DRN-3439260

The complaint

Mr N has complained that Everyday Lending Limited trading as Everyday Loans was irresponsible in lending to him.

What happened

In November 2019 Everyday Lending provided Mr N with a loan of £2,500 repayable over 36 months with a monthly repayment of £174.44. He said the purpose of the loan was home improvements and debt consolidation. The loan was repaid with the proceeds of a second loan from Everyday Lending.

In October 2020 Everyday Lending provided Mr N with a second loan of £5,000 repayable over 42 months with a monthly repayment of £291.20. He said the purpose of this loan was debt consolidation and to repay his overdraft.

Mr N complained that the loans were unaffordable. Everyday Lending looked into his complaint. It said it had carried out proper checks and it thought the loans were affordable.

Mr N referred his complaint to us. Our adjudicator upheld the complaint. He didn't think Everyday Lending should have approved the loans.

As Everyday Lending didn't agree, the matter has been referred to me.

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 of the relevant rules, guidance and good industry practice - on our website.

Having carefully thought about everything, I think that there are two overarching questions that I need to answer in order to fairly and reasonably decide Mr N's complaint. These two questions are:

1. Did Everyday Lending complete reasonable and proportionate checks to satisfy itself that Mr N would be able to repay the loans without experiencing significant adverse consequences?

- If so, did it make a fair lending decision?
- If not, would those checks have shown that Mr N would've been able to do so?

2. Did Everyday Lending act unfairly or unreasonably in some other way?

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

In light of this, 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 of time 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’ve carefully considered all of the arguments, evidence and information provided in this context and what this all means for Mr N’s complaint.

Loan 1
Everyday Lending carried out various checks before it lent to Mr N. This included asking for details of his income and expenditure, carrying out a credit search, requesting a payslip and two months’ bank statements. It calculated Mr N’s regular living expenses using statistical data and assessed his monthly credit commitments. I’ve seen a summary of the information gathered by Everyday Lending, including the credit report and bank statements provided to it at the time. From what I’ve seen, I think the checks that it carried out before lending to Mr N were reasonable and proportionate, in the circumstances.

But simply performing proportionate checks isn’t always enough. A lender also needs to react appropriately to the information shown by those checks. Those results might sometimes lead a lender to undertake further enquiries into a consumer’s financial situation. Or, in some cases, the results might lead a lender to decline a loan application outright. So, I’ve looked at the results of Everyday Lending’s checks to see whether it had made a fair lending decision.

On the face of it, Mr N had sufficient disposable income to be able to afford the loan from Everyday Lending. However his credit commitments (excluding his mortgage but including an amount to reduce his overdraft and his new loan repayment to Everyday Lending) would amount to more than a quarter of his net monthly income. I think that the fact that he was paying such a significant proportion of his monthly income on repaying credit was a reason why Everyday Lending couldn't reasonably say it was likely that Mr N would be able to repay the loan in a sustainable way over a three year period.

Everyday Lending was also aware from the credit check and also from Mr N's submitted bank statements that he was having ongoing problems managing his finances. In particular, he had defaulted on an unsecured loan account the previous month. He'd also defaulted on a second unsecured loan account and a telecoms account owing £100 on dates that weren't recorded on the credit report. His bank statement showed that he had more expenditure leaving his account every month than coming in and his overdraft was increasing month by month. To me this was another warning sign that Mr N was struggling financially and over-reliant on credit.

Overall when I think about what was on the credit search results, the proportion of his income that went on credit repayments and also what was showing on the bank statements Mr N submitted, I don't think Everyday Lending made a fair lending decision. I think on balance it ought reasonably to have realised that Mr N was finding it difficult to overcome his debt problems and keep up with his existing debt commitments, meaning it was unlikely that he would be able to sustainably repay this loan over the 36 month term. It follows that I don't think it made a fair lending decision.

Loan 2

This loan was to be repaid over a longer period and with higher monthly repayments than the previous loan. The monthly loan repayments had increased to £291.20 and were to be repaid over 42 months. If Mr N made each payment when it was due, he'd pay £12,230.40 in total.

Everyday Lending carried out the same checks and again I think they were proportionate.

Although on paper Mr N had sufficient disposable income to be able to afford this loan, his credit commitments (excluding his mortgage but including his new loan repayment to Everyday Lending) would still amount to more than a quarter of his net monthly income. As mentioned above, I think this should have been a warning sign to Everyday Lending.

Mr N had told Everyday Lending he wanted to use the loan for debt consolidation. I think Everyday Lending ought to have been concerned by Mr N's need to borrow expensive credit for debt consolidation only around 11 months after Loan 1 which he'd borrowed partly for the same purpose. A loan which was supposed to have been repaid out of the proceeds of Loan 1 hadn't been repaid. That might be the sort of behaviour that would indicate someone was becoming over-reliant on credit. And whilst Mr N said he was consolidating some of his debt, he was substantially increasing his overall indebtedness by taking out Loan 2.

Everyday Lending was also aware from the credit search that he hadn't managed to clear the three defaulted accounts he'd acquired over the preceding three years although the balances on two of them were £429 and £100 respectively.

I think on balance it ought reasonably to have realised that Mr N would probably be unable to sustainably repay this loan over the 36 month term. It follows that I don't think it made a fair lending decision.

I’ve also thought about whether Everyday Lending acted unfairly in some other way and I haven’t seen any evidence that it did.

Putting things right

If Everyday Lending has sold the outstanding debt, it should buy it back if it is able to do so and then take the following steps. If it is not able to buy the debt, it should liaise with the new debt owner to achieve the results outlined below:

- remove all interest, fees and charges applied to the loans;
- treat any payments made by Mr N as payments towards the capital amounts of £2,500 and £5,000;
- if Mr N has paid more than the capital then any overpayments should be refunded 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 Lending should come to a reasonable repayment plan with Mr N;
- remove any adverse information about the loans from Mr N’s credit file.

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

My final decision

For the reasons given above, I’m upholding Mr N’s complaint. Everyday Lending Limited trading as Everyday Loans should put things right for Mr N as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr N to accept or reject my decision before 9 June 2022.

Elizabeth Grant
Ombudsman