DRN-3405142

The complaint

Mr M complains that Everyday Lending Limited provided him with two loans he was unable to afford to repay.

What happened

	Date	Amount	Term	Monthly repayment	Amount received	Date repaid
Loan 1	27/06/19	£1,900.00	24 months	£207.49	£3,152.94	01/10/20
Loan 2	16/10/20	£3,000.00	24 months	£289.29	£3,200.00	Still active

Mr M paid off the first loan, which was consolidated with loan 2 but struggled with the payments for loan 2. He was struggling with debts and payday loans at the time of having both loans issued.

For loan 1, which was for debt consolidation, and for loan 2 which was also for debt consolidation and for buying furniture, Everyday said that its application process was to review Mr M's applications and to carry out the following checks:

- Obtaining and reviewing up to seven weeks bank statements from a customer's primary bank account
- Conducting a Credit Search
- Carrying out a job check

It used ONS (Office of National Statistics) data to calculate living expenses and independently verified his income. It calculated that for loan 1 Mr M had a disposable income of around £325 after paying his living expenses and credit commitments and paying off various loans. It therefore assessed that the loan was affordable. For loan 2 it assessed that the monthly disposable income figure was around £194, and assessed that that loan was also affordable.

Our adjudicator reviewed both loans and concluded that Mr M was over reliant on payday loans and he was clearly struggling financially. He said that Everyday shouldn't have issued either loan.

Everyday agreed with the adjudicator's view concerning loan 2. However as regards loan 1 although it was aware of the number of payday loans Mr M had taken out, the purpose of the loan was to consolidate his debts and to pay off those loans so as to bring the payments down to one affordable payment.

I issued a provisional decision. In it I said that I thought Everyday had made a fair lending decision in respect of loan 1. But in respect of loan 2 I said I thought it was clearly unaffordable, in line with Everyday's response to the adjudicator's view.

Mr M accepted my provisional findings. Everyday offered no further comment.

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.

My provisional findings were as follows:

"*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 M would be able to repay the loans in a sustainable way?*

- *If not, would those checks have shown that Mr 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 Mr M's ability to make the repayments under the agreements. 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 loans would be sustainable. In practice this meant that the business had to ensure that making the repayments on the loans wouldn't cause Mr M 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 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 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

I'm aware that Mr M's history showed that he was over reliant on payday loans. He advised that this was because of his recent move. He did have a number of such loans outstanding at the time of making his application. And he had exceeded his overdraft limit on his current account. But the purpose of the loan was so that he could pay off those loans and have a more manageable single payment each month. And the evidence is that he did pay off the loans, as they no longer showed on his credit record when he applied for loan 2.

It's unfortunate that he was subsequently unable to break out of the cycle of relying on payday lending, but I think at the time of issuing the loan Everyday's checks were proportionate and did show that, as long as he did consolidate his loan payments he was able to afford the loan. So I think Everyday made a fair lending decision in respect of this loan.

loan 2

Unfortunately Mr M's circumstances had got worse since taking out loan 1. I agree with the adjudicator's view that this loan wasn't affordable. As Everyday has accepted the adjudicator's view in respect of this loan, I won't go into any further detail."

As neither party has any further comments, my provisional findings are now final and form part of this final decision.

Putting things right

I don't think the complaint should be upheld concerning loan 1.

As to what the appropriate remedy is, in respect of loan 2 Mr M 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:

- Remove all interest, fees and charges applied to loan 2.
- Treat any payments made by Mr M as payments towards the capital amount of £3,000.
- If Mr M 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 M.
- Remove any adverse information about loan 2 from Mr M's credit file.

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

My final decision

I don't uphold the complaint concerning loan 1.

I uphold the complaint concerning loan 2 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 M to accept or reject my decision before 27 April 2022.

Ray Lawley
Ombudsman