaint and I remain satisfied that Everyday Loans needs to put things right.

Fair compensation – what Everyday Loans needs to do to put things right for Miss R

Having thought about everything, I’m satisfied that it would be fair and reasonable for Everyday Loans to put things right for Miss R by:

- refunding all interest, fees and charges Miss R paid on her loans;

- adding interest at 8% per year simple on any refunded payments from the date they were made by Miss R to the date of settlement†

- removing any and all adverse information it recorded about these loans from Miss R’s credit file.

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

My final decision

For the reasons I’ve explained above and in my provisional decision of 7 August 2023, I’m upholding Miss R’s complaint. Everyday Lending Limited should put things right in the way I’ve set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss R to accept or reject my decision before 20 September 2023.

Jeshen Narayanan
Ombudsman