DRN-3595784

The complaint

Mr P, through his representative, complains that Everyday Lending Limited, trading as Everyday Loans, lent to him irresponsibly.

What happened

Using information we have from Everyday Lending, here is a brief table of the three loans approved for Mr P.

Loan	Date opened	Date closed	Principal	Instalments	Amount received by Mr P after EL paid down other debts	Highest monthly Repayment
1	17/07/2019	10/12/2020	£1,000.00	18 months	£1,000	£113.37
2	10/12/2020	12/08/2021	£2,000.00	24 months	£1,891.82	£184.68
3	12/08/2021	-	£3,000.00	36 months	£1,208.73	£207.69

One of our adjudicators looked at the complaint and thought that Everyday Lending should put things right for Mr P for loans 2 and 3. The reason was that Everyday Lending had obtained and reviewed bank account statements from Mr P and for the time around loans 2 and 3 being approved there was evidence of significant gambling transactions.

Our adjudicator had calculated as follows*: '…in October 2020* [Mr P's] *gambling transactions totalled £1365, while in November 2020 they totalled £885. Then in June 2021 they totalled £440, and in July 2021 they totalled £245.'*

Everyday Lending disagreed and Mr P agreed with our adjudicator's recommendation to resolve the complaint.

The unresolved complaint was passed to me to decide.

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.

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 Lending, each time it lent, complete reasonable and proportionate checks to satisfy itself that Mr P would be able to repay 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 Lending 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 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 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 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 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.

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 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 the arguments, evidence and information provided in this context and what this all means for Mr P's complaint.

From Mr P's response to our adjudicator's assessment then it seems that he has no dispute with the outcome for loan 1. I have reviewed it briefly and agree with our adjudicator on that loan. And as Mr P has no issue with that outcome then I say no more about it.

For loans 2 and 3, I agree with our adjudicator and I uphold Mr P's complaint about loans 2 and 3. The information Everyday Lending gathered from Mr P included copy bank statements and copies of outstanding loans with other high cost or short term lenders (some instalment lenders). And its plain to see that Mr P was already in overdraft, was selling possessions (such as a bike for £1,000 on 23 October 2020) to reduce that overdraft, had multiple outstanding loans and as well as all of that he was gambling regularly and for substantial amounts.

Examples from the account notes in December 2020 are: '…*gambling looks high …have warned against this in the future…*' and *'…risks are gambled £1,400 in one month but decreased month after …'*

And in August 2021, the account notes state much the same thing and shows me Everyday Lending were fully aware of the gambling and proceeded to lend in any event.

I have read that Everyday Lending's response in which it has accepted that it knew of the gambling at the time of the loans. And I have seen account notes and assessment documents where the gambling by Mr P had been noted and commented on before lending. Everyday Lending's response was that the level of gambling transactions were satisfactory and within what it considered to have been an acceptable margin.

I disagree. The cumulative effect of overdraft debt, other loans, consolidation of loans, gambling, and every increasing capital sums taken with Everyday Lending over longer terms with higher and higher monthly repayments leads me to think that Everyday Lending were wrong to lend. It carried out the checks I would have expected it to have carried out but then failed, in my view, to analyse and apply its own responsible lending criteria to Mr P's situation before approving loans 2 and 3.

I uphold Mr P's complaint about loans 2 and 3 and I direct that Everyday Lending Limited does as I set out below.

Putting things right – what I am directing Everyday Lending to do

- remove all interest, fees and charges applied to loans 2 and 3,
- treat any payments made by Mr P as payments towards the capital amount of loans 2 and 3,
- if Mr P has paid more than the capital then any overpayments should be refunded to 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 can use the refunded sums (after the 8% has been added) to offset any debts Mr P owes to it. And if still there is an outstanding balance, then it should come to a reasonable repayment plan with Mr P.
- remove any adverse payment information about the loans from Mr P's credit file.

† HM Revenue & Customs requires Everyday Lending 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

My final decision is that I uphold Mr P's complaint in part and I direct that Everyday Lending Limited does as I have outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 23 August 2022.

Rachael Williams
Ombudsman