DRN-3316201

The complaint

Mr S complains through his representative that Everyday Lending Limited trading as Everyday Loans (Everyday) lent him money on a high cost loan that he was unable to afford to repay.

What happened

On 24 June 2016 Everyday provided a loan to Mr S of £4,000 repayable at the rate of £221 a month over 48 months. It appears from Everyday's records that he paid off the loan in October 2017, although it's unclear if there were penalty charges still left on the account.

Mr S's representative said that:

- He was not asked if his financial circumstances had changed.
- As a result of this borrowing he had entered into a debt management plan.
- Everyday didn't ask Mr S whether he had dependants and therefore couldn't have taken it into account when assessing the affordability.
- Everyday didn't ask Mr S if he had a pre-existing medical condition and therefore couldn't have taken it into account when assessing the affordability. Therefore not taking in consideration the effect it may have on his ability to repay the loan.
- Mr S had other debts at the time of taking out the loan.

Everyday said it assessed the affordability by verifying his income, and considering a credit report, his payslip and one month's bank statement. It assessed his outgoings by using ONS (Office for National Statistics) data, which allowed 35% of his income for outgoings plus £80 for each child. The loan was for consolidation of his existing loans. When Mr S approached it, he had a negative monthly disposable income and a high income to credit ratio of 58%. By consolidating a number of his loans, he would have been able to increase his disposable income to a positive figure of £104 (rounded up) and decrease his income to credit ratio to around 38%. This would have enabled him to break out of the cycle of payday loans that he was in.

Our adjudicator said that Mr S would have been left in a deficit taking into account the new loan payment, so wouldn't have been able to afford the new loan payment. He also would have had credit commitments of 52% of his income, and he had a credit card that was £22 below its limit.

Everyday disagreed with the assessment of the figures, pointing out that after consolidation Mr S would be left with 2 active loans and a credit card, everything else on his credit file would be consolidated with his loan or had already been settled. It therefore concluded this loan was responsibly lent as it would get him out of his payday cycle and reduce his monthly credit commitments improving his finances overall.

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 S would be able to repay the loan in a sustainable way?

- If not, would those checks have shown that Mr 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 Mr 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 it had to ensure that making the repayments on the loan wouldn't cause Mr S 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 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).

The loan amount was for a considerable sum, payable over a long period. This represented a substantial monthly commitment for Mr S. He was also on a relatively low income, So Everyday should have carried out a thorough assessment of Mr S's financial circumstances.

Taking his representative's points first, I think Everyday did carry out a thorough assessment of Mr S's financial circumstances. The assessment noted he had one dependant and allowed £80 a month for that which I think is reasonable. Neither Mr S nor his representative have shown us any evidence of a medical condition so I can't expect Everyday to have taken any such condition into account.

It's difficult to pinpoint exactly how Everyday arrived at its assessment of Mr S's income and credit commitments since neither seem to accord with the credit report, or Mr S's payslip and bank statement. Looking at Everyday's actual affordability assessment, this would appear to give a figure of £950 for his creditor repayments. It said that the loan would reduce that figure by £543. Everyday paid three loans off from the loan figure before releasing the balance to Mr S. The instalments on those three loans totalled £278, and it's difficult to understand why Everyday didn't pay off the other loans it said it was consolidating. Nevertheless one of the remaining loans had a £244 balance on it with a £203 monthly instalment taken into account. So I think it fair not to take that loan figure into account in assessing his remaining credit commitments.

I think at the very least Everyday should have paid off all the loans it was said to be consolidating. As I have no evidence that those other loans were paid off this means that the figure for creditor repayments could only be reduced by £481 (adding in the £203 for the loan I've mentioned above). Everyday's own assessment left Mr S with a monthly disposable income of £103- £104. But this would be reduced to £62, which I think would be wholly insufficient.

There is another problem with Everyday's assessment. It allows a figure of £1,671 for his monthly income. Yet in its final response letter it said this figure was £1,581 (rounded up), and this would accord with its handwritten note on Mr S's payslip (which incidentally gives an even lower figure). On that basis even though it might slightly reduce the living expenses calculation, Mr S would still be left with no disposable income. I realise that when he approached Everyday he was in a worse position, but I have to conclude that the loan wasn't the answer to his problems and he was simply unable to afford it.

In respect of the income to credit ratio, I realise again that the lending would have improved this but it would still have been very high at around 38%. Again this was an indication that Mr S wasn't able to afford this loan.

I conclude that Everyday didn't make a fair lending decision.

Putting things right

Mr S has had the capital sum for the loan and it's fair that he repays this. So I will require Everyday to do the following:

- Remove all interest, fees and charges applied to the loan.
- Treat any payments made by Mr S as payments towards the capital amount of £4,000.
- If Mr S has paid more than the capital, refund any overpayments to him with 8%* simple interest from the date they were paid to the date of settlement.

- But if there's still an outstanding balance, Everyday should come to a reasonable repayment plan with Mr S.

- Remove any adverse information about the loan from Mr S's credit file.

*HM Revenue & Customs requires Everyday to deduct tax from this interest. It should give Mr S a certificate showing how much tax it's deducted if he 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 Mr S to accept or reject my decision before 5 July 2022.

Ray Lawley
Ombudsman