DRN-3313332

The complaint

Mr P, through his representative, complains that Everyday Lending Limited trading as Everyday Loans provided him with a loan he was unable to afford to repay.

What happened

Everyday issued a loan for £1,500 to Mr P on 10 September 2019, repayable over 18 months at £133 a month. The loan was paid up in September 2020.

Mr P approached Everyday for the loan to pay off some payday loans and to buy new tyres for his car. But he says he couldn't afford to pay the loan instalments and got into further debt paying it off.

Everyday said that its application process was to review Mr P's application and to carry out the following checks:

- 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

It used ONS (Office of National Statistics) data to calculate his living expenses. It calculated that he had a monthly disposable income of around £103 after paying his living expenses and credit commitments. It therefore assessed that the loan was affordable.

Our adjudicator assessed that Mr P was already paying a significant amount of his income to pay loans and credit cards, and was near the limit on most of his accounts. She assessed that the loans were unaffordable to Mr P, so Everyday shouldn't have lent the money to him. She proposed that it repay all the interest and charges paid by Mr P on the loan.

Everyday disagreed and said that the repayment of the payday loans hadn't been taken into account. When it did take those into account and added a higher income figure which Mr P had declared in branch, it assessed that Mr P had a disposable income of around £556 so it was clearly affordable.

The matter has been passed 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 Mr P would be able to repay the loan in a sustainable way?

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

The rules and regulations in place required Everyday to carry out a reasonable and proportionate assessment of Mr P'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 Mr P undue difficulty or significant adverse consequences. That means he 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 he 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 to simply think about the likelihood of it getting its money back - it had to consider the impact of the loan repayments on Mr P**.** 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 such a 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).

Mr P had a significant amount of loans and credit cards which he was paying instalments on. In particular he had default balances on a loan for £1,461 and a credit card for £363. He had a historic delinquent balance on a loan. He had taken out four payday loans in the three months before the loan was approved. He had also taken out two other high cost loans and was near the limit on his credit card. On the other hand he had only a small liability for accommodation. But on Everyday's own affordability assessment, Mr P had credit commitments of £1,138 against his income of £1,970, about 58%. I think that this was likely to be unmanageable.

Everyday says Mr P was paying off some payday loans, which made its loan affordable. I haven't seen evidence that Mr P paid off those loans, but I've noted that he wanted the loan both to pay off some loans and to buy new tyres. Everyday has assessed that the loan repayments would have added around £281 to Mr P's disposable income. It has also used a higher income figure.

I think the figure for income can only be assessed from Mr P's payslip, apart from an £80 accommodation charge. But even if I were to take into account the full amount of the payday loans in the overall figure, this doesn't take away the fact that Mr P's credit commitments would have been over 50% of his income. And the pounds and pence affordability doesn't in my view show the whole picture.

I think that Everyday carried out proportionate checks. But I think that it didn't react appropriately to what it discovered in those checks. Taking into account that Everyday didn't require Mr P to pay off the loans, his high credit liability, and his delinquent accounts, I don't think Everyday made a fair lending decision.

Putting things right

As to what the appropriate remedy is, Mr P has had the benefit of the loan and it's fair that he should pay back the capital sum. But I think Everyday should refund the interest and any charges.

Everyday should:

- refund all interest and charges Mr P paid on the loan.
- 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 the loan from Mr P's credit file.

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

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 11 April 2022.
Ray Lawley
Ombudsman