DRN-3204664

The complaint

Mrs S complains that that Everyday Lending Limited trading as Everyday Loans provided her with loans that she was unable to afford to repay.

What happened

Everyday provided Mrs S with two loans, one in October 2014, for £5,000 repayable at just over £193 a month, the second one in May 2017 repayable at just under £240 a month. Both loans were for 36 months.

At the time of the sale of both loans, Everyday said its checks consisted of

- Obtaining and reviewing up to two months bank statements from a customer's primary bank account.
- Obtaining and reviewing one month's payslip.
- Conducting a Credit Search.
- Carrying out a job check.

In practice what this meant in Mrs S's case is that Everyday obtained a bank statement for her business, and it verified from her tax returns that her income from the business was sufficient to meet the repayments for the loan. Both loans were for the purchase of a car, but Mrs S has clarified that this was a personal, rather than a business expense.

As part of its underwriting, it used 35% of a customer's net income to calculate an approximate personal expenditure with a minimum of £500.00 and maximum of £1,000.00. It also added £80 expenditure per child in the household.

On review by our adjudicator, he said that Everyday should have been aware from its checks that Mrs S was in financial difficulties, and that she was unlikely to have been able to sustain the payments for the loan. On review of her personal bank statements he noted that Mrs S was consistently overdrawn at the time of both loans being issued. She was incurring bank charges and interest as a result.

Everyday pointed out that the bank statements referred to by our adjudicator were for a joint account. And that the loans weren't joint loans so any assessment based on their joint bank statement would not be fair or accurate as this would include expenditure for Mr S. Mrs S had provided it with copies of her own personal (business) bank statement which was reviewed at the time the loans were approved. It provided a copy, from September 2014 and from this pointed out that her income credits and the statement summary showed that she received more than she had going out.

The matter has been referred to me for further consideration.

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 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 complete reasonable and proportionate checks to satisfy itself that Mrs S would be able to repay the loan in a sustainable way?

- If not, would those checks have shown that Mrs S would have been able to do so?

The rules and regulations in place required Everyday to carry out a reasonable and proportionate assessment of Mrs S'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 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 Mrs S 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 to simply think about the likelihood of it getting its money back - it had to consider the impact of the loan repayments on Mrs S**.** 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.

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 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).

loan 1

Everyday calculated (in accordance with its process described above) that Mrs S had a monthly disposable income of £439 taking into account the Everyday loan repayment. Everyday carried out a credit check on Mrs S and obtained evidence of the income from her business. Its affordability check estimated that her credit commitments amounted to 30% of her income, which I consider to be high. She had several loans and large credit card debts. And Mrs S's debt balance was almost £20,000.

The business bank statement that Everyday saw showed, for mid-August to mid-September 2014, payments in of £16,400 and payments out of around £5,800. Yet that can't represent the monthly income for the business. And on the balance sheet for 2014 which Everyday also sent us (which I presume to be the relevant page from Mrs S's tax return) there is a figure of £16,400 for loans and overdrawn bank balances. The figure for the previous year was £20,500, and drawings then were considerably in excess of the net profit.

So whilst on the face of it Everyday assessed that Mrs S had a disposable income with which to pay the loan, I think Everyday's checks were proportionate but it didn't react appropriately to the information it received

I've reviewed the information from Mrs S's personal account, which is a joint account. All the regular outgoings came out of this account. And it was consistently overdrawn over the limit and was incurring bank charges and interest. Whilst Mrs S shared the responsibility for the account with Mr S, I've noted that she made regular transfers into the account from an account in her name with the same bank, that Mr S had a lower income and still the account was consistently overdrawn.

As this was a personal rather than a business loan, I think the information Everyday obtained from its checks should have alerted it to carry out further checks. And I think that it's likely that it would have assessed that Mrs S would have been unable to sustain the loan payments. I don't think Everyday made a fair lending decision here.

loan 2

Mrs S applied for this loan, again on a personal rather than a business basis, and again to buy a car. Her position hadn't changed that much from the time of loan 1. Her debt balance had increased by around £7,000, and her credit commitments against income again were high, at 33%.

Everyday had the benefit of its previous checks, and I think this should have alerted it to carry out further checks in light of what appeared to be a worse credit record. I haven't seen the business account from the time of this loan, but again I can see that the joint account was still consistently overdrawn (this time just under the limit) and hadn't reduced very much since the first loan. Mrs S was again making regular transfers into the account, and it's fair to say she had joint responsibility for managing that account.

Whilst Everyday has assessed that she had a higher disposable income, it's not just the pounds and pence affordability to consider but her ability to sustain the repayments over 36 months. I think in light of the information revealed by its checks that Everyday didn't make a fair lending decision here.

Putting things right

Everyday should:

- refund all interest and charges Mrs S paid on loan 1 and loan 2.

- pay interest of 8% simple a year on any refunded interest and charges from the date(s) they were paid (if they were) to the date of settlement.*

- remove any negative information if appropriate about loans 1 and 2 from Mrs S's credit file.

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

My final decision

I uphold the complaint and require Everyday Lending Limited trading as Everyday Loans to provide the remedy set out under "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 4 April 2022.

Ray Lawley
Ombudsman