DRN-3391192

The complaint

Ms M complains that Everyday Lending Limited lent her money on a high interest loan which she was unable to afford to repay.

What happened

Ms M was provided with a loan by Everyday on 30 June 2014 for £2,500, plus a life insurance premium of £187, repayable over 24 months at the rate of £240 a month. The loan was repaid on 14 September 2015.

Ms M struggled to keep up with the repayments after December 2014, offering lower repayment instalments. She paid off the balance in a lump sum in September 2015. She later complained to Everyday that it had lent to her irresponsibly. Everyday initially said that Ms M was out of time for making a complaint. But an ombudsman decided that we could consider the complaint.

Everyday said that it reviewed Ms M's financial circumstances. Its checks included:

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

In calculating Ms M's outgoings using Office for National Statistics (ONS) data and assessed those at 35% of her income. It paid off two mail order accounts, for which it assessed Ms M had been paying a total of about £17 a month, before releasing the balance to her. It said the purpose of the loan was to consolidate Ms M's debts, which included a number of payday loans. It believed the loan was affordable to her, leaving her with a monthly disposable income of around £427, after accounting for the loan instalment.

Our adjudicator said Ms M's total credit repayments represented a significant proportion of her income. She said there was a significant risk that Ms M wouldn't have been able to meet her existing commitments without having to borrow again. So, she thought it unlikely Ms M would've been able to sustainably meet her repayments for this loan.

Everyday disagreed – it said the creditors were accounted for during the affordability checks at the time the loan was taken, and Ms M still had sufficient disposable income left.

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

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

The rules and regulations in place required Everyday to carry out a reasonable and proportionate assessment of Ms M's ability to make the repayments under the 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 Everyday had to ensure that making the repayments on the loan wouldn't cause Ms M 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 Ms M**.** 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).

I have noted that Everyday obtained two months of bank statements from Ms M. Those statements revealed that she had several active payday loan accounts open. Several of those were opened in the two months prior to the loan application. There were also some details on Everyday's file of the balances left on those accounts. I calculate total balances of around £2,000. Ms M had been paying paid about £355 a month towards them.

So, as the loan was supposed to be for consolidation, I think it would have been important to pay off those debts. Instead, Everyday just paid off two mail order accounts (which saved her about £17 a month) from the loan monies and didn't choose to pay off the loans, which I think it could have done. Ms M had an income, of about £1,492 a month. With a hire purchase loan costing her £206 and the new loan payment, her credit commitments would have been about 54% of her income, which would in my view have been unsustainable.

I haven't seen bank statements after the loan, and Ms M can't obtain them, but if I assume that she did pay off those payday loans, it would bring that figure down to about 30% of her income, still high but *possibly* affordable if she had sufficient disposable income. Whilst I understand Everyday's use of average outgoings, where it has bank statements it should have been possible to calculate Ms M's outgoings more accurately. I think, just from regular outgoings and cash withdrawals, the figure for living expenses was more like £1,000 rather than the £523 assessed. This would have left her with no disposable income, rather than the £427 assessed by Everyday. Whilst the account didn't fall into overdraft for the two month period, Ms M did receive payments from loan companies totalling around £800.

I appreciate that figures over two months are just a snapshot and that it's difficult to work out an exact figure for monthly outgoings. But I think, in light of the fact that Ms M had so many active recent payday loans which weren't paid off directly by Everyday, and that her income appeared to be fully committed that the loan was also unlikely to be affordable for Ms M.

So I don't think Everyday made a fair lending decision.

Putting things right

Ms M has had the capital payment in respect of the loan, so it's fair that she should repay this. So far as the loan is concerned, I think Everyday should refund all interest and charges as follows:

- Remove all interest, fees and charges (including insurance premiums) applied to the loan.

- Treat any payments made by Ms M as payments towards the capital amount of £2,500.

- If Ms M has paid more than the capital, refund any overpayments to her with 8%* simple interest from the date they were paid to the date of settlement.

- Remove, as appropriate, any adverse information about the loan from Ms M's credit file.

*HM Revenue & Customs requires Everyday to deduct tax from this interest. It should give Ms M a certificate showing how much tax it's deducted if she asks for one.

My final decision

I uphold the complaint 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 Ms M to accept or reject my decision before 12 May 2022

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Ray Lawley
Ombudsman